

**Confidential Final Report Concerning Discrimination,  
Harassment and Intimidation in the County Workplace  
for the Schoharie County Board of Supervisors**

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## **Introduction and Summary**

This Final Report (the "Report") is presented to the Schoharie County Board of Supervisors ("the Board") with our appreciation to every Schoharie County ("the County") employee who participated in the evaluation process. Special thanks are extended to the directors and commissioners of the County departments, who made this evaluation possible. Without their assistance, a project of this magnitude would not have been possible in the time allotted.

The report is divided into five sections. The first section describes the procedure and methodology used in the evaluation process. The second section describes the major issues confronting the County. Section three describes our findings for each of the departments, tailoring those findings from guidance provided from the Board, through then Chairman Harold Vroman and Vice-Chairman Phil Skowfoe. The fourth section describes the litigation surrounding the 2012 layoffs and resulting litigation. We have included our recommendations for return to the workplace for any employee improperly targeted for dismissal in this section. In the final section, we set forth findings and recommendations for amending policies and suggestions for training and education.

### **PART I.**

#### **A. Scope of Evaluation**

On October 12, 2012, the Board awarded Fitzmaurice & Walsh, LLP, ("the firm") a contract to evaluate the current state of affairs and relationships, pertaining to prior reported or unreported acts of discrimination, harassment and/or intimidation in the Schoharie County workplace. The contract was awarded through a Request for Proposal (the "RFP") format. A copy of the RFP is attached hereto as Exhibit 1.

The RFP contemplated a broad and wide ranging evaluation, to include interviews of all current County employees, including department heads and members of the Board, former County employees departing service after December 31, 2008, and outside agencies and municipalities that dealt with the County.

At the end of the interviews, the Board intended the Report provide a "detailed analysis" specifically identifying acts of discrimination, harassment, and/or intimidation by Board members and County department heads against County employees; Board members and department heads against other Board members and department heads, and Board members and/or department heads against outside agencies and municipalities. Since the RFP referenced generic and unlawful acts of discrimination, harassment and intimidation, our questions were crafted to elicit both forms of the unwanted behavior.

On October 17, 2012, after consultation with County department heads, and Chairman Vroman and Vice-Chairman Skowfoe, it became apparent that the scope of the evaluation was overly broad and should be minimized. Interviews of outside agencies and municipalities potentially added nearly two hundred additional interviews.

Scheduling for even one hundred employees from outside agencies and municipalities not subject to the County's authority would have been impossible. To that end, we recommended that the outside agencies and municipalities that dealt with the County be excluded from the interview process since interviews of those categories would prohibitively increase the number of interviews while adding little to the purpose of the evaluation. The Board was also concerned about the cost of the inquiry to County taxpayers. Accordingly, on October 19, 2012, the Board voted to narrow the scope of the evaluation, excluding outside agencies and municipalities from the evaluation process. A copy of the Board's instruction is attached hereto as Ex. 2.

In addition to inquiries involving generic and unlawful discrimination, harassment, and/or intimidation, the RFP's Statement of Need, anticipated an evaluation of the budgetary issues surrounding the layoffs that occurred during the 2012 budget process. This request was also wide-ranging. The request was further defined by the RFP's Background Information/Philosophy section which provided, "Further, during the 2012 Budget process, a number of layoffs were made to members of the County workforce, several of whom have questioned the propriety, motive behind and/or legality of particular layoffs made by the Board of Supervisors, and the input provided to the Supervisors by various department heads." This request required a determination of how the budget was created, whether the proper procedures were followed in the creation of that budget, who was authorized to provide insight into the budget, who actually provided information into the creation of the budget, whether that information was accurate, whether it was pretextual, what the motive was behind the layoffs and whether the layoffs were ill-conceived.

At the conclusion of the interview period, in the event there should be a finding of discrimination, harassment, and/or intimidation in the workplace, the Board, asked for "recommendations for remediation," including but not limited to, amendments to portions of the County's current Policies and Procedures Manual dealing with discrimination, harassment and the Ethics Policy, as well as, mandatory training and education for County employees, department heads and Board members, and return to the workplace for any employees found to have been improperly targeted for dismissal.

The RFP required, "That during the course of such inquiry firm shall direct any questions or requests for guidance and direction relative to the conduct of such inquiry, jointly to Harold Vroman and Philip Skowfoe, Jr., respectively Chairman and Vice-Chairman of the Board of Supervisors, and to no other person." *RFP, Statement of Need.* All issues that arose during the evaluation period were addressed to both Chairman Vroman and Vice-Chairman Skowfoe by electronic mail and facsimile, respectively. Former Chairman Vroman and Vice-Chairman Skowfoe were integral to the decision-making process during the interview period.

On January 7, 2013, with the interview process essentially complete. Supervisor Phillip Skowfoe was elected Chairman of the Board of Supervisors and Supervisor Michael Brandow became Vice-Chairman.

The RFP's Statement of Need, as well as the October 19, 2012, instruction, allowed the firm to determine and define the scope of the evaluation process as well as the methodology to be used in creating a detailed final report for the Board.

## **B. Methodology**

On October 5, 2012, the firm requested that the County Personnel Officer disseminate, via electronic mail, questionnaires to all County employees.

The questionnaire was conceived as a tool designed to determine baseline characteristics for each County employee, department and department head, streamline the interview process, and gain insight into the County employees' ideas on improving their workplace.

The questionnaire was not well received.

Of the approximately three hundred and eighty-five current County employees, two hundred and seventy-four returned their questionnaire to the firm for use in the evaluation process. Some of the questionnaires were returned unsigned, incomplete or with a letter or note attached reflecting a pervasive level of paranoia within the County government.<sup>1</sup> Several notes and emails from County employees accused the firm of colluding with the Personnel Department.

### **1. The Interviews**

Interviews were conducted at various locations throughout Schoharie County. While the bulk of the interviews were conducted in the rear third floor conference room of the County office building, the balance of the interviews took place in a Department of Public Works office, the Probation Department's conference room, a conference room in the Department of Motor Vehicles and County Clerk's office, the library in the Old Stone Fort and an office in the Transportation Department. Most of the former employee interviews took place at a hotel in Schoharie County, after work hours.

Only the interviewee and two members of the firm were allowed into the room during the interview. Members of the Sheriff's Department and two department heads requested that an attorney represent them during their interviews.

### **2. Overview Provided to Interviewees**

Each interview began with an explanation of the purpose of the evaluation. The explanation mirrored the language in the RFP. Each employee and former employee was informed that the purpose of the evaluation was to analyze the current state of affairs and relationships pertaining to prior reported or unreported acts of discrimination, harassment

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<sup>1</sup> Few County employees realized the questionnaires requested little information that was not already public information.

and intimidation in the Schoharie County work place which may exist between members of the Board of Supervisors and department heads, current employees and former employees going back to 2009. The employee was then asked if they understood our explanation. If there was any indication the employee did not understand, they were given the opportunity to ask questions about our explanation. Few employees asked questions at this stage.

Next, employees were informed that the Board asked us to perform a countywide evaluation including the interview of every current County employee. At the end of that evaluation period the firm had been retained to write a final report on its findings. Employees were specifically assured that the Board did not want any one individual targeted, any group of individuals targeted or any one department targeted. The purpose of the evaluation was a comprehensive, countywide evaluation that sought to identify acts of generic and unlawful discrimination, intimidation and harassment in the workplace.

### **3. No Retaliation Policy**

All employees were assured that the County had a firm policy prohibiting retaliation against any participant in the evaluation process and any perceived harassment would be reported to the Board. These instructions made clear that the County would not accept any form of retaliation against anyone participating in the interview process.

### **4. Confidentiality**

Confidentiality in the interview process was the foremost concern with a majority of the employees. The employees were told that the members of the Board had assured the firm that they did not want to hear the digital recordings or see the notes created during the course of the interview process. Our notes, questionnaires and digital recordings were to remain within the exclusive custody and control of the firm. These instructions appeared to dispel the fears of most, although not all, of the employees. A copy of that agreement has been attached hereto as Ex. 3.

Employees were told a final report would be prepared for the Board based on our findings during the evaluation process. We did not assure the employees there would be no litigation surrounding the confidential report or specify what actions, if any, the Board may take after receipt of the report. It was made clear to all employees there was confidentiality, although it was a qualified confidentiality. Employees were asked if they understood our instructions. If there were questions based on our instructions, the questions were answered before the interview continued. No employee refused to continue the interview process after our confidentiality explanations.

I conducted all interviews of current and former employees, as well as, all Board member interviews. Joseph Hester, Esq., of counsel to the firm, served as co-counsel for nearly all of the interviews. Michael K. Duffy, Esq., an attorney with the firm and former

Chief of Investigators for Westchester County District Attorney's Office, also assisted with interviews of the Sheriff's Department.<sup>2</sup>

The questions posed to all interviewees were the same objective, standardized open-ended questions.

After the Purpose of the RFP and their qualified confidentiality was explained, interviewees were asked how long they had been employed by the County, their job title, supervisor or supervisory duties, a brief description of their job duties, and educational background.

Interviewees were then asked a two-part question: First, had they heard or did they know of any acts of unlawful discrimination, harassment, or intimidation in the Schoharie County workplace? Regardless of the source of information, we wanted to determine if they had heard or knew about acts of discrimination, intimidation or harassment in the Schoharie County workplace. This part of the question was designed to elicit a broad range of information, including hearsay, subsequently investigated during the evaluation period. The question was intentionally designed to be broad enough to capture responses to generic and unlawful discrimination. Our follow up questions addressed any indication that an employee felt discriminated against or harassed based on their inclusion in a protected class of individuals.

The second part of the question was designed to elicit more personal information about both generic and unlawful acts of discrimination, intimidation or harassment. Interviewees were asked if they were ever subjected to acts of discrimination, intimidation, or harassment, while a County employee, or if they had ever witnessed their fellow County employees subjected to these acts.

The two-part question invariably led to other questions based on employee answers. As the evaluation progressed, moreover, the same issues recurred in most of the larger departments. The initial questions were kept broad enough to capture all acts of discrimination, intimidation or harassment in the County workplace. We told the interviewees we did not care where the source of their information came from. Even rumor, innuendo and hearsay were to be confirmed or dismissed if possible.

After the inquiry into discrimination, harassment and intimidation, all interviewees were asked three questions: had they taken part in any union grievances had they received training from the County in the field of unlawful harassment and discrimination; and how often did they consult the County Policy and Procedures manual.

## **5. Custody**

The interviews were recorded with a digital recorder. Each digital recording/interview was identified by the interviewees name and the date of the

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<sup>2</sup> Due to scheduling conflicts with the Sheriff Department's union attorney, Mr. Duffy could not participate in all of the interviews of deputies.

interview, then transferred from the digital recorder to a computer and backed-up on an external hard-drive. The October 12, 2012, Memorandum of Understanding executed between the firm and the Board instructed the firm that the digital recordings and notes taken by the firm throughout the interview process would remain in the exclusive custody and control of the firm.

## **PART II. Major Issues**

The major issues section is a compilation of topics consistently raised by former and current employees in response to our questions concerning harassment, discrimination and intimidation, as well as, responses to our questions concerning the budgetary issues involving the 2012 layoffs.

Three dominant issues arose during the interviews: the creation of an unauthorized layoff list, the crippling conflict that has developed among the Board of Supervisors, and discrimination and harassment directed at women.

Although not perceived as a major issue, numerous employees struggled with the decision of whether to report intimidation or discrimination to their local union. A majority of employees faced with that decision chose not to involve their local union. Issues surrounding that decision are discussed in the final segment of the major issues section.

Readers are cautioned that the Board requested an evaluation encompassing the interview of over 400 individuals with a final report within 60 days of the execution of the contract. This was an extremely ambitious schedule. This report speaks to our findings during the evaluation period but does not supplant the need for an in depth investigation of several of our findings. It is important to note that we performed a linear evaluation not an investigation. The difference being, an investigation would have allowed us to return to prior interviewees to ask follow up questions. An evaluation did not afford us that luxury.

### **A. The Board of Supervisors**

During the evaluation, we received an overwhelming amount of general and specific complaints about the Board of Supervisors from various County Departments, including the Health Department, the Department of Public Work, the Sheriffs Department, and the Department of Social Services.

It would be impossible to ignore County employee's complaints of intimidation and draft this report. Recognizing that most of the complaints were of a general nature, we attempted to examine the alleged climate of intimidation one incident at a time.

Most of the complaining employees felt a good deal of the intimidation and anxiety was created as a result of dysfunction within the Board of Supervisors.

We reviewed video recordings and minutes of Board meetings and oversight committees. What we found was a general dysfunction, which manifested itself in the form of incivility, rudeness, and outright hostility between Board members, department heads, employees, and members of the public.

The dysfunctional split may have reached its pinnacle in June 2012, when certain Board members filed an Article 78 proceeding against former Chairman of the Board, Harold Vroman, alleging removal from their respective oversight committees was arbitrary and capricious.<sup>3</sup> On August 15, 2012, the Hon. Eugene Devine of Supreme Court, Schoharie County, filed a decision dismissing the petition and denying relief.

Despite Judge Devine's decision, Board members removed from their respective oversight committees were returned to those committees by Board vote.

As many County employees reported, there was an obvious division of Board members within the Board. Based on our interviews with members of the Board, this division was not drawn along party lines. Instead, the split was centered around the Personnel Office. Employee comments and supervisor statements revealed supervisors vehemently divided based on their support or opposition to the Personnel Officer.

Based on our interviews, we found employee beliefs of intimidation revolved around the instability of their County government, coupled with their perception of the Personnel Officer possessing almost unquestioned authority.

An overwhelming number of the general and specific complaints were related to the Personnel Officer (Those complaints are catalogued below). Taking into consideration the form of County government, with its basic checks and balances, it was difficult to fathom how the Personnel Officer could possibly possess the unfettered authority that was being attributed to her. When asked for an example of the proposed authority, many employees directed our attention to the layoff list.

There were many rumors surrounding this layoff list. Many County employees described the creation of the layoff list as an example of the Personnel Officer's authority. Employees came to the interviews with a copy of the layoff list claiming the Personnel Officer created the list herself. Copies of emails from the Personnel Office were provided by employees as proof of the layoff list's author.

The complaints came from County employees who had actually been laid-off, from County employees whose positions were included on the layoff list, and from County employees concerned about past conflicts with the Personnel Office. To the extent possible, all of these documents and claims were examined and researched during our interviews.

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<sup>3</sup> Supervisors Phil Skowfoe, Larry Bradt, Donald Brandow, Earl VanWormer, III, James Buzon, Gene Milone, J. Carl Barbie and Sandra Manko initiated the Article 78 Proceeding.

The proposed lists we inspected included titles but not individual names. Employees explained that although their actual names did not appear on the layoff list, the County's departments were so small that the title usually belonged to one individual.

Still, the ultimate decision concerning layoffs rested with the collective vote of the full Board. It was difficult to comprehend how, therefore, County employees perceived Ms. Ethington as the ultimate arbiter of layoffs. Equally confusing was the Board's decision (if there was a decision) to allow an unauthorized layoff list to be distributed at a Board meeting in light of the County Law of the state of New York.

The next section sheds some light on the Board's decision to circulate the unauthorized layoff list.

## **B. The Layoff List**

The RFP requires the evaluation of prior reported or unreported acts of discrimination, harassment and/or, intimidation in the Schoharie County workplace. During our interviews of County employees, one issue was paramount among complaints of intimidation: Employees felt intimidated by the creation and existence of an unauthorized layoff list. Indeed, many of the employees referred to it as a "hit list." This section addresses those concerns and attempts to explain the proposed reasoning behind the-creation of an unauthorized layoff list.

New York State's County Law ("County Law") defines the procedure guiding the county's budget officer during the creation of a proposed budget. Included in these procedures, are any proposed changes to the budget, including proposed layoffs. Article 7, Section 353 (1) of the County Law, states in pertinent part, "The head of each administrative unit shall submit annually to the budget officer on or before the first day of October, an estimate of revenues and expenditures of such administrative unit for the ensuing fiscal year." After the budget officer's receipt of the department head's estimates, he or she may schedule an inquiry and investigate the submissions. County Law, Article 7, Section 354 (1), attached as Exs. 4 and 5, respectively. After completion of the budget officer's investigation and review of the Department Head's submissions, he or she creates a proposed budget and files it with the Clerk of the Board. *Id.* at Section 354 (2).

In 2011, the co-budget officers for the County were Department of Social Services Commissioner Paul Brady and Director of Planning Alicia Terry.

Our interviews of the co-budget officers established that they performed their investigation and review function throughout the course of October and November 2011, preparing and filing with the Board a proposed budget, pursuant to Article 7 of the County Law.

Despite this investigation and review process a different layoff list was distributed to the Board on November 18, 2011. This layoff list included many additional job titles.

Mr. Brady told us these additional job titles did not appear in the Budget Officer's 2012 Tentative Budget. Most of the department heads informed us that they had not provided any information with regard to the additional layoff list.

A review of the minutes of the November 18, 2011, Board meeting reveals confusion over the author of the list when Sheriff Desmond asked, "How did the layoff list come about. Who made these decisions?" A copy of the Board of Supervisors November 18, 2011 meeting minutes is attached hereto as Ex. 6.

The distribution of the layoff list caused confusion and alarm among the attendees of the meeting. Based on statements included in the meeting minutes, it appears that some members of the Board of Supervisors may have known about the layoff list and some did not. (See, comments of Phillip Skowfoe, Daniel Singletary and Harold Vroman, at Ex. 6).

Co-budget director Brady told us that he was surprised to learn that, after he completed his budget investigations with the various department heads, someone had circumvented the entire process and distributed their own layoff list.

Although many employees presumed they knew who created the layoff list, it was not until January 2, 2013, that we discovered who actually created and distributed the unauthorized list.

On January 2, 2013, we interviewed the County's Personnel Officer, who was represented by her attorney, Bill Ryan, Esq.. The Personnel Officer informed us that she had created the layoff list at the behest of Supervisor Robert Mann. She claimed she had received a note from Supervisor Mann instructing her to create layoffs in addition to the budget officer's proposed layoffs. She told us she did not keep the note. The Personnel Officer was shown a copy of a layoff list and confirmed it was the list she had created. A copy of that layoff list is attached hereto as Ex. 7.

She explained that she had an additional conversation with Supervisor Mann wherein she asked Him, "You guys definitely need these positions layed-off for money reasons, and he said yes." She continued, "I gave [Supervisor Mann] a list and I said these are positions to start discussing about, but you need to go back to the department heads with it." When asked who else was present at the meeting, she said, "Nobody, just Bobby and I."

The Personnel Officer told us that some of the additional layoffs were created by her recollection of remarks made during past meetings with the Board and different committees. She recalled conversations during the past three years when the Supervisors would question the day-to-day activities of certain individuals and include those individuals on her list. Inclusion in her potential layoff list had further consequences when the seniority, "bump" and "retreat" rights were considered. Consideration of the substantive daily activities and the "bump" and "retreat" rights of individuals created many more names/titles to be added to the list. The Personnel Officer referred to this as a

"ripple effect." She explained that the list was simply a list of the potential layoffs and that the ultimate decision was to be made by the Board.

The Personnel Officer told us that the inclusion of additional names/titles to the proposed budget was an attempt to save the County money.

When asked why she did not include the budget officers in the creation of her layoff list, she said she thought she had included them when responding to Supervisor Mann's email concerning the additional layoffs. She maintained that the co-budget officers were inadvertently excluded when she returned Supervisor Mann's email and failed to hit the "reply all" key.

When we asked her for a copy of Supervisor Mann's email, she told us she did not know if she still had the email but she would look for it. When asked to recall the content of the email the Personnel Officer told us she would rather not recall and did not feel comfortable answering the question. A ten-minute recess was then taken from the interview.

When we asked if Supervisor Mann's directions appear in the Finance meeting minutes or Board of Supervisors meeting minutes she told us that she did not know. Later in the interview, the Personnel Officer was asked if she had inspected any meeting minutes for a grant of authority allowing her to create an additional layoff list. She responded it was not her job to "go around and make sure the Board of Supervisors puts everything they are supposed to in the minutes." She told us that actions requested in committees by the Board were often performed before transcription of the minutes. The Personnel Officer told us that after she created the layoff list she asked and was granted the Board's permission to distribute the layoff list at the Board meeting.

A review of the October and November 2011 Finance Committee and Board of Supervisors meeting minutes reveal no discussion of additional layoffs to the 2012 Tentative Budget.

During his December 17, 2012 interview. Supervisor Dan Singletary told us the "hit list" as he referred to it, was created to address "employment costs" which the County had problems controlling in the past. He was shown the layoff list Ms. Ethington admitted to creating and confirmed it was the same "hit list" he had seen. Supervisor Singletary told us all of the department heads were allowed to participate and argue for the retention of their employees. It was not clear however if he meant before or after the layoff list's creation.

Ms. Denice Green, a deputy clerk for the Board, informed us that during the scheduling of interviews for the Board of Supervisors, Supervisor Mann said he would not be interviewed. We left a phone message at his home requesting he attend an interview. We received no return phone call from Supervisor Mann. Two supervisors told us he would not appear for the interview.

The creation of the Personnel Officer's layoff list at the request of Supervisor Mann, however well intentioned, may have violated procedures contained in the County Law.

Based on interviews of County employees the layoff list created by the Personnel Officer at the request of Supervisor Mann caused a great deal of panic throughout county government. Employees questioned their respective department heads about the layoffs. Since they were not consulted, the department heads had no answers to the employees' questions, further adding to the panic. Ultimately, the department heads were able to recover from the surprise of an additional layoff list and successfully argue for the retention of their personnel. As Sheriff Desmond explained to us, "We got to fightin" for our people.

Even still, as more fully explained in the Litigation Section below, not all personnel included in the Personnel Officer's layoff list were able to have their respective department heads successfully argue for their retention.

### **C. Discrimination Against Women**

We encountered several claims of unlawful discrimination against women, during our evaluation. Most of those claims came from members of the Board of Supervisors and department heads.

Several supervisors, male and female, made claims that woman were subjected to acts of discrimination in County government. These supervisors believed the Board, with only two women, was a "good old boys club."

Female department heads and certain members of the Board believed that female department heads received less money for performing basically the same duties as their male counterparts.

#### **1. Recovery Committee**

Perhaps, the most widely reported incident occurred during a Recovery Committee meeting. With some minor variations in their account of events, several interviewees recounted that a County employee was embarrassed and mistreated by a department head.

The employee, Ms. Colleen Fullford is a certified flood plain manager from the Emergency Management Office. Ms. Fullford told us that after the flood, a Recovery Committee was created to assist with the recovery effort. The Committee was given the task of conducting the Hurricane Irene recovery plan for the County.

Ms. Fullford told us that the Board disagreed on the progress of the recovery and voted to appoint County Treasurer Bill Cherry as the sole person in charge of the recovery effort. During that same meeting, Ms. Fullford addressed the Board and told

them if they did not "do the right thing," there was the possibility that the County may be excluded from the National Flood Insurance Program and would have to forfeit FEMA funding. She also told us that in her opinion, no one individual was appropriate for the position since one person could not possibly have the requisite knowledge to solve the recovery problems.

Ms. Fullford further recounted that during a break in the Board meeting, she approached Mr. Cherry, apologized for her opinion and told him she did not feel any one person was capable of doing the job. She told us that Mr. Cherry replied, "If you were interested in the Director position, you would give the Board whatever they wanted." She said it was her responsibility to convey accurate information to the Board so they could make a correct decision.

Ms. Fullford told us she scheduled a meeting with FEMA and New York State officials the next week. She started the meeting by introducing Mr. Cherry as the new Recovery Manager. During the meeting, she claimed that Supervisor Skowfoe and Mr. Cherry repeatedly cut her off. At one point she felt Mr. Cherry made an inaccurate statement and corrected him in front of other members of the meeting. She said Mr. Cherry claimed the statement was accurate and told her to keep her mouth shut if she wanted to continue being a part of the meeting. Her State and Federal counterparts, as well as four Supervisors, were at the meeting. She closed her book, stood up and walked out of the meeting.

Supervisors Bill Goblet, Tom Murray and Harold Vroman attended the meeting and confirmed the above-version of events.

In the hallway after the meeting, it was reported to her that Mr. Cherry said, "That smart mouth bitch has got to be put in her place." Supervisor Harold Vroman told us he overheard the statement in the hallway (This version of the event is recounted in the Emergency Management Office section below).

Ms. Fullford believed she has been excluded from taking part in the disaster recovery effort based on her disagreement with Mr. Cherry.

As described in more detail in the Emergency Management Office section, Mr. Cherry denied the above versions of events and specifically denied referring to Ms. Fullford as a "bitch."

During their interviews Supervisors Anne Batz, Sandra Manko, Bill Goblet and Tom Murray voiced concerns about disparate treatment of women in the Schoharie County workplace. Those accounts appear below.

We interviewed Supervisor Batz on December 17, 2012. At first, Supervisor Batz told us she believed she had been excluded from meetings and caucuses because she was a woman. Later in the interview she tempered her opinion and told us she may have been excluded from caucuses and meetings because she is a new Board member, does not

carry many votes, and is a woman. She suspected there were a few supervisors who believed that women should not be on the Board. She candidly told us that the exclusion based on her gender was more of a "feeling."

During her interview on December 17, 2012, Supervisor Sandra Manko told us she had been discriminated against and intimidated while a member of the Board of Supervisors. When asked if she felt the discrimination was based on the fact she was a woman, she replied, "Definitely, I'm a Democrat, I'm a female and I'm old." She said it was hard to determine if the discrimination was based on her gender or on politics. Like Supervisor Batz, she felt there was an atmosphere of exclusion within the Board. She told us that, "Each year it gets better."

As an example of intimidation, she pointed to an incident with Supervisor Murray where she reported that he "went up one side of her and down the other" during a meeting.

We spoke to Supervisor Torn Murray on December 18, 2012. Supervisor Murray told us that when the County hires an intelligent female she is mistreated, "Every time we get a really smart female - we have some bright girls - we have Alicia Terry, I'll just name a few. We have Alicia Terry, Cassandra Ethington's just so bright, Colleen [Fullford] I'm sure is bright. I see these people being, I don't know if it's discriminated against, but they aren't treated like they should be treated. These girls should be wrapped in cotton and put in a glass jar so nothing happens to them."

Supervisor Murray told us Mr. Cherry attempted to intimidate the Personnel Officer in a Board meeting when he called for her resignation. He said the act appeared on a YouTube video and he felt it was inappropriate. Several employees and supervisors directed our attention to the YouTube video as an example of intimidation.

Although he had not brought up the subject with the Board, Supervisor Murray felt that women in Schoharie County were not paid on par with their male counterparts. Supervisor Goblet told us that in general women in the County are treated poorly. When asked for an example of this disparate treatment, he described his version of the incident between Ms. Fullford and Mr. Cherry and the disrespectful manner in which Ms. Ethington was treated in meetings. At the end of his interview, Supervisor Goblet told us he thought that women were spoken to disrespectfully in Board meetings, "Some of the way these guys talk to these women, you know, someone should get up and bash them."

Ms. Alicia Terry, Director of Planning and Development, told us that it was her belief that there are certain elected officials that seem to target female department heads or female employees who may not be covered by the local union contract. When asked for an example of the discriminatory behavior, she pointed to the Fullford-Cherry incident, which she said she witnessed.

Ms. Terry told us that at a recent Board meeting, Supervisor Skowfoe was animated in his anger when he spoke to her about a resolution she brought to the Board for a vote, and that no supervisor defended her at the meeting.

Ms. Terry believed there is an economic disparity between male and female department head salaries. She told us she was confident, given the breadth of her responsibilities for the County, that she was under-compensated. Ms. Terry told us she spoke with several supervisors about the unequal treatment.

When asked to describe acts of discrimination, intimidation or harassment against herself, she told us there were many acts that occurred over her twenty-two years of employment within the County. Ms. Terry recounted former County Board Clerk, Mr. Leland Lacy's statement that women should wear a skirt and make-up if they wanted to improve their relation with the Board. She told us that statement was made approximately fifteen years ago.

She told us she possessed and had access to many countywide emails and newspaper articles created by Mr. Cherry, questioning her and her staffs competency. She described numerous attacks in the press by Mr. Cherry targeting Planning department projects.

Ms. Terry told us she would provide copies of the emails, newspaper articles, and editorials created by Mr. Cherry. We received a submission from Ms. Terry's attorney, Mr. Bill Ryan, on or about January 7, 2013. The submission did not contain emails, newspapers, or editorials created by Mr. Cherry.

Ms. Sarah Blood has been the Coordinator of Economic Development and Marketing since August 27, 2011. Ms. Blood opined that any woman in a position of power in the County is not looked upon as favorably as a male counterpart. She said that made her feel that her expertise would not be properly valued. This, she said, was a generalized feeling she had, based on how female department heads had been treated and overlooked in the past.

During her interview, Ms. Ethington catalogued several examples of harassment against her by Board members and department heads. Several members of the Board corroborated these examples. Those examples are included in the Personnel Office section.

With respect to acts of harassment that she herself experienced, Ms. Ethington recalled sometime in 2011, during a Republican caucus, Mr. Cherry and Mr. Louis Wilson made comments about her. Ms. Ethington paraphrased the comments as; she floats into a room, flaunts her boobs and blue eyes and gets the guys to give her whatever she wants. She said Supervisors Bill Goblet, Dermis Richards, and Harold Vroman told her about the comments. The comment was confirmed by two supervisors.

During the interviews, we asked all female department heads if they believe they had been victimized by unlawful acts of discrimination, harassment or intimidation. Ms. Nancy Dingee, Ms. Maqorie Troidl, Ms. Bonnie Post, Ms. Indy Jaycox, Ms. Christine Kraemer, Ms. Denise Minton, Ms. Sheryl Largeteau, and Ms. Eilene Fisher, told us they had not been subjected to the unwanted behavior.

#### **D. Local Union 848 & Grievances**

One of the concerns included in the Background Information/Philosophy section of the RFP dealt with the possibility that a "culture may exist whereby employees intentionally refrain from filing complaints against department heads, whether they be elected or appointed officials, which, contains members of the Board of Supervisors, for fear of loss of job or some other form of retaliation."

To explore this concern, we asked every employee at the end of their interview if they had taken part in any grievance procedure as a complainant or as a witness. The overwhelming employee response was that they had never taken part in any grievance.

We spoke with several employees in management positions and one representative within Local Union 848. They told us they would like to see the local be more aggressive in their representation of their members.

One Union representative told us the local simply did not receive the necessary financial support from the CSEA in Albany. As an example, two union representatives said they regretted they did not insist that financial resources be provided for individual's layed-off during the 2012 budget process.

Although most County employees chose not to take part in grievances, president of Local Union 848 Ms. Barbara Schaffer, told us there were numerous complaints and grievances filed each year. The more serious complaints were referred to the CSEA in Albany (e.g., [REDACTED] breathalyzer complaint, described below).

Many County employees felt that while they possessed what they believed were valid grievances, they simply did not have confidence in local CSEA representation. This sentiment was prevalent throughout the Department of Social Services, the Department of Public Work, and the Health Department.

Employees felt that if they file a grievance and loose, it may have a detrimental effect on their employment.

For reasons discussed in the Health Department and Litigation sections below, most Health Department employees never considered filing grievances.

## **PART III- Departments**

The focal point of the Board's evaluation was to ascertain if there were acts of generic or unlawful discrimination, intimidation and harassment, throughout county government. Specifically, had employees been the victim of these unwanted acts by department heads and Board members and had the behavior occurred among department heads and supervisors. To make this determination in an unbiased, objective manner, it was necessary to interview all county employees.

To start our evaluation, we were provided with rosters of current and former employees from the Personnel Department. The roster of current employees contained approximately 414 positions, including Board members. Three positions appeared twice, reducing the number to 411. Ten individuals within the Sheriff's Department had resigned or no longer worked at the department, reducing the roster to approximately 401.

As required by the RFP, we have included only those departments whose employees described acts of generic or unlawful discrimination, harassment and intimidation by department heads or Board members in Part III.

We attempted to corroborate as many reported incidents with a second evidentiary source as possible. Given the time constraints of the evaluation, this was not always possible. As mentioned above, the final report contains the results of a countywide evaluation not an investigation. The large amount of individuals interviewed in the relatively short length of time did not afford us the luxury of returning to employees to ask follow up questions.

Although all interviewees were asked to report hearsay allegations, unless we were able to confirm those allegations with witnesses or documentary proof, hearsay evidence was not included in the report. All acts described below are merely allegations.

### **A. Sheriff's Department**

Sheriff Tony Desmond, elected in 2009, serves as the chief law enforcement official in Schoharie County.

Interviews of Sheriff's deputies began on November 16, 2012, in the Probation Department's conference room.

Scheduling of interviews became a critical concern when presidents of the Sheriff Department's Road Patrol and Correction's Union claimed that every deputy required legal representation. The same attorney represented both the Road Patrol and Corrections unions. Scheduling conflicts with the attorney made a difficult task even more difficult and led to long scheduling delays.

We permitted the attorney for the unions to attend each interview but did not allow her to participate in the questioning. In response to any question, if a deputy wanted to interrupt the interview and speak to counsel outside of the interview room he/she was given the opportunity.

Examples, of discrimination, harassment and intimidation within the Sheriff's Department appear below.

On December 11, 2012, in response to our standardized question concerning discrimination, harassment and intimidation, Sheriff Desmond told us that some time in the Summer 2011, he was on a conference call with Lt. Charles Newman, Undersheriff Ronald Stevens, the Sheriff's secretary, Ms. Siobhan Reddick and the Personnel Officer. During that conference call, Lt. Newman and the Personnel Officer disagreed about an issue. Although he did not recall the subject of the phone conference, Sheriff Desmond recalled that at some point during the conversation the Personnel Officer began to berate Lt. Newman. At that point, Sheriff Desmond discontinued the conference call, remained on the line with the Personnel Officer and took the rest of the call in his office. The Sheriff told us that while on the phone in his office, he told the Personnel Officer she could not speak to Lt. Newman in that manner. When asked for the Personnel Officer's response, Sheriff Desmond told us that she hung up on him.

During the same interview, Sheriff Desmond told us that in October 2011, he met with co-budget Officers Paul Brady and Alicia Terry. During that meeting, he presented his proposed budget cuts to the budget officers. His cuts did not include personnel, but only services and contractors. Shortly after that, he heard that there was going to be thirty-three cuts in personnel from the Sheriff's Department. He was surprised at this turn of events since the co-budget officers never mentioned personnel cuts. Shortly thereafter, he and Ms. Reddick attended a meeting in Ms. Ethington's temporary trailer office. When they entered the trailer, they saw a blackboard with the name of every Deputy Sheriff on it. The Personnel Officer handed Ms. Reddick a document detailing the layoffs she wanted made in the Sheriff's Office. Sheriff Desmond gave examples of the Personnel Officer's proposed demotions such as all corporals back to correction officers and some full-time dispatchers to part-time. He said Ms. Ethington, on her own created the information on the blackboard; he had absolutely no input and was completely shocked by the disclosure.

Sheriff Desmond further recounted that while discussing the "proposed" layoffs, Ms. Ethington became irate, grabbed layoff material from Ms. Reddick's hand, ripped it up and said, "Screw you the games over, get the fuck out of my office."

During her interview on November 16, 2012, Ms. Reddick confirmed the above incident, adding that the piece of paper that was torn from her hand was a jail schedule created by Ms. Ethington to demonstrate how they could operate the jail with fewer deputies than mandated by the New York State Department of Corrections. Ms. Reddick

stated that Ms. Ethington told her she created the jail schedule to show how effectively she could operate the jail.

Ms. Ethington, in her January 2, 2013 interview, denied Sheriff Desmond and Ms Reddick's accounts. She said that she was only attempting to illustrate the bump and retreat rights of each deputy sheriff. She claimed that Sheriff Desmond and Ms. Riddick were laughing, texting and not paying attention to her as she attempted to explain her rationale for the layoffs. She said her patience with them was already worn since she had already been attacked in the social media and other means. She admitted she threw them out of her office, yelling, "Get the fuck out of my office." She told us she believed that Ms Reddick stole the proposed layoff material from her office potentially resulting in the premature distribution of the list.

During his interview on November 16, 2012, Lt. Charles Newman gave detail to the conference call with Ms. Ethington. Lt. Newman told us that he had conducted an investigation into the mistreatment of an inmate at the jail by one of the deputy sheriffs. After the investigation, he questioned the deputy with his union representative. Lt. Newman told us Sheriff Desmond and Undersheriff Stevens concurred with his investigational findings and took the matter to the Board. The individual was suspended pending a full investigation. Lt. Newman said he emailed to Ms. Ethington the deputy's personnel file, all prior emails, and all documents concerning the incident.

On August 26, 2011, while discussing options for the deputy's administrative discipline on the above-mentioned conference call, the Personnel Officer claimed that no one had bothered to interview the deputy about the incident. Lt. Newman advised the Personnel Officer he had previously provided her with a copy of his interview of the deputy with his union representative. Ms. Ethington claimed she never saw the email. While still on the conference call, Ms. Reddick pulled up a copy of Lt. Newman's memorandum on her computer screen and told Ms. Ethington she had indeed been provided with a copy of the memorandum. Lt. Newman claimed that Ms. Ethington became irate and said, "Who the fuck do you think you are. Chuck? You are fucking nobody. Don't raise your voice to me." Lt. Newman said he never raised his voice, stepped back and disengaged from the conversation allowing Sheriff Desmond to handle the matter.

During her interview, Ms. Reddick confirmed Lt. Newman's version of the conference call and said Ms. Ethington told Sheriff Desmond that things were out of control at the jail and deputies were being counseled unfairly.

During the interview, Lt. Newman produced a copy of a jail schedule that proposed operation of the jail with fewer deputies than mandated by the New York State Department of Corrections. He believed Ms. Ethington created the schedule. During her January 2, 2013, interview, Ms. Ethington admitted she made the schedule but claimed it was only to demonstrate bump and retreat rights. A copy of the schedule is attached hereto as Ex. 8.

Undersheriff Stevens corroborated Lt. Newman's version of the conference call, however he could not remember if the Personnel Officer had used the foul language referenced by Lt. Newman.

On December 11, 2012, we interviewed Deputy Todd Ethington. Deputy Ethington was the only deputy to appear without an attorney. During his interview, Deputy Ethington produced yearly logbooks from 2006 to the present, cataloguing incidents of misbehavior in the Sheriff's department.

Deputy Ethington described his relationship with former Sheriff John Bates as poor. He described several instances where Sheriff Bates entered a room, said hello to other people in the room but ignored Deputy Ethington. Deputy Ethington described various examples of mismanagement and misbehavior at the Sheriff's Department.

Deputy Ethington relayed two incidents of harassment involving his wife, Ms. Ethington, the Personnel Officer. He directed our attention to a letter and email containing spurious accusations. He told us the email was distributed by the Clerk of the Board to members of the Board." The letter was given to the Undersheriff who told Deputy Ethington he would investigate the matter. Deputy Ethington felt the investigation into the identity of the author of the letter was flawed. Deputy Ethington told us he felt that Undersheriff Stevens knew more about the investigation than he divulged. He said Undersheriff Stevens told him, "this is bigger than you think."

Based on the email and the letter, the Ethingtons hired an attorney and filed a Notice of Claim against the County. After a 50-H hearing with the County, Deputy Ethington maintained that the harassment stopped for a short period of time. He told us that he and his wife chose not to go ahead with their lawsuit against the County based on assurances by Board members that the harassing behavior would stop. As seen below, Ms. Ethington's version of these events mirror Deputy Ethington's version.

During his November 16, 2012 interview, Sgt. Jeff Bever told us that he had been good friends with Deputy Ethington but had a falling out with him after Sgt. Bever failed to back Sheriff Desmond in the 2006 election.

Sgt. Bever told us his wife had received specialized training that allowed her to apply for a job with a scientific company in Delaware County. He alleged that Deputy Ethington's friend was the head of security at the same company. Sgt. Bever told us that when Deputy Ethington found out Sgt. Bever's wife had applied for a job at the company, he called his friend and made several false claims about Sgt. Bever's wife. In support of that claim, Sgt. Bever produced a disc that he claimed was a recording of Deputy Ethington calling someone who, he thought, was his friend at the company's security department. In reality, Deputy Ethington mistakenly called Schoharie Coimty Deputy Rich Bialkowski and left a message stating, "Hey Rich, it's Todd. Give me a call before you hire Bever's wife." After the statement, the voice described as "Todd" makes a groan and tells "Rich" he will tell him the rest when he gives him a call back.

Sgt. Bever maintained he informed the Sheriff and Undersheriff of these events. He claimed that since these incidents he has feared for his job because of Ms. Ethington's position. He told us he had a wife and children and needed to provide for them.

During a later interview, Deputy Bialkowski told us he had provided the disc to Sgt. Bever.

During his January 8, 2013 interview, Deputy ██████████ told us he was at lunch at a restaurant named Hubie's in Middleburgh, New York. He estimated it was approximately two months after the flood. When he walked into the restaurant he encountered Ms. Ethington and Ms. Sandy Coleman, an employee from the Personnel Office. He told us that after he said, "Hi, how are you" to Ms. Ethington, she said to him, "Chris, you better watch your fucking job." He said he did not immediately respond but watched Ms. Ethington walk to the cash register in the restaurant. He told us that, after a moment, he followed her to the cash register and asked her, "What's that all about?" To which she replied, "You're about to be layed-off." ██████████ told us that when this incident happened, he had not heard of the layoff list. He could not tell us if his position subsequently appeared on any layoff list.

After the first day of interviews at the Sheriff's Department, the issue of an employee's affirmative duty to cooperate with an employer's evaluation arose. The issue had previously been resolved at the October 12, 2012, department head meeting. When we called Sheriff Desmond to schedule interviews after the first day, he informed us that he was confused about the issue because Supervisor Gene Milone, had told him that employees of the Sheriff's Department did not have to cooperate with the evaluation.

The alleged statement by Supervisor Milone, resulted in delay and confusion on the part of the Sheriff Department's employees. Some deputies said that they were told they did not have to cooperate with the evaluation. Although the issue was resolved, the atmosphere during the interviews became openly hostile. Few Deputies, especially in Corrections, chose to meaningfully cooperate. Instead, most deputies chose to answer the standardized questions with a terse "No."

## **B. County Clerk's Office**

Ms. Indica Jaycox is the Schoharie County Clerk, an elected official. Ms. Jaycox oversees an office staff of fourteen. The office is divided into two separate sections, the Department of Motor Vehicles and the County Clerk's office. While employees of the County Clerk's office described no acts of discrimination, intimidation or harassment, employees at the Department of Motor Vehicles described several incidents of the unwanted behavior. Those examples appear below.

### C. Department of Motor Vehicles

Perhaps because of their remote location, several members of the Department of Motor Vehicles told us they had been forgotten about by the County Clerk's office. Accounts of their interviews appear below.

During her interview on December 3, 2010, [REDACTED], a Motor Vehicles clerk said that she originally worked in the County Clerk's office. [REDACTED] said that while working at the County Clerk's office, Ms. Jaycox had asked her to sign a petition on behalf of a political candidate. [REDACTED] told us she stalled and attempted to avoid the situation. When Ms. Jaycox returned and repeated her request, [REDACTED] asked to speak to her in private. [REDACTED] explained to Ms. Jaycox that she was not a member of the suspected party in question and could not sign the document. She asked Ms. Jaycox if that would be a problem. [REDACTED] told us Ms. Jaycox initially said yes, but then approximately twenty seconds later said, "Stay the way you are." [REDACTED] left the office and returned to work. Approximately two hours later, [REDACTED] who had been told by Ms. Jaycox that she scored well enough on her Civil Service test to secure a job at the Department of Motor Vehicles, was told by Ms. Jaycox she no longer had the job. [REDACTED] said she became angry and asked to see her test score. She said, Ms. Jaycox told her there had been a mistake concerning her position.

[REDACTED] told us that during the weekend after the incident she thought about her predicament. She said that since she needed to keep her health care for her children, she went online and changed her political party affiliation.

[REDACTED] told us she was layed-off on December 23, 2011. She said Ms. Jaycox called her in February 2012 and asked her if she wanted to return to work at the Department of Motor Vehicles. [REDACTED] told us she returned to work at the Department of Motor Vehicles in May 2012.

Although she was angry and felt that she had been discriminated against because of her party affiliation, she told us she had a good relationship with Ms. Jaycox.

[REDACTED], a Motor Vehicle Representative, claimed that she believed Ms. Jaycox harassed her. During her interview, [REDACTED] told us that in June 2009, she entered the Department of Motor Vehicles after hours and set the alarm off. When the police came, she told them she was an employee and the situation was quickly resolved. She claimed that when she called Ms. Jaycox and told her that she had set the alarm off, Ms. Jaycox told her not to worry. Two weeks later, she claimed, she was called into Ms. Jaycox's office with her union representative and her supervisor, [REDACTED]. She was told she was going to be written up for entering the building after hours. [REDACTED] claimed there was no policy on the matter. [REDACTED] said that in addition to the complaint of entering the office after hours, there were additional vague allegations included in the disciplinary complaint. [REDACTED] refused to sign the complaint. The complaint was sent to the Personnel Department.

Eighteen months later, she spoke with the Personnel Officer who told her she was going to destroy the complaint since no further action was taken. During the eighteen-month period, she was afraid Ms. Jaycox would attempt to file other disciplinary complaints against her. She told us she believed this was a form of harassment.

██████████ told us that she had been asked to sign several political petitions by Ms. Jaycox while at work. ██████████ told us she did not feel her job was at stake if she did not sign the petition.

Ms. Jaycox denied she asked members of the Department to sign political petitions at work.

#### **D. Office of the Aging**

The director of the Office of the Aging ("Aging") is Ms. Nancy Dingee. Director Dingee oversees a staff of eight employees. Our evaluation included interviews of all eight Aging employees. We provide here, an account of the interviews of the two employees, ██████████ and ██████████ who made claims of unlawful discrimination and harassment.

██████████ is a ██████████ Worker, at the Office of the Aging. During ██████████ interview, ██████████ recounted an incident of harassment in 2008 by the former director, Carol Coltrane. ██████████ told us ██████████ was brought into Ms. Coltrane's office and asked if ██████████ had actually worked on a certain day. ██████████ told Ms. Coltrane that ██████████ did in fact work on that day. ██████████ said she proceeded to accuse ██████████ of being home while ██████████ was supposed to be at work. ██████████ told us that in support of her allegations, Ms. Coltrane told ██████████ that four individuals from Aging had seen ██████████ at ██████████ house when ██████████ was supposed to be working. ██████████ said that Ms. Coltrane "wrote ██████████ up" in a disciplinary memo alleging ██████████ was paid for work ██████████ had not performed. ██████████ told us ██████████ was falsely accused and reported the incident to the Personnel Officer and ██████████ local union.

After ██████████ reported the accusations to his local union and the Personnel Office ██████████ told us the harassment became worse. ██████████ said ██████████ was harassed at ██████████ home when people threw garbage at ██████████ house and left harassing phone calls for ██████████. ██████████ did not know the identity of these individuals. ██████████ told us Ms. Coltrane started to write ██████████ up with numerous disciplinary memorandums alleging insubordination, after ██████████ reported the harassment to ██████████ local union. As a result of the harassment, ██████████ said ██████████ stepped down from ██████████ position and accepted a lesser position within the Office for the Aging. ██████████ said when it came time for ██████████ accusers to come forward and make an official statement, all four recanted.

During ██████████ interview, ██████████ the Business Manager, told us that ██████████ had witnessed Mr. Joseph Patterson, the former Director of Mental Health, raise his voice and point his finger at a fellow employee, ██████████, while he was the interim Director of the Office for the Aging. ██████████ said that, while ██████████ stood outside, ██████████ heard Mr. Patterson yelling at employees inside his office on numerous occasions.

██████ told us █████ witnessed Mr. Patterson intimidate a meal driver. █████ told us that Mr. Patterson wanted to speak to a meal driver but the meal driver refused to speak to Mr. Patterson alone. █████ said Mr. Patterson yelled at the meal driver, "Get the hell out now. Leave through this door and don't ever come back."

### **E. Probation Department**

Interviews of all eleven members of the Schoharie County Probation Department ("Probation") occurred in the Probation Department's Conference room on November 9, 2012.

The director of Probation is Ms. Denise Minton. Ms. Minton was extremely helpful throughout the interview process, making sure that interviews were scheduled with little time between each interview.

We found the entire staff of Probation to be professional and courteous during the course of the interviews. All eleven employees expressed a high level of satisfaction with their careers and employment. The extensive educational background of Probation's staff was also impressive.

Despite the high degree of job satisfaction and advanced degrees, there were reports of intimidation, discrimination and harassment.

██████ an account clerk typist in Probation and formerly in the Health Department, told us that when she worked in the Health Department, she did not attend a single Health Department Christmas party. Ms. Kathleen Strack was the Director of Health at the time. █████ told us that Ms. Strack yelled at her for approximately forty-five minutes during her evaluation for not attending the Christmas party. █████ said she felt intimidated by Ms. Strack and transferred from the Health Department to █████ soon after the incident.

██████ Probation Officer █████ told us that approximately four years ago she went to Mr. Pat Shiland, the County Safety Training Officer, and discussed a confidential matter with him in his capacity as Safety Training Officer. She stated that she did not breach the chain of command in soliciting Mr. Shiland's assistance since the Policy and Procedures manual named the Safety Training Officer as an individual to handle this type of investigation. She expected the matter to remain confidential. Soon thereafter, she was approached by Ms. Minton who "came down" on her about the fact that she had gone to the Safety Training Officer about the issue. █████ said she discovered the Personnel Officer found out about the matter and told Ms. Minton.

Later, she approached Mr. Shiland and asked him if he breached her confidentiality. She said Mr. Shiland told her he had been forced to breach the confidentiality through intimidation by the Personnel Officer. She told us that Mr.

Shiland told her that the Personnel Officer pressured him claiming she was the boss and it would mean his job if he did not tell her about the confidential issue. She said Mr. Shiland was extremely apologetic.

During his interview, Mr. Shiland reported a similar version of this event to us.

██████████ wanted us to know that she liked and respected Ms. Minton and that the above-described behavior occurred approximately four years ago.

## **F. Personnel Office**

The County's Personnel Officer is Ms. Cassandra Ethington. Ms. Ethington oversees the Personnel Office consisting of two other employees, Mss. Sandy Coleman and Annette Fitzpatrick, a part-time employee.

Several supervisors commended Ms. Ethington during their interviews for the work she had performed in the Personnel Office and other areas of County government.

During her first hour of interview, Ms. Ethington catalogued examples of sexual harassment, intimidation, and harassment she had experienced. More generally, Ms. Ethington claimed there was a culture of intimidation that existed in Schoharie County government.

Ms. Ethington believed Mr. Mike West, the County Attorney and Mr. Cherry, had conspired to intimidate and harass her through investigations and intimidation at public meetings. In particular she pointed to Mr. Cherry's animated public plea to the Board for her removal. She told us the event was memorialized in a YouTube video.

She believed Mr. West conducted investigations into her activities as the County's Personnel Officer that were designed to harass her. She described how the County Attorney had waited until she was on vacation with her family, then instructed CDP members to copy her work computer's hard drive and bring the "mirrored" hard drive to his office.

Regarding her claim of a "culture of intimidation" in County government, Ms. Ethington again recounted specific events that she personally encountered. She pointed to two instances of harassment and intimidation. The first was an email that made allegations of "political shenanigans" against herself and her husband. The second example was an anonymous letter she received at her County office, asserting false accusations against her and her husband. The letter and email were given to Undersheriff Stevens to investigate.

She told us Supervisor Earl Van Wormer disseminated the email to members of the public, asserting that the information in the email was true. She told us she contacted Mr. West, told him about the incident, and asked him to ask Supervisor Van Wormer to stop. She said the situation became worse, so she retained an attorney and contemplated

suing the County. Shortly thereafter, members of the Board asked her to forego her lawsuit and assured her that the unwanted behavior would stop. Ms. Ethington told us that she agreed not to sue the County.

Ms. Ethington said there was a culture of hostility at the Health Department. As an example of this culture, Ms. Ethington said that any time she or Ms. Strack, the former director of the Health Department, made decisions concerning the Department, the staff would come right out and say "We are going over your head, we are going to the Board of Health and we will get you." When asked to recall a specific instance when this statement was made, Ms. Ethington said it was a general statement that several employees made at a meeting.

As another example of the culture, she said that after Ms. Eva Gigandet was laid-off, Ms. Gigandet went to members of the Board of Supervisors and misrepresented facts in an effort to undermine Ms. Ethington and retain her position.

She continued by telling us, that the actions of certain employees in the Health Department had created the divide between members of the Board.

Ms. Ethington relayed instances of intimidation by Board members. She told us that at a public meeting, Supervisor Gene Milone told her, "Your reign of terror is over." She felt Supervisor Phil Skowfoe did not like her, and if he does not like you "he chews on it like a dog with a bone." She believed that certain members of the Board were out to get her but she had difficulty providing direct evidence of particular incidents.

She provided the names of supervisors she believed wanted to get rid of her as the Personnel Officer.

It was clear from the interview that by "culture of intimidation" in the County Ms. Ethington meant that there was a culture or climate of hostility towards her throughout the County government.

Ms. Sandy Coleman, a personnel assistant, told us that, during a meeting with DPW Commissioner Tom Fignani, [REDACTED] and [REDACTED], they discussed job specifications for a certain position within the DPW. Ms. Coleman told us that when she informed Commissioner Fignani that he could not tailor the job specifications for an employee. Commissioner Fignani said, "Fuck you." She told us she quickly ended the meeting and told her supervisor, Ms. Ethington.

During her interview, [REDACTED] told us she had never been intimidated or harassed. When asked if she had ever heard the Personnel Officer raise her voice at anyone, she told us that she had witnessed Ms. Ethington scream at [REDACTED] a personnel assistant at the time. [REDACTED] told us that the Personnel Officer shouted that she received no support from [REDACTED] She said the

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[REDACTED]

duration of the outburst lasted for approximately ten to fifteen minutes. When asked if both parties raised their voices, she said no, just the Personnel Officer [REDACTED] volume of the occurrence was inappropriate.

Other relevant issues discussed during Ms. Ethington's interview are included in the Litigation section below.

## **G. Central Data Processing**

The Central Data Processing Department ("CDP") has been overseen by Mr. Stanley France for the past twenty-five years. Mr. France has recently retired.

CDP operates the County's complex computer network, as well as storage, repair and maintenance of the network. During his interview, Mr. France told us CDP is maintained by a very small budget compared to the overall County budget. He had a large wish list of ideas he would have liked to implement prior to his retirement but the County simply did not have the resources. As a result, CDP, he believes is a reactive department largely driven by County employees' repair complaints.

During our interviews of the 9 employees that make up the department, we encountered no complaints of unlawful discrimination or harassment. We did find several complaints of generic discrimination, intimidation and harassment by employees and a Board member.

Perhaps one of the most widely reported incidents of intimidation by employees at the County office building occurred shortly after the catastrophic 2011 flood.

All participants in the incident were interviewed. All of the participants were hesitant to speak about the incident. One of the participants became upset and chose not to continue the interview.<sup>5</sup> Accounts of the incident appear below.

During his interview, Supervisor Tom Murray told us that a disagreement arose between members of CDP and the Department of Public Works. When he heard the disagreement, he told us he went to see what the problem was and quickly became embroiled in the argument. Attempting to quell the dispute, Supervisor Murray told us he used foul language towards two CDP staff members, one of which was a woman. Supervisor Murray was candid, describing his outburst as inappropriate.

During his interview, Mr. France told us that shortly after the incident, he called Supervisor Murray and admonished him for speaking to a member of his department in the way he did.

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<sup>5</sup> This was the only County employee that refused to continue with an interview.

The day after the incident, Supervisor Murray said that he returned to the County office building and apologized to the employees involved in the fracas, including the two CDP employees.

Several employees outside CDP witnessed the same version of those events.

When we interviewed the two CDP employees, they had very different reactions. One staff member said the incident was overblown and he let it roll off his back. The other staff member became upset and refused to recount the incident because she had a family she needed to support and feared for her job. She then left the interview before its conclusion. A department head from another department came in shortly thereafter and told us the CDP employee would not return for the balance of the interview.

## **H. Emergency Management Office**

Mr. Kevin Neary heads the County's Emergency Management Office ("Office"). Mr. Neary's credentials in the field of emergency management are unsurpassed, having served as the Operations Officer for the 1993 and 2001 World Trade Disasters and the TWA Flight 800 crash in New York City.

Ms. Colleen Fullford and Ms. Anne MacCuish serve the Office as Flood Plain Manager and Administrative Assistant, respectively.

As recounted in the Major Issues section, Mss. Fullford and MacCuish complained of harassment and discrimination while employees of Schoharie County.

During her interview, Ms. Fullford recounted acts of intimidation by the County Treasurer, when she was the Interim Director of the Office.

She told us that after the flood, a Recovery Committee was created. Three supervisors led the Recovery Committee, including then Chairman of the Board, Supervisor Vroman. She told us the Recovery Committee involved the DPW's, Building and Grounds department and Office of Emergency Management. The Committee was given the task of handling the Hurricane Irene recovery for the County. Ms. Fullford told us that the Board disagreed on the progress of the recovery and voted to appoint the County Treasurer as the sole person in charge of the recovery effort at a Board meeting. During that same meeting, Ms. Fullford addressed the Board and told them that if they did not "do the right" thing, there was the possibility that the County may be expelled from the National Flood Insurance Program and forfeit FEMA funding. She also told us that in her opinion, no one individual was appropriate for the position, since one person could not possibly have the requisite knowledge to solve the recovery problems.

During a break in the Board meeting, she approached Mr. Cherry apologized for her opinion and told him that she did not feel any one person was capable of doing the job. She told us that Mr. Cherry replied, if you were interested in the Director position,

you would give the Board whatever they wanted. She said it was her responsibility to relay accurate information to the Board so they could make a correct decision.

She told us she had a meeting scheduled with FEMA and New York State officials the next week. She started the meeting by introducing Mr. Cherry as the new Recovery Manager. During the meeting, she claimed that Supervisor Skowfoe and Mr. Cherry repeatedly cut her off. At one point she felt that Mr. Cherry made an inaccurate statement and corrected him in front of the other members of the meeting. She maintained that Mr. Cherry responded by telling her that his statement was accurate and she should keep her mouth shut if she wanted to continue being a part of the meeting. Her state and federal counterparts, as well as four supervisors, were at the meeting. She closed her book, stood up and walked out of the meeting. In the hallway after the meeting, it was reported to her that Mr. Cherry said, "That smart mouth bitch has got to be put in her place."

She appealed to the Board through her oversight committee, but received no satisfaction. She felt Mr. Cherry excluded her from taking part in the disaster relief effort. Ms. Fullford told us that she was the only certified flood plain manager in the County, yet she was not allowed to take part in the flood recovery effort as a result of her dispute with Mr. Cherry.

We questioned Mr. Cherry extensively about this incident in his interview. He told us that he had been cast into the position of Recovery Manager, in addition to his duties as Treasurer. He said that at this meeting, he attempted to convince federal and state officials that the County was in compliance with all relevant laws. In the middle of a statement during the meeting, Ms. Fullford interrupted him and told the attendees that Mr. Cherry was not telling the truth. Mr. Cherry told us that he then turned to Ms. Fullford and said, "Yes, it is true, please be quiet unless you have something else to add to the meeting." He confirmed that Ms. Fullford rose, gathered her belongings and left the meeting. Mr. Cherry believed his integrity had been impugned in front of the federal and state officials.

Mr. Cherry denied that he ever referred to Ms. Fullford as a bitch.

## **I. Department of Public Works**

The Department of Public Works ("DPW") has approximately eighty-five employees not including the newly appointed Commissioner Dan Crandell. After interviewing with the Board, Mr. Crandell was appointed to the Commissioner's position on May 1, 2012.

What we found was an overall atmosphere of apathy and dissatisfaction among the employees assigned to the Schoharie DPW garage, while employees assigned to the outposts (i.e. Blenheim, Seward and Jefferson) described a greater degree of satisfaction in their positions. During our interviews, few employees complained of harassment.

discrimination and intimidation by department heads or supervisors. The complaints that were made appear below.

During his interview, Mr. John DeMis, the Deputy Commissioner of DPW since 2007 told us he believed that he was discriminated against when former Commissioner Fignani, Mr. Ben Cooper, and Ms. Ethington conspired to change the DPW Commissioner's job qualifications to fit Mr. Cooper. He possessed no direct evidence of the conspiracy.

Mr. Demis also told us that he was approached by Supervisor Murray and asked if he would be interested in the Commissioner's position. He said he told Supervisor Murray that he was interested in the position and sent him an email confirming he was interested. Supervisor Murray then told the Board of Supervisors that he was not interested in the position, Mr. DeMis claimed.

Supervisor Murray denied that he misrepresented Mr. DeMis' desire to become the DPW Commissioner, and claimed instead that while he was not impressed with Mr. Demis' enthusiasm for the position, nevertheless, he went ahead and confirmed in an email to the Clerk of the Board, Karen Miller, that Mr. DeMis wanted the job.

During his interview, when asked if he felt he had been victimized by acts of intimidation, discrimination or harassment, ██████████ told us that he felt victimized when he was placed on a "hit list." He told us he openly disagreed with the hiring of Mr. Bill Hanson, the head of the Schoharie County Conservative Party, as the County's lead cleaner position. He said a fellow employee, ██████████ told him of numerous meetings in Ms. Ethington's trailer between Ms. Ethington, Supervisor Vroman, Mr. Hanson, and Supervisor Murray. He said ██████████ also told him he was going to be put on the "hit list" because he was not on the "right team." Soon after the conversation with ██████████ he was brought in to Commissioner Fignani's office and shown a copy of the "hit list." His name appeared on the list.

During his interview, ██████████ told us that while he and Mr. Hanson were sitting across the street from Ms. Ethington's trailer, Mr. Hanson told him that Ms. Ethington and Supervisor Murray were watching every move that ██████████ and ██████████ another DPW employee, made. He said Mr. Hanson told him, "Stick with me and I'll take you places."

### **1. Job Tailoring**

During his interview, ██████████ told us he felt that Ms. Ethington had targeted him by placing him on the layoff list. By way of background, ██████████ told us that in November 2010, he was the ██████████ within DPW. When he heard that the positions of Bridge Supervisor and Buildings Supervisor were going to be combined, he asked Commissioner Fignani if he could have the position. He claimed Commissioner Fignani and he went to visit Ms. Ethington in her office. While in the office, Commissioner Fignani said to Ms. Ethington, "What can we do for ██████████?" ██████████

█████ claimed Ms. Ethington said "Lets give him the Building and Bridges." He told us Ms. Ethington built the job description for him and he was given the job provisionally. He felt he lost his job as a result of Hurricane Irene and Commissioner Fignani's demise. When Hurricane Irene hit, he felt that Mr. Cooper started to order his crews around in an attempt to curry favor with certain Board members. He said he asked Mr. Cooper to stop giving instruction to his crews. Despite his pleas to Mr. Cooper, his crews were constructively removed from his supervision. He told us he complained to Commissioner Fignani but the Commissioner was also falling out of favor with the Board.

Mr. Cooper was finally given ██████ job responsibilities shortly after the flood. ██████ was concerned because he knew there was going to be layoffs as a result of the flood.

He said that in the fall of 2011, he had a conversation with Ms. Ethington. During this conversation, Ms. Ethington said to him, "Quite frankly, I've been getting a lot of complaints about you, you are not doing your job very well." He said he resented this statement because she was the Personnel Officer not a supervisor.

Soon after Mr. Cooper received ██████ job duties, he was brought into Commissioner Fignani's office and told that his job title appeared on the "hit list." He told us he assumed the Personnel Officer created the list.

Shortly thereafter, he went to Commissioner Fignani's office and resigned, he said. He told us Commissioner Fignani told him he had also just resigned. ██████ told us that approximately one and a half years ago, while he and ██████ were present in a County office, Ms. Sandy Coleman, an employee from the Personnel Office walked into the room, handed ██████ a clipboard and told him to write up his job specifications so that it met his qualifications. ██████ denied the event took place.

During his interview, ██████ felt that he had been intimidated when he was asked to be a grade 13 Bridge Working Supervisor. Commissioner Fignani told him to take the grade 13 job, which he did. After working in the grade 13 job for a year, he was called up to the Personnel Office and asked by Ms. Ethington to take a test for a grade 14 job. ██████ He said Ms. Ethington called him several times over the course of eight or nine months and tried to convince him to take the grade 14 job. He told Ms. Ethington that there was no use taking the job ██████. He told us that Ms. Ethington told him to take the job for two years and if he did not pass the test he could revert back to his grade 13 job. Finally, he told us, Ms. Ethington sent a letter to him asking if he intended to take the grade 14 test. He sent the letter back with a negative reply, he said. He claimed he received a letter in the mail shortly thereafter telling him

that if he wanted to keep his grade 13 job, he would have to get his Commercial Driver's license. ██████ told us that the entire situation made him feel harassed.

## **2• Age Discrimination**

█████ complained about age discrimination when he attempted to take the Highway Supervisor's test. ██████ told us he worked in the DPW since February 1, 1999. He first took the Highway Supervisor's test in 2009 and scored first in the open-competitive and promotional classes. He told us that in 2009 the job was not posted by the Personnel Department until he complained to then DPW Commissioner Thomas Fignani. ██████ alleged that the job had already been given to another fellow employee with more seniority prior to the test being posted or administered. When asked how he knew that, ██████ told us that, the more senior employee, ██████ told him that he received the supervisors position before the test had even been offered. ██████ said that another DPW worker, ██████, confirmed that the position was filled prior to the test, although he did not say how ██████ knew this fact. Hay maintained that once he complained to Fignani, the job was posted and administered and despite scoring first in the open-competitive and promotional classes, ██████ was awarded the position.<sup>6</sup>

Approximately three years later the position again became available. When the job was posted, the job requirements had changed. Applicants now needed six months supervisory experience to take the test promotionally. On March 30, 2012, ██████ went to his local union and complained that he believed he possessed the supervisory qualifications and should be allowed to take the non-competitive and promotional class exams as he had taken two years before. The Union filed a letter of grievance ██████ received a Notice of Application Disapproval from the Personnel Department informing him, "YOU DO NOT MEET THE AGE REQUIREMENT FOR THIS POSITION." A copy of that letter is attached hereto as Ex. 9.

An inspection of the Highway Supervisor's promotional qualifications reveals no age requirement. ██████ is forty-six years old. ██████ He told us he chose not to dispute the matter despite scoring first on the exam because ██████

## **J. Department of Health**

The Schoharie County Department of Health's ("Department" or "Health") history is described in the litigation proceedings below as "tortured". For reasons discussed below, we agree with that description.

During our interviews of the Department's employees, nearly all staff presented past and current illustrations of intimidation and harassment on the part of the Personnel Officer.

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<sup>6</sup> It should be noted that ██████ has retired and has not responded to our request to be interviewed.

To understand staff's concerns, it is necessary to review some of the Department's history and understand the nature and duties of the Health Department.

The department is overseen by a number of board's and agencies. Foremost among those agencies is the New York State Department of Health. Locally, the Department receives substantive instruction from the Schoharie County Board of Health. The Board of Health is made up of one member of the Board of Supervisors, and at least three physicians licensed by New York State and the Board of Supervisors. In addition to the County Board of Health, the Board of Supervisors' Public Health Committee provides oversight functions through members of the Schoharie County Board of Supervisors. The full Schoharie County Board of Supervisors provides fiscal supervision. The State Department of Health, the County Board of Health, the Public Health Committee and the Board of Supervisors, make their decisions based on information acquired from the Director of the Health Department or one of the Department's employees.

According to statements by Health staff during our interviews, the Department enjoyed a relatively tumultuous free thirty-year period under Director Carl Stefanik.

After Mr. Stefanik retired in 2006, Mr. Joseph Patterson, the Director of Mental Health Services, served as the Interim Director of Public Health until the Board could find a permanent replacement for Mr. Stefanik.

In early 2007, the Board of Supervisors, with the approval of the Schoharie County Board of Health, appointed Ms. Kathleen Strack as the Director of the Department of Public Health. Several of the former and current Department employees claimed that they were harassed and intimidated by Ms. Strack. Those accounts appear below.

In November we interviewed, [REDACTED], of the Health Department. She said she was intimidated and harassed by Ms. Strack. [REDACTED] told us that, in April 2008, she was asked by Ms. Strack to assume the recently created position of [REDACTED] but that she would have to resign her present position. She assumed the duties of [REDACTED] for 364 days and during this period received good evaluations. On the 364<sup>th</sup> day, she was asked to come into Ms. Strack's office and was summarily fired without notice. Although Ms. Strack did not have to give her a reason for the termination, she told [REDACTED] that she had based her decision, to fire her on a lack of leadership. [REDACTED] claimed she was never informed that the resignation from her previous position and the assumption of the [REDACTED] job had caused her to be placed on probation, thereby exposing her to termination without cause.

[REDACTED] told us she felt intimidated and harassed by the incident. She immediately hired an attorney and within a month was hired back by the County, although in a subordinate position.

During her November 27, 2012, interview, Ms. Ruth Ashworth, former Supervising Public Health Nurse in the Department, told us that Ms. Strack had called her up and told her that [REDACTED] had been fired. When she asked Ms. Strack why, she avoided giving a reason. The [REDACTED] termination left Ms. Ashworth, the Supervising public Health Nurse, unable to cover services for the County. Ms. Ashworth felt that Ms. Strack had discriminated against her because she put the Department's nursing licenses in jeopardy by her actions. She did not feel she had been discriminated against because she was a woman.

## **1. Sale of the CHHA**

A review of the Board of Supervisors meeting minutes shows that a decision was made by the Board of Supervisors to consider selling the County's license to operate their Certified Home Health Agency ("CHHA"), in October 2009. According to former members of the unit, the CHHA's primary function was to provide nursing and home health aide services to County residents. The CHHA was the largest division within the department. The sale of the CHHA resulted in the loss of twelve nurses and three home health aides in the Department. (This report reaches no conclusions concerning the wisdom of the sale).

During interviews, it was reported to us that Ms. Ethington had been assigned a major role in the sale of the CHHA. A review of the Board of Supervisors meeting minutes between August 2009 and December 2011, reveals that the first reference to a grant of authority to Ms. Ethington within the Department of Health was in the November 19, 2010, Board of Supervisors meeting minutes. Those minutes reveal that Mr. Goblet asked Ms. Ethington to finish the transfer of the CHHA, for which she would receive \$150 per week. The minutes do not contain any explanation as to why the Personnel Officer was asked to become involved with the complexities of selling a substantial unit of the Department of Health when the Director of Health was still employed by the County. A copy of the relevant portion of the November 19, 2010 Board of Supervisors meeting minutes is attached hereto as Exhibit 10.

Health staff told us that soon after the November 19, 2010, Board of Supervisors meeting, Ms. Strack resigned her position.

On November 29, 2010, a letter from Mr. Goblet was promulgated to all Health Department Staff. The letter states in part, "... the Board voted and has assigned the Health Department Personnel to report to Cassandra Ethington, Personnel Officer." The letter limited her authority by stating, "Please remember Cassandra is not going to be acting as the Public Health liaison with the State or the Board of Health, she will be there to direct and give all of the staff a point person to go to during this transition period and will be reporting to the Public Health Committee until further notice." A copy of the November 29, 2010 Goblet letter is attached hereto as Ex.11.

After Ms. Strack resigned at the end of November 2010, the January 21, 2011, Board of Supervisors meeting minutes indicate that Mr. Goblet made a motion to revise

Ms. Ethington's grant of authority from, selling the CHHA, to "managing the health department." This decision was supposed to be reviewed by the Board until an interim director was appointed. A Director of Health was not appointed until January 2012. A copy of the relevant portion of the January 21, 2011 Board of Supervisors meeting minutes is attached hereto as Ex. 12.

On or about January 7, 2011, a Report of Personnel Change and Supplementary Payroll Certification, or "426 form", was completed. The form describes Ms. Ethington as the Interim Public Health Director. Notations on the form indicate "for transfer of CHHA" and "from BOS mtg. on November 19, 2010 (for sale/transfer of CHHA)." The form indicates she is to be paid a salary of \$3,500 for the temporary position. Ms. Bemocco signed the form as the Appointing Officer and President of the Board of Health, Supervisor Goblet signed as Chairman of the Public Health Committee, and Supervisor Vroman signed it presumably as the Chairman of the Board (although the title does not appear on the form). A copy of the January 7, 2012 report is attached hereto as Ex.13.

The New York State Public Health Law and the New York State Department of Health describe the requirements for a Director of Public Health position. A Director of Public Health must have a Master's Degree in public health or a related field from a regionally accredited or New York State registered college or university, that includes the five core competencies of a public health education, Biostatistics, Environmental Health Sciences, Epidemiology, Health Policy and Management, and Social and Behavior Sciences. Related fields may include, but shall not be limited to, public health nursing, health administration, community health education or environmental health.

Ms. Ethington told us she possessed a two-year degree in Business Administration.

These findings raise a larger issue: why did the Board of Supervisors, the County Board of Health, and the Public Health Oversight Committee allow Ms. Ethington to act as the interim Director of Public Health for such an extended period of time?

According to statements made by Health employees during our interviews, the year following the Board's November 19, 2010, grant of authority to Ms. Ethington was filled with acts of intimidation and harassment in the Health Department.

These examples of intimidation and harassment should be placed in the context of the structural conflict identified by the New York State Department of Civil Service. As explained below, this structural conflict occurred as a result of the Personnel Officer acting as manager of the Health Department for an entire year.

Furthermore, Schoharie County has an extremely small population. In addition to the structural conflict most employees were aware of which Board members supported the Personnel Officer. Appointing the Personnel Officer as the Interim Director of Health with the support of the Board created the staff's perception of an almost infallible

position within the County and cast a cloud over the entire Health Department. It should be noted that none of the Health staff felt that they had been targeted by unlawful acts of harassment, intimidation or discrimination based on their inclusion in a protected class.

A Personnel Officer for a County is endowed with extensive power. Section 15 (1)(b) of the New York State Civil Service law states inter alia, "A personnel officer shall have all the powers and duties of a municipal civil service commission." Section 6 (1) of the New York State Civil Service law defines the duties of a municipal civil service commission. Those duties require the personnel officer to prescribe and amend the rules and regulations pertaining to rules for examinations, appointments, promotional transfers, reporting and reviewing of performance ratings of employees, sick leave, vacation, time allowances, and other conditions of employment in the classified service of the state.

According to a February 21, 2012, letter from the New York State Department of Civil Service ("Civil Service"), Ms. Ethington had requested an opinion concerning her appointment as the Interim Director of Health while she was still the County Personnel Officer. Civil Service sent a letter in reply to Ms. Ethington's request, addressing the question of: "... whether the past actions by the Schoharie County Board of Supervisors to appoint you to perform the functions relative to the County's Public Health Director and provide you with a stipend to exercise those duties are a violation of Civil Service Law section 27." A copy of the February 21, 2012 letter has been attached hereto as Ex. 14.

The Civil Service letter citing, Section 27 (1) of the New York State Civil Service Law, stated: "A member of a municipal civil service commission or personnel officer ... shall not hold any other public office or employment under the political subdivisions or subdivision over which such commission or personnel officer exercises jurisdiction ..."

Civil Service concluded, "By having responsibility as Public Health Director and Personnel Officer you would have the full range of responsibilities for appointments, terminations, disciplinary actions at the Public Health Department and also be responsible for reviewing, approving/denying and hearing appeals from the same decisions as Personnel Officer. This is an obvious structural conflict."

Civil Service's confirmation of a structural conflict is particularly relevant to this section. Most of the County Health Department employees felt their claims of intimidation and harassment were aggravated by this structural conflict. Section 4.10 and 4.11 of the Schoharie County Policies and Procedures Manual describes the Personnel Officer as one of the persons to whom an employee can report claims of discrimination and harassment to. By acting as the interim Director of Health and the Personnel Officer, the employees could not have pursued that avenue of appeal.

## 2. Intimidation of Staff

During interviews with several employees of the Health Department, we became aware of an incident during a staff meeting at the Polka Dot building in Cobleskill, shortly after the flood caused by Hurricane Irene in August 2011. The Polka Dot building served as a temporary office for the Department of Health after the flood ruined their offices.

During her interview, Ms. Shipp-Hilts, the Epidemiology Coordinator, who had recently been hired in May 2011, told us that at the staff meeting she began to praise the staff for their excellent job performance during and after the flood.

██████████, a Public Health Sanitarian, explained that in the middle of Ms. Shipp-Hilts address to the staff, Ms. Ethington entered the room and started to berate and scream at the staff for a poor performance during the storm and thereafter ██████████ claimed Ms. Ethington not only interrupted Ms. Shipp-Hilts, but completely contradicted what she was saying. Ms. Shipp-Hilts admitted to us that the staff had cause to be confused and that she would not have handled the situation in that manner. Ms. Shipp-Hilts said that several of the staff came to her after the meeting and complained that Ms. Ethington's actions were inappropriate. Ms. Shipp-Hilts told us the word "berate" was a little strong but that nevertheless Ms. Ethington was not afraid to show that she was displeased.

██████████ and other staff told us that Ms. Ethington was angry because she had received a complaint from the New York State Department of Health. She accused members of the staff of going behind her back by complaining to the State ██████████ said that Ms. Ethington ended her tirade by telling the staff that people were going to be "written up" for their actions and some might lose their jobs. Based on Ms. Ethington's statements, ██████████ told us he feared for his job. He told us that, since Ms. Ethington was the Interim Director and the Personnel Officer, he felt trapped. He told us there was nowhere to go. If he had concerns about his director, he could appeal to the Personnel Officer. Since the Personnel Officer and his director were the same person, he had no one whom to appeal. ██████████ concluded his interview by noting this conflict.

██████████, another Public Health Sanitarian, relayed substantially the same version of the Polka Dot incident during her interview. She did not recall if Ms. Ethington told staff they may loose their jobs, but she recalled Ms. Ethington screaming that they were all unprofessional and better straighten up or she is going to start writing them up ██████████ told us that the Personnel Officer left her with the impression that her job was on the line.

Several Health staff members recalled substantially the same version of the event at the Polka Dot building.

### 3. Breathalyzer Incident .

During the course of our interviews few County employees had not heard of the Department of Health's Breathalyzer incident. All of the participants in the incident were interviewed. All gave similar versions of the event. Those accounts appear below.

During her interview, on December 5, 2012, ██████ explained that on April 4, 2012, at approximately 12:20 p.m., she was working in the Health Department when Mr. Ian Feinstein; Deputy Director of Public Health, claimed he smelled alcohol on ██████ breath. Four hours later, at approximately 4:20p.m., ██████ was asked to step into a conference room to speak to Ms. Shipp-Hilts and Mr. Feinstein. When she entered the room, she was surprised to find her union representative with Ms. Shipp-Hilts and Mr. Feinstein. Mr. Feinstein asked ██████ if she had been drinking on the job. ██████ said no. Schoharie County Sheriff's Deputy ██████ then entered the room and asked ██████ to blow into an alco-sensor, commonly believed to be a breathalyzer. ██████ did not know what to do and her union representative could offer little advice. She decided to blow into the alco-sensor. She told us that, after blowing into the alco-sensor for the first time ██████ sternly counseled her that she was not blowing into the instrument. He said he knew eighty-year old men with asthma that could blow harder. ██████ blew into the instrument a second time. After her second attempt, ██████ started to put the device away. He was interrupted by ██████ union representative, who asked to see the reading on the device. The blood alcohol content read 0.0%. ██████ told us she felt harassed.

Ms. Shipp-Hilts' version of the event substantively matched ██████ and Mr. Feinstein's version. She told us that Mr. Feinstein came into her office and said he believed he smelled alcohol on ██████ breath and that she leaned against him at the copy machine: Ms. Shipp-Hilts told us she immediately called Ms. Ethington at the Personnel Office and asked her how to proceed. She told us that Ms. Ethington called the Sheriff's office and requested that a deputy be sent to the County office building. Ms. Shipp-Hilts said that minutes later the deputy appeared in the conference room with a device to measure blood alcohol content. While in the conference room, Ms. Shipp-Hilts told us she did not notice any sign of intoxication from ██████ and agreed the reading was 0.0% blood alcohol content.

██████ told us that he received a call from the Personnel Officer requesting a deputy sheriff at the County office building. When asked under what authority the Personnel Officer made such a request, he told us he did not know. ██████ confirmed this account of events with the exception of the comment about an eighty-year old man with asthma.

During her January 2, 2013 interview, the Personnel Officer admitted she called the Sherriff s office and requested a deputy sheriff be sent to the County Office building. In making the request, she relied on the observations of Mr. Feinstein. She insisted that was the extent of her involvement in the incident.

The day after the incident, Mr. Feinstein, Ms. Shipp-Hilts, Local Union 848 President Barbara Schaffer and ██████ met to discuss the event. Ms. Shipp-Hilts told us that she apologized to ██████ and that Ms. Schaffer was angry that the event had taken place. During that meeting, ██████ became aware of the name of the person who had called the Sheriff's office and requested a deputy sheriff. Ms. Shipp-Hilts told us the request for intervention from the Sheriff's Department was driven by her concern for ██████ well being.

██████ told us that she felt harassed and intimidated by the event. When she found out who had ordered the deputy sheriff to respond, she became suspicious of everyone's motivations since her job title had originally appeared on the first layoff list.

Later that same day, she met with Sheriff Tony Desmond. Sheriff Desmond apologized for the actions of the Sheriff's Department and assured ██████ that had he been present in the Sheriff's Department when the call came in, the incident would never have taken place.

#### **4. Record Retention**

The March 8, 2011, Public Health Committee meeting minutes reveal that Ms. Ethington kept the oversight committee abreast of her management of the department's record retention activity. On March 8, 2011, she informed the Board that "Record Management is ongoing project and hopefully will be completed by the end of April. All records will be boxed and labeled correctly with C02 codes. Expired/outdated material will be discarded/recycled." A copy of the March 8, 2011 minutes is attached hereto as Ex.15.

On November 14, 2012, we interviewed ██████. During her interview, ██████ informed us that she was the ██████ to the Director of the Health Department from February 2008, until July 2010, when she was transferred to the Schoharie County Office ██████. She told us she was the ██████ for Mss. Strack and Ethington.

She told us one of her job responsibilities was record retention management. Mss. Strack and Ethington were her immediate supervisors when she was employed at the Health Department. ██████ explained that she had performed record management responsibilities for several years under Ms. Strack. She told us that she had a book containing the requisite rules and regulations concerning the disposal of County records. She had always used the book as a guide for the disposal of records created by the Health Department, she said.

██████ told us that while Ms. Ethington was appointed manager of the Health Department, the Department relocated to another building. She described Ms. Ethington's behavior as a "bull in a china shop." When asked what she meant by that, ██████ told us Ms. Ethington came in and started to go through files and throw things away. ██████ told us that, as the record management custodian, she knew

what had to be kept, how long it needed to be kept, and how to destroy the files. She said she spent an entire week going through file cabinets and labeling what needed to be kept and what needed to be labeled for disposal. She prepared a corresponding list of items to be disposed. She told us she worked on the project for an entire week until Ms. Ethington came in and threw all the files in the trash bin because the project was not going fast enough. She told us Ms. Ethington's actions deeply disturbed her.

██████████ told us that she was so disturbed about the incident, she consulted with her local union in Albany and was told there was nothing they could do.

Alluding to the structural conflict, ██████████ pointed out that she could not go to Personnel for guidance since the Personnel Officer was the problem.

██████████ Public Health Sanitarian, informed us that in January 2011, during the same relocation, Ms. Ethington instructed ██████████ to throw out Health Department files containing investigations into public water systems, childhood lead paint investigations, and hazardous waste sites. ██████████ told us some of these files had a twenty-year retention schedule that had not expired. When they threw out some of the files, Ms. Ethington said there was still not enough room. ██████████ told us that Health staff threw files contained in two five-drawer filing cabinets into a dumpster in the rear parking lot of the County building. ██████████ told us these files contained investigations into public water systems and hazardous waste sites with unexpired retention schedules. The confidential childhood lead paint files were shredded. When asked why he did not inform Ms. Ethington of the retention schedule, he told us that there was no point since she was in charge and he was afraid she would yell at him.

During her January 2, 2013 interview, Ms. Ethington denied telling anyone in the Health Department to throw away departmental records with unexpired retention schedules.

As further evidence of intimidation, ██████████ told us Ms. Ethington threw out his personal property. When he came in to work one morning, he found all of his personal phone books he kept on his desk in the garbage. He picked a phone book out of the garbage, looked up and found Ms. Ethington standing next to him. She told him he did not need his phone books anymore. She told him if he needed a phone number, he should speak to the secretaries. ██████████ placed his phone book back in the garbage and retrieved them later in the day.

██████████, a ██████████ in the Health Department, relayed an incident between Ms. Ethington and ██████████. She told us that when she came down stairs to get something signed in the Health Department, she saw Ms. Ethington, " ... screaming at ██████████ I don't know about what but there were people there that wanted some assistance and we took them out because it was not something that they should witness." When asked who the "people" were, she said, " People were looking for a permit, or something they were looking for, and ██████████ took the couple

outside, to talk to them outside because she just kept going on and on and on, screaming at [REDACTED]

During her December 5, 2012 interview, [REDACTED] an office keyboard specialist in the Health Department, told us that she was temporarily assigned to the Personnel Department in Summer 2011. While in the Personnel Department she overheard Ms. Ethington say she was going to write up Eva Gigandet for her poor performance during a point of distribution drill where vaccines were distributed.

[REDACTED] statement is corroborated by a memorandum received by Ms. Gigandet from Ms. Ethington on June 14, 2011. In the June 14<sup>th</sup> memo, Ms. Ethington instructed Ms. Gigandet to improve her communication skills and follow the Health Department's chain of command. The memorandum concludes, "Most importantly the communication needs to be there between you and your supervisor and Director. Improvement needs to happen on the above items or future disciplinary action will be the result." A copy of the June 14, 2011 memo is attached hereto as Ex. 16.

The memo is signed Cassandra Ethington, Interim Director of Health (Ms. Ethington's role as Personnel Officer and Interim Director of Health is more fully discussed in the Litigation section below).

During our interview with Ms. Gigandet, she told us that Ms. Ethington was "always on her." Echoing complaints of other Health staff members, Ms. Gigandet told us that she could not appeal the June 14<sup>th</sup> letter, since the person who wrote the memo was the same person she would have had to appeal.

Ms. Gigandet told us that on May 11, 2011, while in a meeting with Mss. Ethington and Shipp-Hilts, Ms. Ethington screamed at Ms. Gigandet for an extended period of time. Ms. Gigandet told us Ms. Ethington screamed at her for talking to Ms. Karen Miller, then Clerk of the Board, about a press release. [REDACTED] confirmed the episode.

Ms. Gigandet's claims demonstrate the protections contained in the Civil Service Law to make sure this exact scenario does not take place. Indeed, the structural conflict, described in the February 21, 2012, Civil Service letter, resulted in Ms. Gigandet's inability to appeal Ms. Ethington's June 14, 2011, disciplinary letter. That same conflict existed again on November 8, 2011, when Ms. Ethington recommended to the Public Health committee that Ms. Gigandet's position be abolished. A copy of the November 8, 2011 minutes are attached hereto at Ex. 17.

On December 5, 2012, [REDACTED] County employee, recounted that on or about January 2011, during the Health Department's relocation, [REDACTED] arranged her desk the way she wanted it. Ms. Ethington came into the room and because she did not like the position of the desks she started to scream at [REDACTED] Ms. Ethington yelled that [REDACTED] was a diva, selfish, and had no right to adapt her

plan. She made [REDACTED] return the desks to Ms. Ethington's floor plan. [REDACTED] told us she heard the screaming from approximately sixty feet away.

When asked about the incident on January 2, 2013, the Personnel Officer admitted that she did yell at [REDACTED] Ms. Ethington told us she had worked on the floor plan for an extended period of time and [REDACTED] continued to argue about the subject. Ms. Ethington told us she was on medication for a double ear infection at the time.

On December 12, 2012, Ms. Penny Grimes, a former Health Department employee told us she had been targeted for layoff by the Personnel Officer because of her relationship with the former Director, Ms. Strack. As more fully developed in the Litigation section below, Ms. Grimes filed an Article 78 proceeding against the County when she was layed-off.

During her interview, Ms. Grimes alleged two incidents in which she was intimidated and yelled at by Ms. Ethington.

During a meeting in Ms. Ethington's office on December 28, 2011, Ms. Grimes alleged that Ms. Ethington screamed at her for approximately two and one half hours, repeatedly calling her a liar. Ms. Grimes claimed the Personnel Officer was angry about her request for union representation at a prior meeting and her request to be considered for the position of Health Director. Employees at the Department overheard Ms. Ethington yelling at Ms. Grimes but could not hear the content of the speech.

Later during 2011, Ms. Grimes claimed Ms. Ethington screamed at her for an extended period of time following a Professional Advisory Committee meeting, for comments she made to Committee members after the meeting.

Ms. Ethington denied screaming at Ms. Grimes.

During her interview, Ms. Betsy Bernocco, President of the County Board of Health, told us she was present for the meeting between Mss. Grimes and Ethington. Ms. Bernocco told us both individuals raised their voices during the argument.

[REDACTED] was an employee of the Health Department until she was laid off in October 2011. Soon after her layoff, she was hired back by the County's Department of Social Services.

As discussed in greater detail in the Litigation Section below, Mr. Cherry told us that he had a conversation with Ms. Ethington before [REDACTED] was layed-off. He said that while at the front desk in the Treasurer's Office, Ms. Ethington told him she was going to get rid of [REDACTED] because she felt she was doing a poor job with the billing in the Health Department.

During their interviews, Mss. Shipp-Hilts and Bernocco denied any involvement in the recommendation to layoff [REDACTED]

## **K. County Fire Coordinator's Department**

The County's Fire Coordinator is Mr. Matthew Brisley. There is one other employee that works in that department, Ms. Margaret Hait.

When asked about acts of discrimination, harassment, and intimidation, neither Ms. Hait nor Mr. Brisley were aware of any such acts.

Mr. Brisley complained that when the County's Safety Officer, Mr. Pat Shiland was laid-off, he received a December 27, 2011, phone message from one of the Board members informing him that in addition to his duties as the County's Fire Coordinator, he now had the additional duties of the Safety Officer. Mr. Brisley told us he never received training for the position and has never conducted any safety training since his telephonic appointment in December 2011.

During his interview, Mr. Pat Shiland relayed three instances of intimidation.<sup>7</sup> He told us he was asked by a member of the Probation Department to conduct an investigation into a report of potential workplace violence. He described himself as the workplace violence coordinator and claimed to have authority to perform confidential investigations for the County. He described the matter as confidential. Mr. Shiland told us the matter was investigated and addressed with the Director of Probation, Ms. Denise Minton. Soon after, he told us he was summoned to the Personnel Office. While in the Personnel Office, Ms. Ethington requested the identity of one of the parties involved with the investigation. He refused to provide the name of the party to her. He claimed he was subsequently called on the phone and screamed at by the Personnel Officer. He said the Personnel Officer demanded he provide the identity because it was a matter of law enforcement importance. Mr. Shiland told us he provided the identity and regretted doing so. He said he called his local union and reported the incident but later chose not to pursue it.

Mr. Shiland said that during the relocation of the Health Department in 2011, he received a call from Health employees who complained that there was a black substance that may have been asbestos on the carpet being removed. He told us he shut down the building and had a mold company check the black substance. He claimed that he performed this function as the County's Safety Officer and determined the black substance was not asbestos. Mr. Shiland told us that Ms. Ethington yelled at him. He claimed she "pitched a fit", yelling, "Who do you think you are, I'm a department head, you're nobody." Mr. Shiland told us he was thrown out of her office.

The final incident, Mr. Shiland alleged, occurred in early September 2011, soon after the flood. Mr. Shiland asserted the Board placed him in charge of cleaning up the

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<sup>7</sup>Mr. Pat Shiland's claims have been included in the County Fire Coordinator segment since that department has assumed his duties. Mr. Shiland was laid-off in 2012.

flood damage at the County office building. He said Ms. Ethington came down to the County office building and started to give him directions. He could not remember the specific directions. Mr. Shiland maintained that he told Ms. Ethington that he did not have time for her instructions, that he was in charge of the project, and to leave him alone. He claimed he called up Chairman Vroman and asked who was in charge of the project. He told us Supervisor Vroman confirmed that he was in charge. He said he told Supervisor Vroman to get the Personnel Officer out of the project. He said he told Supervisor Vroman, "I am not going to play this game. If she stays down here, I'll go serve coffee at FEMA. She's interfering with stuff. We have serious matters down here. She's personnel, get her out of here." He claimed that from that point on Ms. Ethington no longer appeared on the project site.

Soon after, he attended a Recovery Committee meeting. He told us he encountered the Personnel Officer in the hallway. He claimed she said, "You son of a bitch, you want to run to the fuckin' Board and rat on me. I can't wait until you are out of here." He said she was emotionally upset and had tears in her eyes.

Although layed-off in 2012, Mr. Shiland was recently brought back to teach safety training for the County, as a consultant. He claimed he never fought the decision to lay him off because he planned to retire in a year anyway.

## **L. Old Stone Fort**

On December 12, 2012, we interviewed all three members of the Old Stone Fort Museum ("Museum").

Mr. Carle Kopecky is the Director of the Museum. Mr. Daniel Beams is the Museum Curator and Mr. Paul Reynolds is the janitor of the Museum.

We found all three individuals to be extremely passionate about their work at the Museum.

When we asked the standardized questions about discrimination, intimidation and harassment, Mr. Kopecky directed out attention to the 2012 budgetary process.

He told us he was surprised by the layoff list that was passed out at the Board of Supervisors meeting. During that meeting, he first discovered that Mr. Beams' position as the Museum Curator was going to be abolished. He told us he could not conceive of any museum without a curator. Mr. Kopecky said he was able to negotiate with the Board to save Mr. Beams' position by reallocating money set aside for maintenance and repair of the Museum's windows to pay for Mr. Beams' salary. From Mr. Kopecky's negotiations, Mr. Beams agreed to give up his County health benefits.

Mr. Kopecky told us that the decision to create a layoff list without department head input, violated Section XI (4) of the CSEA contract. He told us that Section XI required that any contemplated reduction in service must be noticed through the

department head to the union, thirty days in advance of the contemplated reduction. The initial layoff list made this impossible.

During the 2012 budget crisis, Mr. Reynold's position as janitor was cut from full-time to part-time. Mr. Reynolds told us he was scheduled to return to full-time employment in 2013. When we asked Mr. Kopecky what had changed to return Mr. Reynolds to full-time status he replied, " nothing ."

## **M. Planning and Development**

The Planning and Development Department ("Planning") consists of Ms. Alicia Terry, the Director of Planning, and six subordinate employees.

Based on interviews of Planning staff, we found the director and members of the staff all spoke of what might variously be called bullying, intimidation or discrimination in the workplace of Schoharie County. Those accounts appear below.

### **1. Discrimination Based on Sex/Gender**

Ms. Sarah Blood has been the Coordinator of Economic Development and Marketing since August 27, 2011. During her interview, she told us she has never been the victim of discrimination, harassment or intimidation, but that she witnessed such behavior at a May 18, 2012, Board meeting. She reported that during the meeting, while she was seated behind County Treasurer Bill Cherry and Republican Committee Chairman, Lou Wilson, she overheard Treasurer Cherry refer to Ms. Fullford as a "a strong-headed bitch."

Ms. Blood reported the remark to Ms. Terry the same day. She also informed us that Ms. Terry may have told Ms. Cassandra Ethington, stating it was the proper chain of command.

In addition to Mr. Cherry's remark, she reported that Supervisor Phillip Skowfoe, the present Chairman of the Board of Supervisors, made a "borderline inappropriate" comment at the December 11, 2012, Board meeting, when he said her department head did not know what she was talking about. Although Ms. Blood was not present at the meeting it was broadcast, she said on Skopoe [phon.].

### **2. Retaliation**

██ has worked for the County seventeen years ██████████ told us Ms. Terry harassed him because he informed the Town Board of Richmondville of the controlling land use regulations with regard to the erection of wind turbines in affected areas of the town. ██████████ claimed his information was contrary to the information supplied by his director. The information he supplied would have inhibited the project, whereas, according to ██████████ the director was in favor of the project. As a consequence of his actions and correspondence with

outside agencies on the subject, he received a letter of reprimand from Ms. Terry. [REDACTED] told us he responded to the letter of reprimand with allegations that his director failed to provide correct information to the town board .

According to [REDACTED] as a result of his communications with the Town and State and his response to his director, Ms. Terry instituted a policy of screening all outgoing department letters. She also gave him an evaluation rating of "effective" for the year 2008 which was below the rating he had received in previous years, ratings of "outstanding" or "highly effective".

[REDACTED] claimed he informed his director he was taking time off to go skiing in March 2009. He claimed he was rebuked by the director for taking time off. He told us Ms. Terry claimed she never received notice of his intention to take time off.

As a result of the attendance dispute, the director instituted a new policy with regard to time and attendance. [REDACTED] and other Planning staff felt the director did not evenly enforce the new policy. He also told us not everyone follows that policy. He described Ms. Blood as coming and going at her ease and since April 2012, not having to put her intended plans on the schedule for the coming week.

[REDACTED] is a Planner in Planning and Development. He told us he has never been the victim of harassment, discrimination or intimidation, but, in answer to the question of whether he has seen others victimized he relayed a situation within the department.

He claimed there were two schools of thought within the department with regard to the department's function and responsibility. One school, which was shared by [REDACTED], was that, when asked, the department should disseminate objective information regarding an issue, with complete disinterest as to any course of action to be followed. The other school embraced, according to [REDACTED] by the Director, was to steer the way things were to happen. In essence, she would, find a way not to disseminate information if it would foster a position to which she was opposed, [REDACTED] claimed.

When asked to give an example, he mentioned the case of proposed wind turbines for the Town of Richmondville. He told us the director favored development of the wind turbines. As an example of her position, [REDACTED] reported she made comments about the "pinky, commie liberals who are trying to get in the way of progress".

### **3. Discrimination**

[REDACTED] has worked in Planning for eleven years. [REDACTED] told us the method for accounting for time use in the Department was not evenly supervised. He told us there was a different policy for different staff members.

[REDACTED], and has worked for the County since 1998. When asked if she had ever witnessed her fellow employees being subjected to discrimination, harassment or intimidation, she reported that Ms. Terry was dissatisfied with Sean Jordan's work. [REDACTED] told us that Ms. Terry told her that she was going to get rid of Mr. Jordan. Mr. Jordan was eventually laid off, ostensibly for financial reasons. [REDACTED] also reported that Ms. Terry used to refer to Mr. Jordan in his absence as "Skippy the wonder pup."

[REDACTED] also claimed there was favoritism in the department and pointed to the uneven application of the time allocation policy. She told us the director had established a policy for keeping track of staff's time in a February 1, 2011, memorandum. That policy, she said, was not handled the same for all staff members and identified Sarah Blood in particular as a member whose time was never monitored.

[REDACTED] complained that although Ms. Terry gets a stipend for work she does on tourism in the county, she has the members of the Planning Department, who do not share in the stipend, do the actual work.

[REDACTED] told us she never went to the union about this because of fear of retaliation. She also said that one cannot go to the Personnel Office about problems because there is a direct line between her director and the Personnel Officer. She said the atmosphere in Planning has become very clouded with personal agendas, politics and emotion.

[REDACTED] Planner, described an ambient feeling that if one files a grievance there would be retaliation. She said she did not trust the union, claiming nothing is confidential and the union representatives are indiscreet. She gave no concrete examples for her feeling of possible retaliation.

Ms. Terry appeared for her interview with attorney Bill Ryan. Mr. Ryan was present throughout the entire interview. Ms. Terry has worked for the County for twenty-seven years. When asked about being victimized by discrimination, harassment or intimidation, she told us there were certain elected officials who seemed to target female department heads or employees who are not covered by union contract. By way of example, she pointed to comments made by Mr. Cherry in the press targeting her or her department. She maintained he targeted her because she is a female department head.

As an instance of sex/gender discrimination she described comments made by Mr. Cherry to Ms. Fullford, referenced above in the Major Issues section. She told us Mr. Cherry patronizingly said to Ms. Fullford "Look, missy, if you think your are going to get this Board to do anything you're going-to have to act differently."

As described in the Major Issues section above, Ms. Terry told us that during a conversation with Mr. Louis Wilson, Mr. Cherry referred to Ms. Fullford as "a strong-headed bitch." Ms. Terry stated that she was sitting immediately behind Mr. Cherry when he made the statement. She recalled that she had also been subject to harassing

emails from Mr. Cherry, in which he questioned her skill, knowledge, and experience in planning and economic development. She claimed Mr. Cherry referred to her department as the flat tire of Schoharie County.

Ms. Terry was the co-budget officer from June 2009 through December 2011. She maintained that during her tenure as co-budget officer, Mr. Cherry regularly attacked projects she was working on.

During his interview, former employee Sean Jordan told us that he was harassed by Ms. Terry. He described the events leading up to his layoff at the end of 2011. He said, despite assurances he would receive an upgrade in his position, he was laid-off. After he received notice of his layoff, he was told he could not use his computer, he could not lobby supervisors to keep his job and told to use his compensatory time instead of coming in for the last three days of employment. This faulty instruction concerning compensatory time was later overturned by the County when he was awarded the three days.

Mr. Jordan claimed he was intimidated by the creation of the layoff list. He said he knew Ms. Ethington was behind the layoff list. He also knew that Ms. Ethington was a friend of Ms. Terry. He feared the relationship contributed to his inclusion in the layoff list.

During the second day of his interview, Mr. Jordan told us Mr. Terry intimidated him when he was a passenger in her car. He told us her driving skills and offensive language caused him to be intimidated.

## **N. Mental Health**

Ms. Bonnie Post is the newly appointed Director of the Mental Health Department. The department consists of twenty-eight members including Ms. Post.

During our interviews, we encountered several complaints of intimidation and harassment within and outside of the department.

██████████ a Mental Health Systems Coordinator, told us that the former Director of Mental Health, Mr. Joseph Patterson, intimidated her. When asked for an illustration of that intimidation she recalled the following example. When Mr. Patterson first started working at Mental Health, she informed him there was a problem with the billing records. ██████████ told us Mental Health mistakenly billed the state for approximately \$5,000 of services they had not performed. She asked Mr. Patterson what she should do. She told us Mr. Patterson said, "Keep your mouth shut, that would be a skeleton in our closet, and don't ever bring it up again."

During another incident, ██████████ told us that Mr. Patterson brought her into his office and yelled at her using foul language because she could not immediately meet



finger pointed twelve inches from her face. She told us that Mr. Patterson claimed she was stirring up the drivers. [REDACTED] said she was afraid of Mr. Patterson. She went to her local union President, Barbara Schaffer, but nothing ever came of it.

During her interview, Ms. Post told us she was surprised to learn that there were three filled positions from Mental Health on the layoff list. She told us she went to see Ms. Ethington about the matter. She claimed the Personnel Officer told her she had created the layoff list. It was Ms. Post's belief that Ms. Ethington created the list but it was at the request of a supervisor and not necessarily the Board's instruction. Ms. Post expressed anger with the decision to create a layoff list without her input. She told us that at a subsequent meeting she was able to give up positions that were not filled and retain the three positions that were filled and had appeared on the layoff list.

#### **PART IV. Litigation and the 2012 Budgetary Process**

There has been significant litigation since the 2012 budgetary process resulted in layoffs. The *Purpose* section of the RFP required that if our evaluation found acts of discrimination, harassment and/or intimidation, our report should contain, "recommendations for remediation, to include but not be limited to the following; Return to the work place of any employees found to have been improperly targeted for dismissal." To make that determination, it was necessary to compare the facts uncovered during the evaluation period to the voluminous pleadings in the Article 78 proceedings.

We began by reviewing the pleadings, in *Matter of Penny Grimes v. Schoharie County*, (Sup. Ct. Schoharie, 2011) *Matter of Eva Gigandet v. Schoharie County* (Sup. Ct. Schoharie, 2011 ), and *Matter of Sean Jordan v. Schoharie County* (Sup. Ct. Schoharie, 2011). For the purpose of this report we will summarize all three actions. Since *Grimes* and *Gigandet* deal with similar facts, we analyze both actions at one time. Analysis of the *Jordan* matter appears in the section thereafter.

#### **A. Grimes and Gigandet**

In *Grimes*, the Petitioner, Ms. Grimes sought to compel the County to reinstate her to her former position as Public Health Administrator with retroactive pay, health benefits and seniority in her position back to December 16, 2012, the day of her layoff. Ms. Grimes alleged that she was discriminated against and laid-off based on her age and close relationship with the former Director of Public Health, Ms. Kathleen Strack (Grimes' claim of legislative equivalency is not addressed in this report). A copy of the April 9, 2012, Grimes verified petition is attached hereto as Ex. 18. As proof of these claims Ms. Grimes alleged the following facts.

Ms. Grimes' job of Public Health Educator was created in 1994 through a grant application from New York State and the Healthy Heart program. Ex. 18 at para. 2. Ms. Grimes holds a Bachelors degree in Community and Human Services with a Master's degree in Health Education and has been a Registered Professional Nurse since 1969. *Id.* at para. 6. Ms. Cassandra Ethington, the County Personnel Director, became the interim

Director of the Health Department despite holding only a two-year degree in Culinary Arts in December 2010, and immediately started a pattern of verbal attacks against Ms. Grimes. *Id.* at paras. 7-11. In May 2011, Ms. Assante Shipp-Hilts was hired as the Epidemiology Coordinator. *Id.* at para. 16. On November 2, 2011, Ms. Grimes was informed by Ms. Ethington that her position was being eliminated due to downsizing/restructuring. *Id.* at para. 3. Ms. Grimes was laid off effective December 16, 2011. *Id.* During November 2011, while pleading for her position at a meeting of the public Health Committee, the same committee was interviewing a young man for the position of Deputy Health Director, a position that had been eliminated two years before, during the sell off of the Certified Home Health Agency (the "CHHA"), at a salary of \$55,000 per year. *Id.* at paras. 19, 20 and 30. In addition to the creation of a new Deputy Director position, Ms. Ethington hired an outside consultant to perform the same duties performed by Ms. Grimes in 2011, for \$16,380 and projected at \$18,500 for 2012. *Id.* at para. 26. The combined total of these two years would have made up for the cost of Ms. Grimes benefits. *Id.* The decision to lay Ms. Grimes off for financial reasons was a ruse designed to circumvent the CSEA Collective Bargaining Agreement and Civil Service Law. *Id.* at para. 37. Since the amount that the County spent in 2012 for contractual services and the Deputy Director position are well in excess of the amount they paid Ms. Grimes for salary and benefits to perform substantially the same duties, there simply is no savings to the County by laying off Ms. Grimes. *Id.* at paras. 30-37.

The County answered Ms. Grimes' Verified Petition, based in part, on an affidavit from Ms. Ethington, sworn to on June 7, 2012, a copy of which is attached hereto as Ex. 19. Ms. Ethington's affidavit outlines the County's argument. Ms. Ethington denied she was ever appointed the interim or acting Director of Public Health. Ex. 19 at para. 31. She was granted a limited degree of authority by the Board of Supervisors to oversee the closure of the CHHA unit of the Health Department. *Id.* at para. 30. She was seen by Board members and employees of the Health Department as the contact person in the Department of Health. *Id.* at para. 31. Ms. Shipp-Hilts was the *de facto* Director of the Health Department upon her appointment in May 2011. *Id.* at para. 56. In January 2011, time studies were completed by each member of the Department of Health filling out a log of their daily duties. *Id.* at paras. 47 and 48. On or about February 2011, Ms. Bonnie Hamilton, the Delaware County Director of Public Health, performed a study of the Department by interviewing all employees and finalizing her suggestions in a report. *Id.* at paras. 39-46. Ms. Shipp-Hilts made the decision to lay off employees from the Health Department based on her review of the time studies, the Hamilton report and from her personal observations. *Id.* at paras. 53-64. Ms. Ethington never recommended Ms. Grimes be laid off. *Id.* at para. 63. Although Ms. Grimes' salary was covered by grant monies, her benefits package, consisted of health care and contributions to her pension cost the County \$29,854. *Id.* at paras. 60 and 61. Ms. Ethington denies she forced anyone who supported Ms. Strack out of County employment, including Ms. Grimes. *Id.* at paras. 88-93. Ms. Ethington's relationship with Ms. Grimes was cordial and professional until the layoffs, wherein there occurred understandable disagreements. *Id.* at paras. 94-112. Ms. Grimes' age was never a consideration when deciding who to lay off. *Id.* at para. 129.

Similar to *Grimes*, in her Article 78 petition, Ms. Gigandet sought to compel the Court to reinstate her to her former position with back pay from the date of her termination until reinstatement. In *Matter of Gigandet v. the County of Schoharie*, Gigandet alleged that she was hired as a Public Health Preparedness Coordinator in February 2008. See, April 2, 2012, verified petition of Eva Gigandet attached hereto at Ex. 20 at paras. 4-7. She was terminated on December 16, 2011. Downsizing, restructuring, and budgetary issues were provided as reason for her termination. *Id.* at paras. 11-13. At the time of her termination, her position was fully funded by federal grant monies through August 9, 2012. Those same grant funds are still available to the County. *Id.* at paras. 9 and 10. Ms. Gigandet claimed her position was eliminated in bad faith insofar as the County did not have a bona fide financial reason or accomplish any savings by eliminating her position. *Id.* at para. 20.

In response to Ms. Gigandet's Verified Petition, the County included affidavits from Ms. Ethington, among others. Ms. Ethington averred that Betsy Bemocco, a former member of the Board of Supervisors and past President of the Board of Health, became responsible for the oversight of the Department of Health on an interim basis. See, April 26, 2012, affidavit of Cassandra Ethington attached hereto as Ex. 21 at para. 16. Ms. Ethington was asked by the Board to oversee the closing of the CHHA unit and the attendant personnel related issues. *Id.* at para. 16-17. In light of the CHHA closing, the County engaged Ms. Bonnie Hamilton, Director of the Delaware County Health Department, to evaluate the department and make recommendations. *Id.* at paras. 18-20. The Hamilton report set forth her concerns about the structure of the department and her recommendations for change to accomplish more efficient and coordinated operation. *Id.* at para. 21. The Hamilton report noted a lack of interaction and coordination within the Department. *Id.* at para. 24. Ms. Hamilton included a new organizational configuration to her report. *Id.* at para. 26. The Hamilton report notes a lack of supervision with respect to Petitioner's position. Ms. Gigandet had no oversight due to the vacant Director's position. *Id.* at para. 30. The vacancy in the Director's position made consideration of the recommended changes considerably more difficult. *Id.* at para. 32. In May 2011, Ms. Shipp-Hilts was hired as the Epidemiology Coordinator. The County Board of Health confirmed Ms. Shipp-Hilts as the Director of Health on August 22, 2011. *Id.* at paras. 32-36. The flood of August 29, 2011, made it apparent the County's disaster preparedness was sorely lacking in structure, staffing, and organizational support. *Id.* at para. 40. Due to the flood, Ms. Ethington did not formally request approval for Ms. Shipp-Hilts' position as Director of Health from the State Department of Health until November 21, 2011, making note of Ms. Shipp-Hilts lack of managerial experience. *Id.* at paras. 41-43. Ms. Shipp-Hilts made a departmental reorganization recommendation to the Board. She recommended hiring a Deputy Director who would be responsible for emergency preparedness in an integrated manner across division lines and the elimination of Ms. Gigandet's and others positions. *Id.* at para. 45. The Board approved the elimination of Ms. Gigandet's position in the course of the adoption of the 2012 budget. *Id.* at para. 46.

On August 1 and 13, 2012, Supreme Court, Schoharie County (Devine, J.) rendered its decision and issued its order denying Mss. Gigandet and Grimes' petitions, respectively, constituting the judgment of the court.

## **B. Findings of Fact**

In *Grimes* and *Gigandet*, the County asserted two arguments: first, by operation of her title as Epidemiology Coordinator, the County claimed that Ms. Shipp-Hilts was the *de facto* Director of the Health Department, and second, the County maintained that Ms. Ethington never recommended layoffs of Mss. Grimes or Gigandet. We address both of these positions below.

## **C. De Facto Director of Health**

Based on statements by County employees, department heads and the Personnel Officer during our interviews, all pleadings filed in the above matters, copies of emails, County documents and Public Health, Finance, and Board of Supervisors' meeting minutes, we found evidence that Ms. Shipp-Hilts was not the *de facto* Director of Health from the first day she was hired, and Ms. Ethington acted as the manager of the Department of Health on a day to day basis from December 2010 through at least October 2011.

### **1. Statements**

Our analysis begins with interviews of Mr. Paul Brady, co-budget director, and current probationary Director of Health, Ms. Assante Shipp-Hilts. Both employees told us they worked closely with Ms. Ethington on a daily basis. While Mr. Brady characterized Ms. Ethington as the *de facto* Director of Health, Ms. Shipp-Hilts chose to describe her as the top of the chain of command, or Overseer of Health.

Mr. Brady told us that it was Ms. Ethington who was the point person providing day-to-day direction to Health staff. He based his conclusion on his daily interaction with the Department of Health and his role as co-budget officer. Mr. Brady informed us that the Board had given Ms. Ethington a limited grant of authority to prepare a plan to close the CHHA. He believed that she exceeded that grant of authority and acted as the *de facto* head of the Health Department.

In support of that statement Mr. Brady told us that he and Ms. Terry had been the co-budget officers for 2011. It was their duty as co-budget officers to have routine interaction with the department heads. According to Mr. Brady, department heads have to submit written requests on a monthly basis to the budget officers to have any formal action taken on the county budget. In turn, the budget officer would prepare a resolution for the Board and Finance committee with their recommendation on the financial transactions.

During his 2011 tenure as a co-budget officer, he received those critical instructions from Ms. Ethington. Mr. Brady informed us that during the course of the

2012 budget negotiations in November 2011, he met with Ms. Ethington and Ms. Shipp-Hilts, but it was Ms. Ethington who presented the substantive issues for the 2012 budget.

A review of the February 9, 2011 through November 9, 2011 Finance Committee meeting minutes, reveal that Ms. Ethington was the only individual from the Health Department in attendance at the Finance Committee meetings. The Finance Committee meeting minutes attendance section lists Ms; Ethington as "Personnel Officer/Interim Health Department Supervisor" from February 9, 2011 until December 14, 2011. A copy of the December 8, 2010 through December 14, 2011 Finance Committee meeting minutes are attached hereto as Ex. 22.

During her interview, Ms. Ethington informed us that she never authorized anyone to identify her as the "Interim Health Department Supervisor" in the attendance section of the Finance Committee meeting minutes.

It was Mr. Brady's perception that until Ms. Shipp-Hilts was appointed Director of Public Health sometime in January 2012, Ms. Ethington functioned as the *de facto* head of Health. Mr. Brady also recalled that in the course of the 2012 budget negotiations the idea for a newly created Deputy Director of Health position, assumed by Mr. Feinstein, was never discussed with the co-budget officers. In fact, he was completely surprised when he heard Health had hired a Deputy Director of Environmental in February 2012, he said.

During Ms. Shipp-Hilts interview, she told us she was hired as the Epidemiology Coordinator in early May 2011. While she was the Epidemiology Coordinator, she reported directly to Ms. Ethington. Ms. Shipp-Hilts defined the chain of command in the Department of Health as follows: she reported to Ms. Ethington, who, in turn, reported to the Board of Health and the Board of Supervisors. Ms. Shipp-Hilts also informed us that she knew of Ms. Ethington's use of the title Interim Director of Public Health in County documents.

In her June 7, 2012, affidavit, however, Ms. Shipp-Hilts twice claimed that she was the *defacto* head of the Department of Health on the first day of her employment: "In the absence of a director or deputy director for the department, by virtue of the job specification for Epidemiology Coordinator, I became the *defacto* director of the Department upon my appointment as Epidemiology Coordinator." Shipp-Hilts' affidavit at para. 4. Ms. Shipp-Hilts concluded, "Once I arrived at the Department, I was the immediate supervisor of all staff in the Department, plain and simple. I know of no rationale basis why petitioner would have as she seems to contend, believed Ms. Ethington was to [*sic*] holding herself out as head of the Department even after my arrival." A copy of the June 7, 2012, Shipp-Hilts affidavit is attached hereto as Ex. 23, at para. 16.

The Ethington affidavit, also sworn to on June 7, 2012, using similar language, matches Ms. Shipp-Hilts' opinion, "Ms. Hilts' [*sic*] official job specification makes her

the *defacto* Department head in the absence of a director or deputy director." Ex. 19 at para. 56.

That statement was contradicted during the Personnel Officer's January 2, 2013, interview. During the interview, the Personnel Officer told us that Ms. Shipp-Hilts was not the *defacto* Director of Health from the first day of her employment, contradicting her own and Ms. Shipp-Hilts' collective opinions included in their respective June 7, 2012, affidavits.

Further, during her December 10, 2012, interview, when Ms. Shipp-Hilts was asked if Ms. Ethington was the interim director of the Health department, she said, "That set up was a little bit confusing, in that, the New York State Department of Health recognized Cassandra as the point of contact for them, I was not their point of contact. It was Cassandra." That statement is inconsistent with her June 7, 2012, affidavit, wherein she stated, "I know of no rationale basis why petitioner would have as she seems to contend, believed Ms. Ethington was to [*sic*] holding herself out as head of the Department even after my arrival." Ex. 23 at para. 16.

As an example of Ms. Ethington's demonstrated authority, during a monthly staff meeting at the Polka Dot building in Cobleskill, Ms. Shipp-Hilts praised the Department of Health staff for its performance during the flood, she told us. In the middle of Ms. Shipp-Hilts' staff address, Ms. Ethington entered the meeting and began to scream at the staff for poor performance during the flood. Ms. Shipp-Hilts admitted staff had cause to be confused. She said several employees came to her after the meeting and told her Ms. Ethington's performance was inappropriate. When asked in what capacity Ms. Ethington berated the Health staff, Ms. Shipp-Hilts admitted it was in her capacity as the overseer of the Health Department.

In a February 17, 2011 email, created by Ms. Ethington, she states that in addition to the closure of the CHHA, she "ran" the Health Department. The email asks for an opinion from Ms. Maria Kenneally, Office of Commission Operations & Municipal Assistance, New York State Department of Civil Service. Ms. Ethington requests an opinion concerning Section 27 of the Civil Service Law. A copy of the February 17, 2011 email is attached hereto as Ex. 24.

As a preface, she tells Ms. Kenneally, "Last August the Board of Supervisors on suggestion from the County Attorney asked me to be the point person on the closure of our CHHA and to make sure things got completed as required by Public Health Law. For this the Board paid me a stipend of \$150 weekly for the extra hours to copy the documents, write the closure plans etc." She continues in the next paragraph, "Then about 2 months later they had me run the Health Dept. with no additional money. While they recruited for a permanent Health Department Director."

## 2. 2011 Public Health Committee

In addition to Mr. Brady and Ms. Shipp-Hilts' statements, we questioned members of the 2011 Public Health Committee about who was in substantive charge of the Department of Health from November 2010 until January 2012. Their accounts appear below.

Supervisor Bill Goblet, was the Chairman of the Public Health Committee in 2011. Supervisor Goblet told us that he never heard Ms. Ethington refer to herself as the Interim Director of Health but that he may have referred to her as the interim Director of Health in meetings. He told us he did not think it was "such a big deal." He told us that when Ms. Strack resigned as the Director of Public Health, he was looking for a person to "keep the thing afloat" until a regular director could be hired. That period was over a year.

When asked about the presence of Ms. Bemocco at the Health Department, he recalled that Ms. Bemocco asked the Board for a stipend. It was his recollection that after Ms. Bemocco's stipend refusal and daughter's illness, she was not present in the department as much, however, she was still available to answer questions from the Health staff.

Supervisor Goblet told us that as the Chairman of the Public Health Committee, the first he heard about layoffs in that department was at the Public Health Committee meeting when Mss. Grimes and Gigandet appeared and pleaded to keep their jobs. A review of the Public Health Committee meeting minutes show that the first date Mss. Grimes and Gigandet appeared in front of the Public Health committee was November 8, 2011.<sup>8</sup>

Supervisor Goblet told us that he believed Ms. Ethington was a faithful servant and, "The role she was cast in weren't [*sic*] by her own design. The role she was cast in were what we put her in to do the things we did not know how to do."

During his interview, Supervisor Carl Barbie told us that based on the instruction he received as a member of the Public Health Committee from Ms. Ethington, he believed she was managing the Health Department. He told us that after Ms. Strack left the Health Department, Ms. Ethington started to attend the Public Health Committee meetings as the representative of Health. When Ms. Shipp-Hilts was appointed as the Director in January 2012, Mr. Barbie told us Ms. Ethington did not attend the meetings anymore. When asked, "Was she [Ms. Ethington] the chief proponent of the information that she gave to you?" He replied, "Yes and the Chairman of the committee accepted almost everything she said."

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<sup>8</sup>Supervisor Goblet told us he suspected Ms. Ethington was given an "assignment" by Supervisor Robert Mann to reduce the size of the County work force. That issue is more fully discussed in the Layoff List section above.

During his interview, Supervisor Michael Brandow reported that between November 2010 and January 2012, Ms. Ethington was the *defacto* head of Health. He based that conclusion on the fact that he was a supervisor on the Public Health Committee and Ms. Ethington made the presentations to the Committee.

During his interview, Supervisor Richard Lape told us that Ms. Shipp-Hilts was not the Director of Health when she began at the Department of Health in May 2011. Supervisor Lape told us that when Ms. Shipp-Hilts was hired as the Epidemiologist, it was Ms. Ethington who was "running the show" at the Department of Health.

### 3. Department of Health Staff

In addition to statements by Mr. Brady, Ms. Shipp-Hilts and Board members on the Public Health Committee, we interviewed current and former Health Department staff about their understanding of who was in control of the Health Department from November 2010 to January 2012. Staff statements support Ms. Ethington's January 2, 2013, statement that Ms. Shipp-Hilts was not the *defacto* Director of Health, but they contradict what Mss. Ethington and Shipp-Hilts' contend in their similarly worded June 7, 2012, affidavits, in which they claimed that Ms. Shipp-Hilts became the *de facto* department head her first day as Epidemiology Coordinator. Their accounts appear below.

██████████ was the ██████████ from february 2008, until she transferred to the Office of Emergency Management in July 2011. Based on our review of the Public Health Committee Meeting minutes from August 2010 through July 2011, ██████████ attended all Public Health Committee meetings, was responsible for taking all meeting minutes and transcribing them into type written form. ██████████ acted as the administrative assistant for Ms. Strack and Ms. Ethington. ██████████ informed us that from the time Ms. Strack left until July 2011, Ms. Ethington exercised control over the Health Department.

As an example of Ms. Ethington's demonstrated authority, ██████████ told us she was in charge of records management in the Health Department. Certain records had a distinct retention period and needed to be kept for a designated length of time, she said. ██████████ told us she had a book that defined the applicable retention periods for files in the Health Department. ██████████, told us that during the relocation of the Health Department, Ms. Ethington came in like a "bull in a china shop." When asked what that meant, ██████████ said, "She came in, she went through the files, threw things away. I was the person who kept--record management. I knew what needed to be kept, I knew how long it had to be kept, I knew how you had to destroy the stuff. I spent a whole week going through file cabinets and separating items, putting them into files. Labeling them for disposal, filling the sheets out." When asked how she knew what needed to be thrown out, she said, "I have a book ██████████ told us that Ms. Ethington, "came and tossed them all in the trash bin because they weren't being- because it wasn't going fast enough. Which really flipped me out." When asked what happened when she threw the material out, ██████████ replied, "Nothing." When

asked if she confronted Ms. Ethington, ██████████ said, "No, what am I going to say? She was my direct superior. I had no recourse. I told you before, I went to the union in Albany to see what recourse we could take. And he basically said, there's nothing you can do." ██████████ was asked if she contemplated going to Personnel, to which she replied, "No, how could I go to Personnel, she was the problem."

As another example of Ms. Ethington's substantive control over the Health Department, ██████████ recounted the following: Although Ms. Bemocco was supposed to assist with medical issues at the Department of Health, she simply did not come in enough. ██████████ told us that work would pile up. When Ms. Bemocco did not appear, Ms. Ethington would handle the work. When the New York State Department of Health called up and asked for the person in charge ██████████ told them it was the Personnel Officer.

During her January 9, 2013, interview, Ms. Bemocco told us that when the Board failed to grant her a stipend for her duties, she stopped coming to the Health Department. She told us she stopped coming into the Health Department sometime in late February to early March 2011, although she was still available to staff. In her June 7, 2012 affidavit, Ms. Ethington asserts that Ms. Bemocco declined to offer her services after March 31, 2011. Ex. 19 at para. 34.

██████████ told us she was ██████████ and reported directly to Ms. Ethington, beginning in November 2010, until she was layed-off in October 2011. As the accounting supervisor she worked closely with Ms. Ethington. When asked how she knew that Ms. Ethington was the head of Health and not just acting as the administrative head, she pointed to Ms. Ethington's direct oversight of her billing duties as the accounting supervisor.

As further evidence of Ms. Ethington's role in Health, when ██████████ asked Ms. Ethington if she would be laid off, Ms. Ethington responded that there should be enough work to go around. Later, ██████████ approached Ms. Shipp-Hilts and questioned if she would be layed-off. Ms. Shipp-Hilts said she did not know if she was going to be layed-off but would ask Ms. Ethington.

During his December 5, 2012 interview, ██████████ a Public Health Sanitarian, told us about the October 2011, "Polka Dot" staff meeting cited above. His version of the event matched Ms. Shipp-Hilts' version of the incident with one discrepancy. ██████████ told us that after Ms. Ethington finished berating the entire staff, she threatened them by saying she was going to write people up and people could lose their jobs. Several Health Department employees recalled this statement. Ms. Shipp-Hilts however did not recall Ms. Ethington threatening the staff with losing their jobs.

During her December 5, 2012 interview, ██████████, a twenty-three year County employee and registered nurse in the Department of Health, told us that even before Ms. Strack left in November 2010, Ms. Ethington was transitioning to be the head

of the Health Department. She based her conclusion on Ms. Strack's limited presence and Ms. Ethington's increasing role in the sale of the CHHA. Statements made during our interview with ██████████ corroborated this statement ██████████ told us that staff was able to run their programs without much daily supervision. If she did have questions or concerns she would report to Ms. Ethington. ██████████ claimed that until Ms. Shipp-Hilts was hired as the Director of Health in January 2012, Ms. Ethington continued to exercise control over the Health Department.

██████████ a part-time employee in the Personnel Office estimated that Ms. Ethington would spend approximately half of each day in the Health Department.

On December 5, 2012, ██████████ ██████████ in the Health Department told us that Ms. Ethington stepped in as the Interim Director of Health when Ms. Strack left. When asked how ██████████ knew Ms. Ethington was the interim director, she told us she had worked in the department and that they were told Ms. Ethington was the interim director. She told us she could not remember how she was informed. Although, in theory, Betsy Bemocco was available as co-interim director, the daily directives came from Ms. Ethington, ██████████ explained.

On December 5, 2012, ██████████ ██████████ County Public Health Sanitarian, told us he believed that after Ms. Strack left Ms. Ethington was in charge. When asked to give an example of her demonstrated authority, ██████████ pointed to screaming tirades aimed at Health staff by Ms. Ethington during the relocation of the Health Department. He told us that when another Health employee, ██████████ attempted to move her desk within the Health Department, Ms. Ethington screamed that she was a diva and should not vary her floor plan in the Health Department. Two independent witnesses to the tirade confirmed ██████████ account.

During her interview, Ms. Ethington admitted she had yelled at ██████████ for changing the floor plan. She explained that despite approval of the floor plan from the Board of Health, ██████████ continued to argue the point with her. Ms. Ethington told us that at the time of the argument she had a double ear infection, which may have caused her to raise her voice.

██████████ informed us that in January 2011, during the relocation of the Health Department, Ms. Ethington instructed ██████████ to throw out Health Department files. The files contained investigations into public water systems, childhood lead paint investigations, and hazardous waste sites. ██████████ told us some of these files had a twenty-year retention schedule. When they threw out some of the files, Ms. Ethington said there was still not enough room. Acting at Ms. Ethington's direction, Health staff threw files that were kept in two five-drawer filing cabinets into a dumpster in the rear parking lot of the County building. ██████████ told us these files contained investigations into public water systems and hazardous waste sites. The confidential childhood lead paint files were shredded. When asked why he did not inform Ms.

Ethington of the retention schedule, he told us that there was no point since she was in charge and he did not want to be yelled at.

As further evidence ██████████ told us Ms. Ethington threw out his personal property. When he came in to work one morning, he found his personal phone books he kept on his desk in the garbage. He picked a phone book out of the garbage, looked up and found Ms. Ethington standing next to him. She told him he did not need the phone books anymore. She said if he needed a phone number, he should speak to the secretaries. ██████████ placed the phone book back in the garbage and retrieved them later in the day.

Lastly, as a final offer of proof that Ms. Ethington acted as the interim director, ██████████ produced his Schoharie County identification with Ms. Ethington's signature on the back denoting the position of "Interim Department Head." Several Health staff members presented their identifications with Ms. Ethington's signature on the back. A copy of ██████████ identification is attached hereto as Exhibit 25. ██████████ concluded the interview by re-stating Ms. Shipp-Hilts' description of the chain of command; which was that when Ms. Shipp-Hilts was hired as the Epidemiology Coordinator, he reported to her and she in turn reported to Ms. Ethington.

During her January 2, 2013 interview, the Personnel Officer told us she never authorized anyone to place her electronic signature on the back of Health Department identifications or throw out Health Department files.

During her December 5, 2012 interview, ██████████ an office keyboard specialist in the Health Department, told us that she was temporarily assigned to the Personnel Department in Summer 2011. While in the Personnel Department she overheard Ms. Ethington say she was going to write Eva Gigandet up for her performance during a point of distribution drill where vaccines were distributed.

Ms. Gigandet received a memorandum from Ms. Ethington on June 14, 2011. In the June 14<sup>th</sup> memo, Ms. Ethington instructed Ms. Gigandet to improve her communication skills and follow the Health Department's chain of command. Ms. Ethington proceeded to define the chain of command, "Assante Shipp-Hilts is your immediate supervisor and I am in charge administratively over the health department on a day to day basis until further notice." The memorandum concludes, "Most importantly the communication needs to be there between you and your supervisor and Director. Improvement needs to happen on the above items or future disciplinary action will be the result." The memorandum is digitally entitled, "Cassandra R. Ethington, Interim Director, Public Health Department." Ms. Ethington's hand written signature appears next to her title as "Interim Director." Further, Ms. Ethington refers to herself as the "Director" in the body of the memo and asks Ms. Gigandet to improve her communication with her as "Director". Ex. 16.

It should be noted that in Ms. Ethington's October 12, 2012, affidavit, she explained that the June 14th memorandum signed by her as Interim Director was only a

draft. She corrected her mistake by removing the Interim Director title and replaced it with "Personnel Officer." A copy of the June 14, 2011 corrected memorandum is attached hereto at Ex. 26.

During her January 2, 2013 interview, Ms. Ethington told us she had placed a copy of her June 14, 2011, disciplinary memorandum in Ms. Gigandet's file.

On December 5, 2012, [REDACTED] a sixteen year County employee, recounted evidence that Ms. Ethington managed the Department of Health. On or about January 2011, during the Health Department's relocation, [REDACTED] arranged her desk the way she wanted it. Ms. Ethington came into the room and disliked the position of the desks and started to scream at [REDACTED]. Ms. Ethington yelled that [REDACTED] was a diva, was selfish, and had no right to adapt her plan. She made [REDACTED] return the desks to Ms. Ethington's floor plan. [REDACTED] told us she heard the screaming from approximately sixty feet away.

During the interview, [REDACTED] told us that she liked Ms. Shipp-Hilts and enjoyed her supervisory style. However, throughout 2011, when Ms. Shipp-Hilts was asked by staff to comment on the anticipated layoffs, she repeatedly claimed she was only the Epidemiology Coordinator, not the Director, distancing herself from the layoffs. More recently, [REDACTED] recalled a December 2012, staff meeting called to discuss the lack of morale in the Health Department. When confronted with her purported role in the layoffs, Ms. Shipp-Hilts again claimed that at the time of the layoffs she was only the Epidemiology Coordinator and not the director. Several Health staff confirmed [REDACTED] statement.

Moreover, [REDACTED] told us that she read Ms. Shipp-Hilts affidavit included in the *Grimes* and *Gigandet* litigation. [REDACTED] referred to the sections in Ms. Shipp-Hilts' affidavit wherein she referred to herself as the *de facto* head of Health and made the decision to layoff employees in the Health Department. Ex. 23 at paras. 4, 8 and 16. [REDACTED] told us that when Ms. Shipp-Hilts was in her office, they had a frank discussion about the claims in Ms. Shipp-Hilts' affidavits. [REDACTED] told us that Ms. Shipp-Hilts admitted that some of the "stuff" in her affidavit was not quite right.

On December 12, 2012, [REDACTED] a registered nurse within Health told us that after the August 28, 2011 flood, she informed Ms. Shipp-Hilts of an important Board meeting and asked her to represent the Health staff at the meeting. [REDACTED] told us Ms. Shipp-Hilts refused to go to the meeting stating that she was only the Epidemiology Coordinator, not a Director.

#### **4. Interim Director Title**

In addition to the statements by Mr. Brady, Ms. Shipp-Hilts, Board members on the Public Health Committee, and Health staff describing Ms. Ethington's role as substantive Director of Health, documents created by Ms. Ethington provide evidence she

held herself out to Health staff and the rest of Schoharie government as the Interim Director of Health. Those documents, offered in chronological order, appear below.

On March 4, 2011, [REDACTED] administrative assistant in the Health Department, circulated a new email policy at Ms. Ethington's request, requiring that all emails from the Health Department be copied to Ms. Ethington first. Ms. Ethington would then make the determination whether to inform Ms. Bemocco, "Please be advised that all email correspondence should go to Cassandra Ethington first who will then forward to Betsy Bemocco, if necessary. Do not cc Betsy on any email correspondence from now forward." A copy of the March 4, 2011 email is attached hereto as Ex. 27.

During her interview, Ms. Bemocco conceded she left some time in mid-February to early March 2011. Ms. Bemocco maintained she was still available to the Health Department staff after March 2011.

On May 19, 2011, Ms. Ethington created and sent an email to all employees of the Health Department. The instruction stated in part, "For those of you that may have confusion on the chain of command within the department I would like to clarify the following: As per the Board of Supervisors I am still in charge on a daily administrative basis of the Health Department and the CHHA until its closure." The email continues by defining roles and persons in charge of each unit. Ms. Shipp-Hilts' role is limited to, "Environmental, Preparedness, and Public Health Programs." Ms. Stiles is in charge of Early Intervention. The definition of roles and responsibilities contradicts Ms. Shipp-Hilts affidavit in which she states that from the very first day she was the *defacto* Department head. A copy of the May 19, 2011 email is attached hereto as Ex. 28.

As explained above, on June 14, 2011, Ms. Ethington sent Ms. Gigandet a disciplinary memorandum and later filed the memo in her personnel file. During her January 2, 2013 interview, Ms. Ethington admitted it was wrong to include the title of Interim Director of Health next to her name and sign it electronically in her June 14<sup>th</sup> letter. She claimed that once she realized what she was doing was wrong, she corrected her title and typed in "Personnel Officer." When asked to explain Ms. Gigandet's receipt with the title "Interim Director Public Health Department" she told us that someone must have taken the draft from her desk.

On June 24, 2011, Ms. Shipp-Hilts informed Ms. Ethington that she would forward Eva Gigandet's " ... emergency preparedness material for the state ... " for her review. A copy of the June 24, 2011 email is attached hereto as Ex. 29.

On September 9, 2011, Ms. Ethington sent an email to Eva Gigandet requesting reports for a meeting Ms. Ethington had with New York State later that morning. The digital signature created by Ms. Ethington at the bottom of the email reads, "Interim Public Health Director". A copy of the September 9, 2011 email is attached hereto as Ex. 30.

On October 7, 2011, Ms. Ethington created and sent an email to the co-budget officers, Mr. Brady and Ms. Terry, wherein she makes budget request transfers for medical supplies and Bio-Terror Equipment and describes herself as, "Acting Director, Public Health Department." A copy of the October 7, 2011 email is attached hereto as Ex. 31.

As mentioned above, during her interview the Personnel Officer admitted she realized it was wrong to include her printed name and signature next to the title, "Interim Director, Public Health Department, in the June 14<sup>th</sup> letter to Ms. Gigandet. During the same interview, Ms. Ethington was presented with the September 9, 2011, email and asked why, in light of her admission that it was wrong to refer to herself as the Interim Director of Health, she continued to hold herself out as the Interim Director of Health after June 14, 2011. She replied that there was a lot going on with the flood at the time she signed her name.

## **5. Meeting Minutes**

We reviewed the Finance Committee meeting minutes from December 2010, through January 2012, when Ms. Shipp-Hilts was named as probationary Director of Health. A copy of the Finance Committee meeting minutes from December 2010 through January 2012, are attached hereto as Ex. 22.

## **6. Finance Committee**

The Finance Committee meeting minutes from February 9, 2011 through November 9, 2011, reflect Ms. Ethington's presence as the representative from the Health Department attending these important meetings. From February 2011 through December 2011, Ms. Ethington is included in the attendance section as, "Personnel Officer/Interim Health Department Supervisor." There is no indication in the minutes that anyone else from the Health Department attended these meetings.

According to the Finance committee meeting minutes, with the exception of the November 21, 2011 Finance Committee meeting, Ms. Shipp-Hilts attended none of the meetings from May through November 9, 2011. Ms. Shipp-Hilts' absence at the meetings corroborates [REDACTED] statement that staff asked Ms. Shipp-Hilts to attend Board and committee meetings but she refused, claiming she was just the Epidemiology Coordinator, not the Director.

## **7. Board of Supervisors**

We reviewed the Board of Supervisors meeting minutes from December 16, 2011. Supervisor Goblet, the Chairman of the Public Health Committee, and Supervisor Singletary informed the Board who was in charge at the Health Department. When Supervisor Van Wormer asked whether Ms. Shipp-Hilts was in charge, Supervisor Goblet stated, "Waiting on the State." Supervisor Van Wormer asked, "Who is officially

in charge?" Supervisor Singletary responded, "We put Mrs. Ethington in charge." A copy of the December 16, 2011 meeting minutes is attached hereto as Ex. 32.

Statements by Mr. Brady, Ms. Shipp-Hilts, members of the Public Health Committee, and staff of the Health Department, coupled with, the Personnel Officer's creation of documents referring to herself as the Interim Director of the Public Health Department, taken together with her attendance at Finance Committee meetings as the sole representative of Health from February 9, 2011 through November 9, 2011, provide evidence that the Personnel Officer acted as the *defacto* Director of the Health Department.

#### **D. Recommendation for layoffs**

In the County's response to Mss. Grimes and Gigandet's petitions, Ms. Shipp-Hilts asserts that she recommended the layoffs in an attempt to restructure the Health Department. Ex. 23 at para. 64. Based on the proof below, there is evidence that Ms. Ethington made the recommendation to layoff members of Health and other departments.

#### **1. Meeting Minutes**

Meeting minutes from the Public Health and Personnel Committee meetings, as well as Ms. Bemocco's statement that Ms. Ethington made the recommendations for layoffs at the Finance Committee meeting, provides evidence that Ms. Ethington made the recommendations for layoffs.

A review of the November 8, 2011, Public Health Committee meeting minutes show that Ms. Ethington made the recommendation that four members of the Department of Health were to be layed-off: "Cassandra reported that four (4) staff are targeted for layoffs within the Department of Health." According to the Public Health Committee meeting minutes, there is no other representative from the Department of Health present at the meeting. A copy of the November 8, 2011 Public Health Committee meeting minutes is attached hereto as Ex. 33.

A review of the November 9, 2011, Personnel Committee meeting minutes reveal that a motion was made by Supervisor Mann to "eliminate the two newly requested positions in the Health Department and fill the Deputy Director position instead." The only name from the Health Department that appears in the "OTHERS PRESENT" section is "Cassandra Ethington." A copy of the November 9, 2011 meeting minutes is attached hereto as Ex. 34.

During her interview, Ms. Betsy Bemocco, the President of the Board of Health was asked who made the Health budget presentation to the Finance Committee and she responded, "Cassie did." It should be noted however that Ms. Bemocco told us earlier in her interview that the layoff decision was a collaborative effort between her and Ms. Shipp-Hilts. She told us that she received a phone call from Supervisor Skowfoe the week before Thanksgiving, while Ms. Shipp-Hilts was at his house. During the phone

call, he told Ms. Bernocco he was concerned about the budget. Supervisor Skowfoe handed Ms. Shipp-Hilts the phone and she and Ms. Bernocco agreed to meet about the budget after Thanksgiving. Ms. Bernocco told us she had a meeting with Ms. Shipp-Hilts the day after Thanksgiving and they discussed proposed layoffs and the structure of the Health Department.

## 2. Statement by Personnel Officer

On December 4, 2012, Ms. Judith Warner, the former Director of Emergency Management, and self-described friend of Ms. Ethington told us she had a feeling "in her heart" that Ms. Ethington was behind the layoffs. As evidence of this sentiment, Ms. Warner recalled having lunch with Ms. Ethington in Middleburgh, New York, in August 2011 at which Ms. Ethington told Ms. Warner that she was going to "pink slip" one person in each division within Health. Ms. Warner claimed that Ms. Ethington specifically named Penny Grimes, Eva Gigandet, [REDACTED] and someone in Environmental, whose name Ms. Warner could not remember.

## 3. Euler Layoff

On or about October 7, 2011, [REDACTED] was layed-off from the Health Department.<sup>9</sup>

During Ms. Shipp-Hilts' interview, she was asked, "Who's suggestion was it to lay [REDACTED]?" She replied, "Cassandra's." Ms. Shipp-Hilts explained that [REDACTED] as a member of the CHHA staff, was overseen by Ms. Ethington. When asked if Ms. Ethington discussed her intention to lay off [REDACTED] with Ms. Shipp-Hilts, she said, "Yes."

During Ms. Betsy Bernocco's January 9, 2013 interview, she told us that she had no input in the layoff of [REDACTED]

When [REDACTED] was layed-off on October 7, 2011, the only person left in a position of authority at Health was the Personnel Officer.

The County Treasurer, Bill Cherry told us that he remembered a conversation with the Personnel Officer at the front desk of the Treasurer's office. Mr. Cherry told us this conversation took place when he and the Personnel Officer were on good terms. Mr. Cherry recalled that the Personnel Officer asked if she could use [REDACTED] on a permanent 50-50, shared basis between the Health Department and Treasurer's office to assist with the Medicaid billing. He told us that [REDACTED] had transferred to the Treasurer's office after her position was cut in the Health Department where she assisted with the billing. He said Ms. Ethington told him she was mad at [REDACTED] and blamed her for missing Medicaid billing. Mr. Cherry claimed that Ms. Ethington said she was going to get rid of [REDACTED] no matter what. A few weeks later, according to Mr. Cherry, [REDACTED] was layed-off.

<sup>9</sup>A few months after her layoff, [REDACTED] was re-hired in the County Department of Social Services.

The Public Health, Finance, and Personnel Committees meeting minutes, as well as the Board of Supervisors meeting minutes, from August 2011 through November 2011, contain no statement that [REDACTED] or her position was to be abolished. The only notation in the August 9, 2011, Public Health Committee meeting minutes and August 10, 2011, Finance Committee meeting minutes is a motion that was made to backfill for the positions of [REDACTED] Public Health Nurse and Office and Keyboard Worker.

A review of the April 27, 2012, New York State Department of Civil Service's assessment of the Schoharie County Personnel & Civil Service Department's operations, notes, "The majority of the positions listed below indicate that they were abolished as part of the 2012 Budget. However, there was no notation or source document indicating the reason for the abolition of the position of Accounting Supervisor (Grade B) in the Health Department which occurred on 10/7/2011 and pre-dates the 2012 Budget." [REDACTED] [REDACTED] was the Accounting Supervisor (Grade B). A copy of the April 27, 2012 Civil Service review is attached hereto as Ex. 35 at page 6.

During her interview [REDACTED] told us that the Personnel Officer personally layed her off.

Ms. Bernocco's and Ms. Shipp-Hilts' denial of any recommendation to layoff [REDACTED] provides evidence that the Personnel Officer acted in a dual role as Personnel Officer and *defacto* head of Health. Further, Ms. Shipp-Hilts' statement that she did not recommend [REDACTED] layoff in October 2011, calls into question her claimed authority as the *defacto* Director of Health included in her June 7, 2012 affidavit.

#### **4. Creation of 2011 Department of Health Layoff List**

The former County Director of Health until November 2011, Ms. Kathleen Strack, provided evidence that the Personnel Officer recommended the 2011 layoffs. Ms. Strack provided evidence of alleged acts of intimidation by Ms. Ethington during the 2011 budget process evincing the Personnel Officer's involvement in other department's affairs.

Ms. Strack told us that in August 2010, she was asked to create layoffs by Chairman of the Public Health Committee, Bill Goblet. She created those layoffs and memorialized them in an August 11, 2011, memorandum to Supervisor Goblet. A copy of the August 11, 2011 memorandum is attached hereto as Ex. 36.

Ms. Strack told us that the Personnel Officer was not satisfied with the number of layoffs included in her August 11<sup>th</sup> memo and told her to make additional cuts. In her June 26, 2012, affidavit, Ms. Strack affirmed that, when she was the Director of Health, she created a list of potential layoffs, while Ms. Ethington prepared a separate list, "Ms. Ethington prepared her own list of potential lay-offs and even though I was the Director at the time, it was Ms. Ethington who made the final determination which positions could

be eliminated and which personnel could be laid off." A copy of the June 26, 2012 affidavit is attached hereto as Ex. 37.

In addition to her affidavit, Ms. Strack provided us with an August 26, 2010, copy of Ms. Ethington's hand-written, layoff list. The color copy provided to us via email reveal the names of employees Ms. Ethington grouped into categories of "potential layoffs", "no layoffs" or "saved by seniority". A copy of that list is attached hereto as Ex. 38. During her January 2, 2013, interview, Ms. Ethington said she created the list.

An October 12, 2010, email from Ms. Ethington, revealed that after Ms. Strack created her own layoff list, Ms. Ethington was not satisfied with her decision and demanded additional immediate cuts, "I want this to come to rest as of this week. You have come in closer but bottom line is you are still clerical heavy." Ms. Ethington instructed Ms. Strack that she had to choose between two employees named, [REDACTED] [REDACTED] Ms. Ethington continued the email by stating, "We are leaving the department more then [*sic*] manageable you need to learn to manage it better by better utilization of your staff .. ! am done and I am not beating around the bush anymore." The October 12, 2010 email is attached hereto as Ex. 39.

During her January 2, 2013 interview, Ms. Ethington was asked who gave her the authority to create the August 26, 2010, hand-written, potential layoff list. She told us she believed her grant of authority was contained in the Public Health Committee meeting minutes, likely in executive session. A review of the August 10, 2010 and September 14, 2010, Public Health Committee meeting minutes reveal no grant of authority to the Personnel Officer. Ms. Ethington continually asserted during the course of her interview that not all relevant information is included in the meeting minutes.

Acting on her October 12, 2010 email, in the October, 13, 2010, Personnel Committee meeting minutes, Ms. Ethington complained to the Personnel Committee that Ms. Strack's layoff list still did not mirror Ms. Ethington's, "Mine and Katie's layoff list still do not match." She concludes her statement by making a motion to submit her list instead of the Director of Health's list in order to post the layoff positions by November 1. A copy of the October 13, 2010 Personnel Committee meeting minutes are attached hereto as Ex. 40.

During our November 14, 2012 interview of [REDACTED], she told us that she had seen Ms. Ethington's 2010, layoff list in August 2010. She remembered the lay off list because her name was included. She told us that until she was transferred to the Emergency Management Office in July 2011, she was apprehensive, never knowing if it would be her last day at work.

The October 12<sup>th</sup> email and October 13<sup>th</sup> meeting minutes, as well as Ms. Strack's December 31, 2012 affidavit, provide evidence that even before the 2012 budgetary crisis, Ms. Ethington recommended substantive layoffs in the Department of Health.

More importantly, the 2011 layoff list, emails and meeting minutes corroborate what most Health staff told us during the interviews, which is that Ms. Ethington had the full support of the Board on her decisions to layoff employees. To contest that authority would put their employment in jeopardy.

The time frame relating to the matter immediately above relates of course to potential 2011 layoffs, not 2012.

## **5. Unsolicited Layoff Recommendations**

On December 5, 2012, we interviewed Mr. Louis Wilson, a thirty-year county employee and current Chairman of the Schoharie County Republican Party. When asked about instances of intimidation, discrimination or harassment, Mr. Wilson relayed an event from 2010. He told us that the Personnel Officer came into his office and announced she was going to rearrange the Board of Elections office schedule. She said that because they had too many employees they would have to get rid of some and demote others to part-time status. Before she could finish, Mr. Wilson told the Personnel Officer she had no standing in his office and to get out. He told us he never saw Ms. Ethington in his office again.

During the very next interview, Mr. Clifford Hay, Chairman of the Schoharie County Democratic Party, provided a copy of Section 3-300 of the New York State Election Law, which provides that appointments to the Board of Elections are made by the Commissioners and all employees of the Board of Elections serve at the pleasure of the Commissioners. A copy of this section of the Election Law is attached hereto as Ex 41.

As more fully explained in the Departments section above, on December 11; 2012, we separately interviewed Sheriff Tony Desmond and his secretary Ms. Siobhan Reddick. When asked if he had ever witnessed fellow employees subjected to discrimination, intimidation or harassment, Sheriff Desmond informed us that in October 2011, he met with co-budget officers Mr. Brady and Ms. Terry. During that meeting, he presented his proposed budget cuts to the budget officers. His cuts did not include personnel, just services and contractors.

Shortly after that, he heard there were going to be thirty-three cuts in personnel to the Sheriff's Department. With Ms. Reddick, he attended a meeting in Ms. Ethington's temporary office. When they arrived they saw Ms. Ethington's blackboard with the names of every Deputy Sheriff on it. Ms. Ethington handed Ms. Reddick a document detailing the layoffs and cuts she wanted made in the Sheriff's office. Sheriff Desmond gave examples of Ms. Ethington's proposed demotions, for example, all corporals back to correction officers and full-time dispatchers to part-time. He said the Personnel Officer had created the information on the black board, he had absolutely no input and was shocked by the disclosure. He said shortly thereafter, while discussing the proposed layoffs, the Personnel Officer became irate, grabbed the layoff material from Ms.

Reddick's hand, ripped it up and said, "screw you the games over, get the fuck out of my office." In an interview with Ms. Reddick, she corroborated Sheriff Desmond's version.

During our interviews, almost all of the department heads told us they were never consulted by Ms. Ethington prior to the distribution of the list at the November 2011 Board of Supervisors' meeting. The Personnel Officer told us Ms. Alicia Terry and Ms. Shipp-Hilts were consulted.

The Personnel Officer's recommendation in the November Public Health Committee meeting, her admission to Ms. Warner, her solitary recommendation to layoff Ms. Euler, and her demand for substantive layoffs from Sheriff Desmond, Mr. Wilson and Ms. Strack, present evidence of Ms. Ethington's role in the 2012 recommendations of layoffs in the Health Department.

## **6. Incomplete Hamilton Report**

In her June 7, 2012 affidavit, Ms. Shipp-Hilts claimed that she based her recommendation to lay off four members of the Health Department on her review of a study completed by Delaware County's Director of Health, Bonnie Hamilton ("the Hamilton Report"), self-evaluation/desk audits completed by staff, and her two and a half months of observations in the Health Department. An analysis of the Hamilton Report and desk audits discloses they were both incomplete and should not have been used as the basis to restructure or layoff employees in the Health Department.

Ms. Hamilton was retained by the County to study the operations and structure of the Health Department. We reviewed the February 17, 2011 Hamilton Report. The version of the report that we were given was incomplete and, in Ms. Hamilton's words, a "cursory first draft." The very last sentence of the report reads, "Specific Interviews: this section to be completed and sent in at a later date." A copy of the February 17, 2011 incomplete report is attached hereto as Ex. 42 .

Until we interviewed the Personnel Officer on January 2, 2013, we were unaware that two more sections to the Hamilton Report had been completed. Ms. Ethington's attorney provided us with the final two sections of the Hamilton Report on January 16, 2013. A copy of the final two sections of the completed Hamilton Report is attached hereto as Ex. 43.

A review of Mss. Ethington's and Shipp-Hilts' June 7, 2011, affidavits in *Grimes* and *Gigandet*, reveals that the basis for their conclusions was developed from the incomplete Hamilton Report with no inclusion or reference to the two additional sections, "Ms. Hamilton issued a report which set forth her many concerns about the structure of the department and her recommendations to accomplish more efficient and more coordinated operations." Ex. 19 at para. 42.

An email from Ms. Hamilton to Ms. Ethington indicates that the completed "final piece" of the Hamilton Report was sent to Ms. Ethington on April 11, 2011. A copy of the April 11, 2011 email is attached hereto as Ex. 44.

During our interview of Ms. Shipp-Hilts, she admitted the February 17, 2011, Hamilton Report never included recommendations for layoffs, but that, "We needed to be more efficient." We were not aware of the additional sections of the Hamilton Report when we questioned Ms. Shipp-Hilts on December 10, 2012.

In fact, the incomplete Hamilton Report praised the Health staff: "In general, each employee interviewed had a strong knowledge base in the assigned program area and appeared conscientious in assuring that program work was completed." Ex. 42 at p. 5.

The Hamilton Report concluded that staff needed to communicate more, be cross-trained in different disciplines within the department, and stop working in their individual "Silos."

The incomplete draft of the Hamilton Report determined that Ms. Gigandet's position in the Public Health Preparedness Program "lacks supervision" by a nurse and that "by law, a nurse needs to be supervised by a nursing supervisor" and requires more communication with Health staff. Ex. 42 at p. 4.

In the very next sentence, Ms. Hamilton concluded that the Public Health Programs was understaffed. Ex. 42 at p. 4.

The incomplete Hamilton report concluded that Ms. Grimes was overburdened, "The Health Educator is working in CD, lead and immunization and then trying to fit health education/chronic disease into the workday." Ex. 42 at p. 4. This conclusion was repeated in the June 28, 2012, Grimes affidavit, when she stated she was overworked, not underworked. Ex. 45 at para. 8. Both conclusions contradict Ms. Shipp-Hilts' affidavit that, "For the most part, petitioner was handing out literature such as lead and immunization pamphlets at fairs and local community activities." Ex. 23 at para. 20.

## **7. Final Hamilton Report**

The two final sections of the Hamilton Report included an analysis of interviews conducted on February 14 and 15, 2011, and a separate report from the Delaware County Epidemiologist, Ms. Amanda Walsh. Ms. Walsh visited the Health Department on March 18, 2011, and issued her report on March 24, 2011. Ms. Walsh's report concentrated on the Public Health Preparedness Coordinator, Ms. Eva Gigandet .and is attached to the final Hamilton Report.

Ms. Walsh's report praises Ms. Gigandet as a, "very smart, thorough individual." The report is not without criticism, "Eva is not confident in her ability to develop preparedness plans and is intimidated by NYSDOH/CDC plan review tools called TAR's (Technical Assistance Review)." Ms. Walsh concludes that because Ms. Gigandet is

handling complex grants and preparing the budget portion of those grants, her position should receive assistance from a clerical worker to assist in updating and submitting the Schoharie County Public Health Preparedness Plan and Technical Assistance Review.

There is no indication that Ms. Gigandet should be laid-off or the department restructured in Ms. Walsh's section of the Hamilton Report. In fact the report recommends additional support staff.

The second half of Ms. Hamilton's report includes interviews with Ms. Linda Stiles, Mr. Mike Cole, Ms. Penny Grimes, and Ms. McCuish. The second half of the Hamilton Report makes no suggestion or recommendation of a restructuring or need for layoffs in Health.

The Hamilton Report concludes with a section entitled, "Areas Needing a Corrective Action Plan." The section sites four areas needing correction: the STD contract; the Medical Director's personnel file, needed to include evidence of credentialing, six of the nine personnel files that were reviewed did not contain evidence of immunization against rubella; and the Medical Director's personnel file did not show evidence of annual fire training or child abuse identification, assessment, reporting and referral. Ex. 43.

There is no suggestion in the Hamilton Report that layoffs occur.

In her June 7, 2012, affidavit, Ms. Shipp-Hilts states that she based her recommendation to restructure the department, in part, on the Hamilton Report included in Ms. Ethington's June 7, 2012 affidavit, as Exhibit A. But Exhibit A of Ms. Ethington's affidavit contains only the incomplete partial first draft of the February 17, 2011, Hamilton Report. It is difficult to understand how Ms. Shipp-Hilts used a draft segment of a partial report on which to base her decision to layoff employees and restructure the department.

## **8. Time Studies**

Ms. Shipp-Hilts also contends she based her decision to layoff Health employees based on time logs completed by the Health staff.

The Personnel Officer gave time logs to the staff in January 2011, prior to Ms. Shipp-Hilts employment by the County.

During our interview of [REDACTED] she told us that Ms. Ethington directed her to collect the time logs from the staff. [REDACTED] recalled that there were many complaints from staff concerning the time logs. She said that not all of the Health staff completed the logs, although she could not remember the exact number of staff who refused to complete the log. The logs remained on her desk for months until she filed them in a file cabinet behind her desk, she said. The logs remained in the filing cabinet until she was transferred to another department in July 2011, she said.

During our interviews of Health staff, two employees confirmed that they did not fill out the daily time logs. Ms. Shipp-Hilts confirmed that not all employees completed the logs. Although Health staff told us that the clerical staff did not have to complete the desk audits, we were not able to verify these claims.

Since the Hamilton Report and the desk/audits were incomplete it is hard to comprehend how they could have been used as a tool to restructure the Health Department.

## **9. Structural Conflict**

The foregoing provides proof that the Personnel Officer acted as the *de facto* head of the Health Department and recommended Health staff be layed-off.

The significance of those two facts when considered with the Department of Civil Service's incompatibility/structural conflict opinion, supports the conclusion that the County should not have layed-off Mss. Grimes and Gigandet.

Although the initial creation and distribution of the layoff list may have started a panic, the simple fact remains that the unauthorized layoff list still had to be voted on by the Board of Supervisors. In between the time the list was initially distributed and voted on, the various department heads were able to argue for the retention of their employees. Compared to the initial unauthorized list, few layoffs actually occurred. The only employees unfortunate enough not to have an advocate on their behalf were in the Health Department. The reason was that the individual acting in the role as the Interim Director of the Department of Health was the same individual acting as the Personnel Officer.

The distribution of the additional layoff list at the November 18, 2011, Board of Supervisors meeting caused confusion on the part of department heads and employees. A review of the Board of Supervisors' November 18, 2011 meeting minutes demonstrates the confusion over who created the layoff list when Sheriff Desmond asked, "How did the lay-off list come about. Who made these decisions?" Ex. 6.

At the same meeting, the minutes reflect Supervisor Skowfoe said, "I would like to address the statement that the full Board of Supervisors knew about this. I do not think the full Board was aware. Maybe the Personnel Committee was." *Id.*

On November 18, 2011, during a Board of Supervisors meeting, Mr. Vroman attempted to quell the panic over the unauthorized layoff list by correctly stating, "This is a proposed budget and layoff list. Nothing in concrete. The Finance Committee is meeting with department heads next week." *Id.*

Most department heads told us that, although they were completely surprised and resented the unauthorized layoff list, they were still able to argue against the layoffs

during the Finance Committee meetings held during the month of November 2011. Most Department Heads told us that they successfully avoided the suggested personnel cuts.

Examination of a February 21, 2012, New York State Department of Civil Service letter, from Ms. Nancy Kiyonaga, Director, Commission Operations & Municipal Assistance, shows that Ms. Kiyonaga believed the appointment of Ms. Ethington as Personnel Officer was incompatible with her position as Interim Director of Health. A copy of the February 21, 2012 letter is attached hereto as Ex. 46.

Reflecting concerns by Ms. Ethington, as well as members of the public, Ms. Kiyonaga states in her letter, "This is in response to your request for an opinion of whether the past actions by the Schoharie County Board of Supervisors to appoint you as Personnel Officer and assign you to perform the functions relative to the County's Public Health Director and provide you with a stipend to exercise those duties are a violation of Civil Service Law section 27." Ms. Kiyonaga continues, "In addition to technical assistance in this matter, we have received inquiries from members of the public on the same subject, stating their concern you served as both the Personnel Officer and Public Health Director for a limited period of time during 2011-2012." *Id.*

Section 27(1) of the Civil Service Law states, inter alia, "A member of a municipal civil service commission or personnel officer ... shall not hold any other public office or employment under the political subdivisions or subdivision over which such commission or personnel officer exercises jurisdiction .... " Ms. Kiyonaga continues her analysis, "A Personnel Officer is a public officer charged with the enforcement of Civil Service Law within Schoharie County. Service in that role while simultaneously functioning as Public Health Director, another, separately appointed public officer, charged with the enforcement of Public Health Law appears to run contrary to Civil Service Law, section 27(1). The receipt of additional compensation appears to support the fact that significant duties as Public Health Director were exercised." *Id.*

Ms. Kiyonaga explains her reasoning, "By having responsibility as Public Health Director and Personnel Officer you would have the full range of responsibilities for appointments, terminations, disciplinary actions at the Public Health Department and also be responsible for reviewing, approving/denying and hearing appeals from the same decisions as Personnel Officer. This is an obvious structural conflict." *Id.*

An example of the structural conflict occurred when the Personnel Officer recommended the abolition of [REDACTED] position in Health. Mss. Shipp-Hilts and Bernocco told us the recommendation rested solely with Ms. Ethington. Ms. Ethington could only have recommended the layoff as the interim Director of Health, she could not have recommended the layoff in her capacity as Personnel Officer. [REDACTED] could have appealed that decision, but her avenue of appeal, among others, would have been to the Personnel Officer. The same person who recommended the layoff.

Another example of this structural conflict occurred on June 14, 2011. When Ms. Ethington issued the June 14th disciplinary letter to Ms. Gigandet, she included a copy of

the letter in Ms. Gigandet's personnel file. These actions demonstrate that while Ms. Ethington had, " ... the full range of responsibilities for appointments, terminations, disciplinary actions at the Public Health Department ... " she was, "responsible for reviewing, approving/denying and hearing appeals from the same decisions as Personnel Officer." Therein lies the conflict.

Further, in the context of the structural conflict, [REDACTED] and [REDACTED] claimed they were harassed by Ms. Ethington when she screamed at them. They could not have reported these acts to the Personnel Officer, as contemplated in sections 4.10 and 4.11 of the Schoharie County Policy and Procedures manual, since she was the person alleged to have harassed them.

During her interview, Ms. Ethington acknowledged receipt of the February 21, 2012, New York State Department of Civil Service, letter. She told us her interpretation of Section 27(1) of the Civil Service Law was different from Ms. Kiyonaga's interpretation. The Civil Service letter concludes with a suggestion that Ms. Ethington have the County Attorney request a formal opinion letter from the Attorney General. We did not ask Ms. Ethington if such a request was made.

## 10. Conclusion

The Board, through the Chairman, Vice-Chairman and RFP, require that if there are findings of discrimination, intimidation or harassment in the Schoharie County workplace, then our "detailed analysis and report shall further provide recommendations for remediation" including a "return to the work place of any employee found to have been *improperly targeted* for dismissal."<sup>10</sup>

As described above, several County employees contended they had suffered acts of intimidation, harassment and discrimination, against them.

We also found evidence that the Personnel Officer, acting as the *defacto* head of the Department of Health, recommended the abolishment of Mss. Grimes and Gigandet's positions.

Evidence establishing that the Personnel Officer had acted as the *defacto* head of Health, albeit at the behest of Supervisors Goblet and Singletary, coupled with her recommendation for layoffs while acting as the Personnel Officer, supports the incompatibility or structural conflict argument set forth in the Department of Civil Service's opinion letter. When Ms. Ethington's and Supervisor Mann's additional recommendations were distributed, the corresponding department heads were able to successfully argue for the retention of their employees. The checks and balances included in the County Law and CSEA contract were realized.

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<sup>10</sup>We do not touch Judge Devine's decisions rendered in *Grimes* or *Gigandet* concerning bad faith termination, age discrimination or legislative equivalency. The issues addressed in those decisions are not what the Board has asked us to review.

Because of the structural conflict, when the recommendations were made to layoff Mss. Gigandet and Grimes, they did not have the protection of an independent department head to argue for their retention; the checks and balances were not in place.

Accordingly, since we found evidence that Mss. Grimes and Gigandet's positions were improperly targeted, we recommend Mss. Grimes and Gigandet be returned to their previous positions in the Schoharie County workplace.

### ***E. Jordan v. County of Schoharie***

In December 2011, Mr. Sean Jordan was layed-off from his position as an Economic Development Assistant. By petition noticed and dated April 23, 2012, Mr. Sean Jordan commenced a special proceeding, pursuant to Article 78 of the CPLR, against Schoharie County, seeking reinstatement and award of his lost salary, benefits and seniority caused by his termination. Mr. Jordan had been appointed to his position on June 11, 2007, and served until December 23, 2011. Mr. Jordan claimed that his position was eliminated for putatively financial and economic reasons resulting from the financial stress on the County caused by the flood of August 2011. Mr. Jordan claimed the elimination of his position was not caused by budgetary necessity. Rather, the budgetary reasons advanced for his layoff were advanced in bad faith and were a pretext used by Ms. Terry the Director of the Office of Planning and Economic Development ("Planning"), who employed her position as a budget officer to circumvent the provisions of the Civil Service Law and the collective bargaining agreement. Mr. Jordan asserted he was layed-off as a result of the director's personal animus toward him.

As evidence of the disingenuous budgetary explanation, Mr. Jordan described the retention in the budget of a newly created position in his department, Economic Development Marketing Coordinator. This position was seven pay grades higher than Mr. Jordan's Grade 12. Mr. Jordan alleged this position encompassed the same duties he had performed, albeit not contained in his job description. Thus, he contended, the County did not realize any net cost savings by eliminating his position.

Mr. Jordan contended he had not received proper notice of his contemplated layoff. The only formal written notification he received was an unsigned email attachment from the Personnel Director on Thanksgiving Eve, 2011. He complained that he was given short notice of the posting for the Economic Development Marketing Coordinator position. He also suggested that his age and marital status may have contributed to the elimination of his position.

Respondent submitted the affidavits of Ms. Terry, as well as Ms. Ethington, the Personnel Officer, Ms. Sarah Blood, the Economic Development Marketing Coordinator, and Supervisor Tom Murray, contending that Mr. Jordan's layoff was economically and financially motivated and was not executed in bad faith.

### **1. Particular Contentions**

In *Jordan v. Schoharie County*, the petitioner charged that, after December 2010, when the former Director of Economic Development, Mr. Jody Zakrevsky, left his position and Ms. Terry assumed her duties as head of Economic Development, he continued to work out of title, performing duties beyond those of Economic Development Assistant. April 23, 2012, verified petition of Sean Jordan attached hereto as Ex. 47 at paras.12-17. After Ms. Terry assumed the role of head of Economic Development, Mr. Jordan saw an increase in the amount of duties and responsibilities given to him. *Id.* at paras. 16-17. Seeking an upgrade to correspond to his actual work, Mr. Jordan received assurances from both Ms. Terry and the Personnel Director that he would receive an upgrade before the creation of an envisioned new Grade 19 position. *Id.* at paras. 21-26. Both Ms. Terry and the Personnel Officer recommended that a desk audit be performed in order to bring about the upgrade. Despite their reassurances that the desk audit would be performed, a new position was created. *Id.* at paras. 27-33. Mr. Jordan claimed that when the job description for the new position appeared, he was performing many of the duties and responsibilities. He realized that the Personnel Officer used the work description he had given her to create the description for the Grade 19 position. *Id.* at paras. 34-44. The Personnel Officer informed Mr. Jordan that he lacked the experience for the new position, although he was allowed the opportunity to apply for the new position. *Id.* at paras. 44-46. Mr. Jordan discovered the new position on the last day of the application deadline. He claimed the job was never posted on the website and his director never bothered to inform him of the posting. *Id.* at paras. 47-54. After discovering the posting, Mr. Jordan interviewed for the new position with Ms. Terry and Mr. Nickle. *Id.* at para. 55.

Ms. Terry informed Mr. Jordan that he did not obtain the position and in August 2011, Ms. Sarah Blood was hired to fill the position. *Id.* at paras. 56-57, 65. After Ms. Blood was hired, he saw no change in his duties and responsibilities. *Id.* at para. 58. Ms. Terry and Supervisor Murray informed him that they were looking for someone with many years of experience to fill the position *Id.* at paras. 60-63. He heard admissions by Ms. Blood that she had no marketing experience. *Id.* at para. 65. On November 14, 2011, Ms. Terry informed him that she, as budget officer, had cut his position due to concerns of a personal nature. Despite Ms. Terry's statement, she recommended his position be funded in the 2012 tentative budget. *Id.* at paras. 70-73. Mr. Jordan said the new position, which was seven pay grades above his own, was never considered for elimination or reduction and that Ms. Blood had not even taken a Civil Service examination for the position. *Id.* at paras. 80-81. In a November 14, 2011 telephone conversation, Supervisor Murray told him "You're young. You don't have a family or kids to support. We had to take that into consideration when we chose to eliminate your position." *Id.* at para. 90.

In his petition, Mr. Jordan accused the Personnel Officer of lying when she released a county-wide email stating that the only layoff list being circulated around the county was the one disseminated at a public hearing. *Id.* at paras. 105-06. Instead, he contended, there was another list circulated with far greater numbers of potential layoffs, whose purpose was to create an atmosphere of fear and intimidation throughout the County. *Id.* at paras. 106-09.

Besides charging that Ms. Terry's motives were personal rather than fiscal, he claimed that she had a history of conducting personnel issues in bad faith and charged that she and the Personnel Officer acted in bad faith and engaged in improper and unethical practices. He claimed the two had amended job descriptions and qualifications to fit specific individuals. *Id.* at paras. 112, 119, 121. Ms. Terry improperly instructed him not to come to work after December 20, 2011, even though his last day of employment was to be December 23, 2011. His computer was unhooked one week prior to December 23, 2011. *Id.* at paras. 124-26.

Ms. Terry's affidavit, sworn to on May 31, 2012, and attached hereto as Ex. 48, made a number of allegations in opposition to Mr. Jordan's contentions. She asserted that she had been appointed Director of Economic Development, that Mr. Jordan had never contested this fact to her directly, and that this cause of action cannot be premised on a lack of documentation. *Id.* at paras. 21-26. Ms. Terry denied that Mr. Jordan had been working out of title and was fulfilling the duties of Economic Director. *Id.* at paras. 32-50. Ms. Terry pointed out that Mr. Jordan's grievance had never been based on a claim of out-of-title work. *Id.* at paras. 51-53. Ms. Terry found no evidence that the former Economic Director, Mr. Jodi Zakrevsky, had planned to make Mr. Jordan a co-director. The first she heard of this plan was in Mr. Jordan's instant Article 78 petition. *Id.* at paras. 54-58. Ms. Terry denied she planned to upgrade Mr. Jordan's position from a grade 12 to a grade 16. *Id.* at paras. 59-69. Mr. Jordan attempted to obtain an upgrade in summer 2011. *Id.* at paras. 70-80. Mr. Jordan had no legal entitlement to have his position upgraded and his claim was untimely in his Article 78 proceeding. *Id.* at paras. 81-82. With regard to the Marketing Coordinator position, Ms. Terry stated that the position was not created based on the specifications Mr. Jordan had supplied. *Id.* at paras. 83-92. Ms. Terry claimed the new position was posted on the county's website, in three weekly newspapers and on bulletin boards in the county office building. *Id.* at paras. 93-97. Indeed, Mr. Jordan filed a timely application and was interviewed for the position. *Id.* at para. 98. Ms. Terry defended the choice of Ms. Blood for the position based on her resume. *Id.* at paras. 99-106. In defending the layoff decision Ms. Terry recited the budget cutting process, including her initial recommendation as department head to fund Mr. Jordan's position. She changed that position after being instructed by the Finance Committee to seek further cuts in the budget. *Id.* at paras. 113-52. She recounted her discussions with Mr. Jordan, as department head, concerning his deficiencies in job performance and activity. She dismissed these as being the reasons for the layoff, insisting as department head she would have preferred to retain his position. *Id.* at paras. 113-24. Mr. Jordan consulted his local union about his layoff and was told he had no legal basis to challenge the layoff. The local Union did not file a grievance. *Id.* at paras. 157-58.

In answer to Mr. Jordan's contentions, Ms. Ethington asserted in her affidavit sworn to on May 31, 2012, and attached hereto to as Exhibit 49 that, Ms. Terry had been appointed Economic Director by the Board of Supervisors, she informed Mr. Jordan of that fact and any failure to provide Mr. Jordan with documentation in support of this fact did not create a legal cause of action. *Id.* at paras. 8-14. Mr. Jordan never provided her

with any specifics of his claim that he was working out of title and the CSEA never initiated a grievance on this issue. *Id.* at paras. 16-24. She told Jordan he needed to fill out a job classification questionnaire and have it reviewed and approved by his department head. If he believed his job title was incorrect, then a request for an upgrade had to be submitted to Ms. Ethington by the C&EA. *Id.* at paras. 29-30. Ms. Ethington stated that she never received such a request from the CSEA. Ms. Ethington never assured Mr. Jordan that his position would be reallocated or upgraded. *Id.* at paras. 31-37. Ms. Ethington agreed with Mr. Jordan that she did not tell him when this position was posted but does not tell employees of such postings for fear that it might be interpreted as showing favoritism to one candidate over another and she must remain strictly neutral on such matters. *Id.* at paras. 43-48. Ms. Ethington said the position was posted on the county's website, advertised in three newspapers and posted on various bulletin boards in the county office building. *Id.* at paras. 49. In any event, Mr. Jordan made application and was interviewed. *Id.* at para. 52. She denied telling Mr. Jordan he was not qualified and gave his application to Ms. Terry. *Id.* at paras. 54-55. To Mr. Jordan's suggestion that the provisional position of Economic Development Marketing Coordinator should have been eliminated from the 2012 budget before his own position, Ms. Ethington points out that that would have been required under the Civil Service Law only if the two positions were in the same title. *Id.* at para. 59.

Ms. Ethington said that a layoff list of titles to be unfunded in the 2012 budget had been created by the "department heads and/or the co-budget directors or the Chair of the Finance Committee." She analyzed those positions according to seniority and attendant bumping or retreat rights so as to develop a separate list of which employees were likely to lose their positions. *Id.* at paras. 60-64. This second list, Ms. Ethington stated, was not made available to anyone in order not to give cause for alarm. *Id.* at paras. 65. She intended to keep the list confidential until the CSEA contract would require notice of layoffs. *Id.* at paras. 66-67. She said the list was taken without authority from her office. *Id.* at para. 68. She did not identify who took the list from her office. Ms. Ethington denied the list was meant to instill fear and intimidation describing the list's creation as a necessary function of her office. *Id.* at paras. 69-70. The CSEA told Mr. Jordan that he had no basis to challenge the elimination of his position for reasons of economy. *Id.* at paras. 76-77. The County Treasurer's, proposed budget, funding Jordan's position, was accomplished by accessing County fiscal reserves, leaving little or no reserves for future contingencies and emergencies. *Id.* at paras. 81-82.

In her affidavit sworn to on May 31, 2012, and attached hereto as Exhibit 50, Ms. Blood presented her qualifications for the position as Economic Development Marketing Coordinator, argued that she was qualified to hold that position, and denied Jordan's claim that she had no marketing experience and that he was supposed to teach her the "ins and outs of economic development." *Id.* at paras. 5-16; 21-22. She stated that her questions of Mr. Jordan's daily responsibilities were innocent and not hostile. *Id.* at paras. 19-20.

In his affidavit sworn to on May 31, 2012, and annexed as Exhibit A, Supervisor Murray said that Mr. Jordan had never indicated he was working out of title and denied

that he had ever told Mr. Jordan that he was looking for someone with twenty-five years of experience for the position of Economic Development Marketing Coordinator. *Id* at paras. 5-10. He said he never told Mr. Jordan it was alright that he was losing his position because he did not have a family to support. *Id* at para.13. Supervisor Murray was a member of the Finance and Personnel Committees and he never heard Ms. Terry suggest that Mr. Jordan's position was being eliminated for any reason other than the need to achieve fiscal savings. *Id* at paras. 15-16.

By decision and order dated August 13, 2012, the Supreme Court, Schoharie County, denied Mr. Jordan's petition in its entirety, finding that Mr. Jordan had failed to establish that his position had been eliminated in bad faith.

## **2. Inconsistent Statements in *Jordan***

During her January 2, 2013, interview, the Personnel Officer described the process she used to create the layoff list at the request of Supervisor Mann, the additional layoff titles were selected when she recalled remarks made during past meetings with the full Board and various Board committees. She remembered conversations during the past three years when supervisors would question the day-to-day activities of certain individuals and included those individual's title on her list. Inclusion in her potential layoff list had further consequences when seniority, "bump" and "retreat" rights were considered. Consideration of the substantive daily activities, combined with the individual's seniority, "bump" and "retreat" rights, created many more names/titles to be added to the 2012, proposed budget. The Personnel Officer referred to this as a ripple effect. She reminded us that the list included *potential* layoffs created at the behest of Supervisor Mann and the ultimate decision was made by the Board (this description also appears in the Layoff List segment of the Major Issue section).

When asked if she spoke with Mr. Brady or Ms. Terry prior to releasing her additional layoff list, Ms. Ethington said she had not. The Personnel Officer told us, she thought she had "cc'd" Ms. Terry and Mr. Brady on an email with Supervisor Mann, but forgot to hit the "reply all" button on her computer.

Ms. Ethington was shown a copy of the layoff list employees claimed she had created. She confirmed she created the list after the budget officer's proposed budget was revealed, although at the request of Supervisor Mann. Ex. 7.

In her May 31, 2012, affidavit, Ms. Ethington states at paragraph 62, "For the most part, to my knowledge, department heads and/or the co-Budget Directors or the Chair of the Finance Committee determined the titles to be proposed to be unfunded in the 2012 budget." Ex. 49.

This is a different explanation than offered during her January 2, 2013 interview.

In her May 31, 2012, affidavit, Ms. Terry states at paragraph 130, that after she presented the Budget Directors proposed budget, "Mr. Brady and I were told by Robert

Mann, in no uncertain terms, to go back to the drawing board for further cuts and to return with a budget which would be in the single digits." Ex. 48.

A review of the October and November 2011, Finance and Personnel Committee meeting minutes, reveal no mandate to create additional layoffs in the budget from either committee.

During her interview, Ms. Terry told us that the department heads had input when the layoff list was created. When she was shown a copy of the list created by Ms. Ethington, she told us "she believed" it was the same list she had created with input from the department heads.

She was asked if she received any direction from Supervisor Mann to create a layoff list. She said she was told to, "trim the budget, and we knew over the years equipment and contractual expenses had been trimmed to basic bare bones so there was one place left to go." She was then asked, if there was no statement requesting additional layoffs in the minutes it would mean certain supervisors created the list themselves. She answered, "Correct."

Despite inconsistent statements concerning the creation of the unauthorized layoff list, Mr. Jordan, electing to appear *pro se*, offers sparse evidence supporting his conclusion that his layoff was a function of personality conflict and not a determination of the department's critical mission. Most of the statements Mr. Jordan offers to prove his personality conflict theory, were denied in interviews and/or sworn affidavits by the individuals he asserts made the statements (i.e., Ms. Ethington, Ms. Terry, Supervisor Murray and Ms. Blood).

Still, the circumstances surrounding Supervisor Mann's request for additional layoffs is concerning.

It is undisputed that Ms. Terry did not recommend Mr. Jordan's layoff in her initial proposed budget. Ex. 48 at para. 130.

Ms. Terry claimed that after she submitted the proposed budget to the Finance Committee, she was told by Supervisor Mann to cut the budget further. She told us she took that statement to mean additional layoffs, since the equipment and contracts had been trimmed to "bare bones."

Ms. Ethington has described the directions she received from Supervisor Mann to trim the budget. Those directions were received in a note and email.

Assuming *arguendo*, there was an unauthorized, proposed layoff list created at the behest of Supervisor Mann, the fact remains, the Board made the ultimate decision based on the input of Ms. Terry. Unlike Mss. Grimes and Gigandet, Mr. Jordan explored all avenues of appeal available to him, including to the Personnel Officer. There was no structural conflict argument available to Mr. Jordan as with Mss. Grimes and Gigandet.

During their interviews, Mss. Terry and Blood described their duties and responsibilities. We found that Mr. Jordan's duties were being performed by Mss. Terry and Blood. The grants previously administered by Mr. Jordan were divided between Mss. Terry and Blood. Likewise, Mss. Blood and Terry, served the Community Board's previously served by Mr. Jordan.

During his interview, ██████████ claimed that Ms. Terry had agreed that Mr. Jordan deserved an upgrade. This fact, taken by itself, is insufficient to refute Ms. Terry's claim that she based her layoff decision on a determination of which positions were non-essential to the mission of the department. Especially in light of Ms. Terry's initial decision to fund Mr. Jordan's position.

### **3. Conclusion**

Although there are discrepancies in Mss. Terry's and Ethington's testimony, the distinctions are insufficient to recommend that Mr. Jordan's layoff be overturned.

Accordingly, we make no recommendation concerning Mr. Jordan's reinstatement.

### **PART V. Evaluation of the Schoharie County Policies and Procedures**

In the final section of this report we evaluate the County's Policies and Procedures Manual relating to, (a) discrimination in the workplace and harassment (including sexual harassment), (b) mandatory education and training in the workplace, and, (c) the County's Ethics Policy.<sup>11</sup>

During the evaluation period, we asked all County employees how often they consulted the Schoharie County Policies and Procedures Manual ("Policies and Procedures Manual"). The overwhelming response to that question was that most employees rarely consulted the manual.

No member of the Department of Motor Vehicles possessed a copy of the Policies and Procedures manual. Indeed, almost every member of that department told us they lost their manual in the flood of August 2011 and had never sought to replace it.

Nearly all of the Correction officers in the Sheriff's Department could not tell us the last time they looked at the manual. Members of the Department of Public Works

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<sup>11</sup>The RFP required, "In the event that the evaluation shall result in finding that there are prior reported or unreported acts of discrimination, harassment and/or intimidation in the workplace, then such detailed analysis and report shall further provide recommendations for remediation, to include ... I. Amendment to portions of current Policies and Procedures Manual relating to Discrimination in the Work Place and Harassment; 2. Amendment to portions of current Ethics Policy; 3. Mandatory education and training in the work place for both Employers and Employees."

were equally oblivious to the whereabouts of their Policies and Procedures Manual or knew about the manual's inclusion in the County's website. Few employees or department heads realized that their daily work activities should be guided by this manual.

Sections 4.10 and 4.11 of the Policies and Procedures Manual contains the County's anti-discrimination and harassment policies. These sections of the manual should be viewed as a valuable tool that effectively serves the employee, department head and supervisor as a rule book or guideline for anti-harassment and discrimination policies and procedures.

In addition to acting as a guideline and rule book, a revised anti-harassment and discrimination policy would demonstrate compliance with applicable state and federal laws.

The first part of the final section addresses Discrimination in the Work Place and Harassment (including sexual harassment), respectively. The section contains an analysis of the current policies and procedures relating to Sections 4.10 and 4.11, and our recommendations for change in the policies and procedures and training for employers and employees.

The second part of the final section addresses our recommendations for amendment to portions of the Schoharie County Ethics Policy.

## **A. Discrimination in the Workplace & Harassment**

Sections 4.10 and 4.11 of the Policies and Procedures manual are outdated and in much need of updating and revision. A copy of sections 4.10 and 4.11 are attached hereto as Ex. B.

### **1. Discrimination in the Workplace**

Section 4.10 addresses discrimination in the workplace. The section consists of three paragraphs. The first paragraph pertains to County employees that believe they have witnessed or been subject to conduct by another County employee that qualifies as discrimination based on the complainant's inclusion in a protected class. The protected classes listed in section 4.10 are, age, color, creed, disability, gender, marital status, national origin, race or religion. The scope of the protected class is extremely narrow and classifications are vague. Our sample Policy Statement below includes a broad range of protected classes and may be tailored as the Board desires. Any amendment to section 4.10 should however, broaden the scope of the protected class by inclusion of at least some of these more recently defined classes.

The second paragraph of Section 4.10 pertains to individuals outside County government who believe they may have been discriminated against by County

employees. While the protected class categories are different from the classifications in the first paragraph, they are still very narrow.

Both paragraphs inform potential complainants to direct their complaints to the Personnel Officer, the relevant department head, or the County Board of Ethics. The Policies and Procedures Manual did not provide the identity of the members of the Board of Ethics.

The final paragraph in Section 4.10 is ambiguous and vague. The section contemplates that if the matter is not resolved, "the above-named individuals shall forthwith inform the Personnel Committee and the County Attorney concerning the complaint." The term "above-named individuals" could refer to a number of individuals in the first two paragraphs and serves to confuse the complainant.

Most importantly, section 4.10 includes no procedures for reporting, investigation, informal resolution, or time periods for the disposition of an investigation.

## **2. Harassment**

Section 4.11 addresses harassment and sexual harassment in the workplace. As with Section 4.10, the protected class of individuals contained in Section 4.11 is narrow and should be broadened to include a number of recent additions to the classes.

The Sexual Harassment section adequately defines the categories of Sexual Harassment but includes no specialized procedures for investigations to deal with sensitive topics and confidentiality. The "Other Harassment" section contains identical subdivisions, which presumably are typographical errors but confuse anyone reading the paragraph.

The Employees Responsibilities section is overly burdensome to a County employee. The section makes it incumbent on the employee to: monitor his department for signs of harassment, educate and counsel his fellow employees on prohibited behavior and the County's reporting procedures, intervene in any acts of harassment between employees, and immediately separate complainants in a pending harassment investigation.

The Employees Responsibilities section takes the responsibility of monitoring, intervening, preventing, and resolving acts of harassment away from management and places it almost completely on the employees.

The Complaint Procedures section is inadequate. Subsection 3, is unclear and simply makes no sense. Subsection 3 states, "The other person to whom a complaint is given shall meet with the employee and document the incidents complained of, the person(s) performing or participating in the harassment, and the dates on which it occurs." A close reading of the section provides no indication of the identity of, "The other person to whom a complaint is given." It is simply confusing to the reader.

The sections are poorly written and provide little guidance to the employee or department head on definitions and procedures. As mentioned above, these sections should act as a guide to the employees and department heads, instead they confuse and complicate important policies and procedures during a stressful period.

The sections relating to harassment and discrimination do not establish compliance with state and federal laws. Clearly drafted harassment and discrimination procedures will help employees and employers alleviate inconsistent treatment in the various departments of the County. The following recommendations address the County's lack of an investigative plan to deal with complaints once they happen. The recommendations clearly define procedures to be followed once a complaint is made and policies to be posted defining behavior that will not be tolerated by the County.

## **B. Recommendations**

### **1. Display anti-harassment and discrimination policy**

The County should develop an anti-harassment and discrimination policy and openly display that policy in a conspicuous place within each department. A copy of our sample anti-harassment and discrimination policy is included below.

Most employees did tell us they were required to sign a statement confirming their understanding of the manual when they first received it. Based on our findings during the evaluation period, each employee should be issued a Policy and Procedure manual and required to sign a statement that he has read the Policy and Procedures manual, understands it and will conduct himself accordingly. Sanctions for violations of the policies should be explained to each employee during their initial harassment and discrimination training.

### **2. Reporting and Complaint Procedures**

Above all else, the County should establish a clear reporting and complaint procedure. A clear and concise complaint procedure can lessen the liability to the County if harassment and discrimination is claimed. As shown in the sample harassment and discrimination policy below, complaint procedures must spell out the behavior covered by the policy, the person conducting the investigation, and the time frame in which the investigation must be completed, among other things.

### **3. Survey**

In order to make recommendations for amendments to sections 4.10 and 4.11, it was necessary to determine the extent of unlawful discrimination and harassment existing in each department among employees and department heads. Statements made during the interviews of all Schoharie County employees formed the gravamen of our conclusions.

Based on the interviews, we realized there were alleged acts of unlawful discrimination and harassment that were more prevalent in some departments than others.

During the evaluation process, we catalogued alleged acts of generic and unlawful discrimination, harassment and intimidation among employees, department heads and supervisors. We performed this function to gauge which departments may need increased training.

We compiled our findings by department in the section below. Claimed acts of unlawful harassment and discrimination, as well as, generic or common acts of intimidation, discrimination and harassment among employees, department heads and supervisors are catalogued by a brief description of the act and the group alleging to have performed the acts (i.e., employees, department heads, and supervisors). If the employees of a department reported no incidents of unlawful harassment or discrimination or generic discrimination, harassment or intimidation, the department is not included in the section below.

#### Department of Motor Vehicles

- Employee claim of unlawful discrimination by department head based on political affiliation.
- Employee claim of harassment by department head based on accusation by department head that the employee falsely reported an incident.

#### Sheriff's Department

- Claims of harassment and intimidation among employees.
- Employee claims of harassment and intimidation by a former department head.
- Employee claims of harassment and intimidation by a departmental supervisor.
- Employee claims of harassment and intimidation by an outside department head.

#### Department of Social Services

- Claims of harassment among employees.
- Claims of unlawful sexual harassment based on the dissemination of a sex catalogue and offensive sexual remarks among employees.
- Claims of unlawful racial discrimination among employees based on offensive comments.

#### Office of the Ageing

- Employee claim of harassment and intimidation by former department head based on department heads failure to conduct an adequate investigation.
- Employee claim of harassment by a former department head based on offensive language.

#### Probation Department

- Employee claims of harassment and intimidation by outside department head based on offensive comments.

### Personnel Office

- Employee claims of harassment and intimidation by a former outside department head based on the use of foul language.
- Department head claims of harassment and intimidation by other department heads and members of the Board of Supervisors based on offensive comments.
- Department head claims of harassment and intimidation by employees based on offensive speech and culture of hostility.
- Department head claims of harassment and intimidation by members of the Board of Supervisors based on the distribution of offensive written material.

### Central Data Processing

- Claims of harassment among employees.
- Employee claims of harassment and intimidation by member of the Board of Supervisors.

### Emergency Management Office

- Employee claims of harassment and intimidation by former department head based on offensive speech.
- Employee claim of harassment and intimidation by outside department head based on offensive speech.

### Department of Public Works

- Claims of unlawful racial discrimination based on racial slurs among employees.
- Claims of harassment and intimidation based on offensive language among employees.
- Employee claims of unlawful age discrimination by department head based on a denial of promotion based on age.
- Claims of unlawful sexual harassment based on offensive speech among employees.
- Claims of assault among employees.

### Department of Health

- Employee claims of intimidation and harassment by outside department head based on offensive speech, disposal of personal property, atmosphere of intimidation, and wrongful termination.
- Employee claims of intimidation and harassment by former department head based on offensive speech and wrongful termination.
- Former employees claims of harassment, intimidation and unlawful discrimination by outside department head based on unlawful termination, offensive conduct and speech and age discrimination.

### The Old Stone Fort Museum

- Department head and employee claim of intimidation and harassment by outside department head based on the dissemination of a layoff list.

### Department of Planning and Economic Development

- Employee claims of discrimination and intimidation by department head based on disparate treatment of employees.
- Former employee claims of harassment, intimidation and unlawful discrimination by department head based on disparate treatment of employees and unlawful termination.
- Department head claims of harassment and intimidation by another department head based on offensive speech.

### **C. Training**

According to department heads and employees interviewed during the evaluation process, in January 2011, all County employees, including members of the Board, were required to attend harassment and discrimination training. The mandatory training was provided by an Albany law firm on three different dates, at various departments within the County. The seminar was referred to as Recognizing and Preventing Harassment in the Workplace.

During our interviews we asked if employees remembered attending the seminar. Most employees that remembered attending the seminar thought it was beneficial. There was a large group however that did not remember attending the mandatory training.

We asked the Personnel Officer to provide us with a list of employees that attended the mandatory training. Approximately 258 County employees attended the seminar according to the list provided by the Personnel Office.

One of the complaints by employees who attended the Harassment in the Workplace training was that the groups were too large. Some participants felt intimidated in such a large gathering and were hesitant to ask questions.

It should be noted that training was also provided by the County Safety Officer Pat Shiland. Most employees we questioned told us the training provided by Mr. Shiland dealt in general with safety training in the workplace. Some of those sections touched on harassment and discrimination, however the main thrust of the training was related to safety topics in the workplace.

As mentioned above, the questions posed at the end of our interviews served as the basis of an informal survey to determine the training's effectiveness and if an increase in the frequency may benefit employees. Based on the frequency of complaints it is our determination that County employees, including members of the Board, could benefit by increased training in not only the areas of unlawful discrimination and harassment, but also in generic acts of discrimination, harassment and intimidation, for the next 18 months.

Although it is our belief that increased training is beneficial, especially in light of allegations made during the evaluation process, we also recognize the cost of training to the County.

#### **D. Sample Discrimination and Harassment Policy**

Our recommendation for sections 4.10 and 4.11, is that they be removed from the Policies and Procedures manual. We have researched numerous samples of municipal harassment and discrimination policies and procedures. The sample policy below was created by taking sections of policies and procedures from municipalities in New York State and tailoring them to make one policy. We have purposely excluded the section and subsection designations so that the Board may accept or reject any portion of the sample policy it wishes.

##### Policy Statement

It is the policy of Schoharie County to recruit, employ, retain, promote, and provide benefits to employees without regard to race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, gender identity, marital status, legally registered domestic partnership status, disability, predisposing genetic characteristics, alienage, citizenship, military or veteran status, or status as a victim of domestic violence. Sexual harassment, a form of sex discrimination, is prohibited under the County's Policy Against Sexual Harassment.

##### Procedure for Review of Allegations of Unlawful Discrimination

##### Discrimination Defined

Treating members of a protected class less favorably because of their membership in that class. The protected groups are based on race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, gender identity, marital status, legally registered domestic partnership status, disability, predisposing genetic characteristics, alienage, citizenship, military or veteran status, or status as a victim of domestic violence.

Harassment is a type of discrimination involving oral, written, graphic or physical conduct relating to an individual's race, color, or national origin (including an individual's ancestry, country of origin, or country of origin of the individual's parents or other family member) or other protected characteristic that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to perform in the workplace.

##### The Discrimination and Harassment Review Board

The Discrimination and Harassment Review Board ("Review Board") shall have the ultimate responsibility for overseeing compliance and making final decisions on complaints regarding the Discrimination and Harassment Policy.

### Confidentiality

The privacy of individuals who bring complaints of discrimination, who are accused of discrimination, or who are otherwise involved in the complaint process should be respected, and information obtained in connection with the filing, investigation, or resolution of complaints should be handled as confidentially as possible. It is not possible, however, to guarantee absolute confidentiality and no promise of complete confidentiality should be made to County employees who are involved in the complaint process.

### Making a Complaint of Discrimination

Any applicant for employment or individual who is employed by the County may file a complaint of discrimination. The County places a strong emphasis on prompt action to resolve complaints alleging discrimination. All County employees who believe they have been discriminated against or harassed are strongly encouraged to report allegations as promptly as possible. Delay in making a complaint may make it more difficult to investigate the allegations.

The complaint procedure that follows applies to all job applicants and employees and in some instances, former employees of the County. County employees have the right to equal employment opportunity in their capacity as employees.

Sexual harassment, a form of sex discrimination, is prohibited under the County's Policy Against Sexual Harassment. County employees who believe they have been sexually harassed are strongly encouraged to report their allegations as promptly as possible.

### Whom to Contact

Any County employee or applicant for employment, may file a complaint of discrimination or sexual harassment.

Individuals who believe they are being or have been discriminated against or harassed in violation of County policy are encouraged to contact, as soon as possible, the Personnel Officer, their department head, or the County Safety Training Officer ("the investigating officer").

At the time the individual makes his/her complaint, the investigating officer should provide the complainant with a complaint form and with information about the various internal and external mechanisms through which the complaint may be filed.

### Preliminary Review of Complaints

County employees who believe they have been victims of discrimination/harassment may contact one of the investigating officers to discuss issues relating to discrimination, with or without filing a complaint. The investigating officer may conduct a preliminary fact-finding review. At its conclusion, the investigating officer shall inform the complainant of the options

available. These include seeking informal resolution to the problems the complainant has encountered or asking that a full investigation be conducted.

### Informal Resolution

Individuals who believe they have been discriminated against may choose to resolve their complaints informally. Informal resolution is a confidential process where parties can participate in a search for fair and workable solutions. Informal resolution requires the consent of both parties and suspends the complaint procedure for up to thirty (30) working days, which can be extended, at the sole discretion of the investigating officer for up to fifteen (15) working days. The investigating officer should make an initial determination if informal resolution is appropriate in light of the nature of the complaint.

All complaints, whether formal or informal, should be made in writing. The parties may agree upon a variety of resolutions, including but not limited to modification of work assignment, training for a department, or an apology. Resolutions should be agreed upon, signed by, and provided to the complainant(s) and respondent(s). Once both parties reach an informal agreement, it is final. Because informal resolution is voluntary, sanctions may be imposed against the accused only for a breach of the executed voluntary agreement.

The complainant may advise the investigating officer at any time during the informal resolution process that he or she wishes to withdraw a complaint.

The investigating officer or either party may at any time prior to the expiration of thirty (30) working days declare that attempts at informal resolution have failed. Upon such notice, the investigating officer may commence a full investigation.

If no informal resolution of a complaint is achieved, the individual shall refer the matter to the investigating officer to conduct a more thorough investigation of the complaint.

### Investigation of Discrimination Complaints

Full investigation of a discrimination complaint may occur when:

The investigating officer determines, upon review of a complaint, that an investigation is warranted, or informal resolution has failed.

It is recommended that the investigation include the following, to the extent feasible:

Interviewing of the complainant by the investigating officer.

Informing the complainant that an investigation is being commenced, that interviews of the accused and possibly other people shall be conducted, and that the Review Board shall determine what action, if any, to take after the

investigation is completed.

Interviewing of the accused by the investigating officer. The accused should be advised that a complaint of discrimination has been received, that an investigation has begun, which may include interviews with third parties, and that the Review Board shall determine what action, if any, to take after the investigation is completed. The accused should be given a copy of the complaint (with sensitive information such as the complainant's home address and telephone number redacted) and an opportunity to respond. An accused employee who is covered by a collective bargaining agreement may consult with a union representative and have a union representative present during the interview;

Determining if, in addition to the complainant, the accused, and those persons named by them as potential witnesses, there are others who may have relevant information regarding the events in question and whether there is documentary evidence that may be relevant to the complaint. Persons interviewed should be advised that information related to the complaint should be kept confidential and not disclosed further, except as necessary during the complaint process;

Informing the accused that retaliation against any person who files a complaint of discrimination, participates in an investigation, or opposes a discriminatory employment policy is prohibited under County policy and federal and state and city law. The accused should be informed that if retaliatory behavior is engaged in, he/she shall be subject to severe discipline, up to and including termination of employment;

Informing the complainant of the right to file a complaint with the appropriate federal or state or city agency and requesting that the complainant advise the investigating officer if he or she has filed a complaint with an external agency. In the event that the investigating officer learns that the complainant has filed a complaint with an external agency, he or she should inform the County Attorney's office and attempt to coordinate the investigation accordingly.

Withdrawing a complaint.

A complaint of discrimination may be withdrawn at any time. Only the complainant(s) may withdraw a complaint. Requests for withdrawals must be submitted to the investigating officer in writing. The investigating officer, prior to making the determination to end the investigation, will consider whether evidence has been found that may lead to the conclusion that the County has an obligation to take action to correct unlawful discriminatory behavior. If there is such evidence, the investigation will continue.

In either event, the investigating officer will notify the respondent(s) in writing that the complainant(s) has withdrawn the complaint and whether it has been determined by the Review Board to continue the investigation for corrective action purposes.

In the event that a complaint is anonymous, the complaint should be investigated as thoroughly as possible under the circumstances.

#### Period of Investigation

Whenever possible, the investigation of complaints should be completed within 45 days of receipt of the complaint. In cases where the investigation is not completed within 45 days, a letter should be sent to the parties stating the reason for the delay.

#### Discrimination and Harassment Review Board

When the investigation is completed and within 30 days of the date the complaint was made, the investigating officer who performed the investigation shall submit a written report with recommendations to the Review Board with a copy to the department head in which the employee whose behavior has been complained of is employed.

The Review Board shall review the investigative reports and make recommendations known to the department head based on those reports, concerning the disposition of complaints of discrimination and harassment and any alleged instances of retaliation and/or frivolous and malicious charges arising from complaints.

The Review Board shall comprise three individuals: the County Attorney or his/her designee, a County employee from a designated list, and one member of the Board of Supervisors.

Prior to assuming their responsibilities, all members of the Review Board or their designee will have attended discrimination and sexual harassment training.

The Review Board will review the investigating officer's report to determine whether a recommendation for formal action shall be made. The Review Board will recommend formal action if it concludes that there is a reasonable basis for believing the alleged incident(s) occurred, and that the alleged incident(s) constitute a violation of policy. The nature and severity, as well as the context in which the alleged incident(s) occurred, shall be considered by the Review Board in determining whether formal action is recommended to the department head. The determination of whether a particular action or set of circumstances constitutes a violation shall be made from the facts, on a case-by-case basis.

The Review Board shall prepare a written opinion rendering its judgment on at least the following issues:

- Whether or not a complete and adequate investigation has been conducted;
- Whether or not the findings are substantiated by the report; and

- Whether the Review Board agrees or disagrees with the recommendations of the investigating officer's report.

A copy of the Review Board's opinion and judgment as well as the investigating officer's report will be provided to the Personnel Office by a member of the Review Board.

The department head will review the investigating officer's report and Discrimination and Harassment Review Board opinion and, if appropriate, will institute disciplinary actions consistent with the County's policy, collective bargaining agreements and New York State law.

There shall be a regular review of the Discrimination and Harassment Policy. This review shall occur no less frequently than once every year.

#### Retaliation

An employee who participates in any part of the complaint procedure as a complainant or a witness may do so without fear of retaliation. Retaliation against someone who has filed a complaint will not be permitted by the County and will result in strong disciplinary action.

(Remedial Actions for Discrimination and Harassment appear after the Sexual Harassment section)

#### Sexual Harassment Policy

The County believes in the dignity of the individual and recognizes the rights of all people to equal employment opportunities in the workplace. In this regard, the County is committed to a policy of protecting and safeguarding the rights and opportunities of all people to seek, obtain and hold employment without subjugation to sexual harassment or discrimination of any kind in the workplace. It is the County's policy to provide an employment environment free from sexual advances, requests for sexual favors, and other verbal or physical conduct or communications which have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Scope of policy. This policy applies to all County employees and all personnel in a contractual or other business relationship with the County, including, applicants, temporary or leased employees, independent contractors, vendors, consultants, volunteers and visitors. Depending on the extent of the County's exercise of control, this policy may be applied to the conduct of nonemployees with respect to sexual harassment and/or sex discrimination of the County employees in the workplace. This policy applies with equal force on County property as it does at County sponsored events, programs, and activities which take place off County premises.

### Policy objectives.

By adopting and publishing this policy, it is the intention of the County to:

- Notify employees about the types of conduct which constitute sex discrimination or sexual harassment based on gender or sexual orientation prohibited by this policy;
- Inform employees about the County's complaint procedures that enable any employee who believes she or he is the victim of sex discrimination or sexual harassment to submit a complaint which will be investigated by the County;
- Clearly advise all supervisory staff, administrators, and employees that discriminatory treatment based on sex, sexual orientation, or sexual harassment of employees is strictly prohibited and no such person possesses the authority to harass or discriminate; and
- Notify all employees that the County has designated the Personnel Officer, their department head, or the County Safety Training Officer ("the investigating officer") to receive complaints of discrimination based on sex or sexual harassment and ensure compliance with this policy.

As used in this chapter, the following terms shall have the meanings indicated:

### PROHIBITED DISCRIMINATION OF EMPLOYEES

Prohibited discrimination of employees can take the form of any negative treatment of an employee, by either a County employee or official, or a third party engaged in County sponsored activities, which a) negatively impacts an employee's employment opportunities and/or employment benefits; and b) is based upon the employee's sex or sexual orientation. Prohibited discrimination of employees can also take the form of harassment even where there is no tangible impact upon the employee's employment opportunities and/or employment benefits. The phrase "prohibited discrimination" as used in this policy includes all forms of "sexual harassment" (defined below).

### SEXUAL HARASSMENT

Sexual harassment is prohibited and can include, but is not limited to, inappropriate forms of behavior described by the Equal Employment Opportunity Commission, as follows:

Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual (e.g., promotion, transfer, demotion, termination); or

Such gender-based conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive working environment.

Specific forms of behavior that the County considers sexual harassment are set forth below. Every conceivable example cannot be delineated herein, and thus the descriptions below should not be interpreted in any way as being all-inclusive.

Verbal- Abusive verbal language, including jokes, comments, teasing or threats related to an employee's sex, sexual activity, sexual orientation and/or body parts, whether or not said in that person's presence, including, but not limited to, sexual innuendos; slurs; suggestive, derogatory, or insulting comments or sounds; whistling; jokes of a sexual nature; sexual propositions; threats; comments on a person's appearance that make the person feel uncomfortable because of his or her sex or sexual orientation; continuing to ask someone for dates or to meet after work after the person has made it clear that he or she does not want to go; sexually oriented comments about an employee's anatomy that are unwelcome, unreasonable interference with an employee's work performance, or the creation of an intimidating; hostile or offensive work environment; and unwelcome sexual advances or demands for sexual favors.

Nonverbal- Abusive written language showing or displaying pornographic or sexually explicit objects or pictures; graphic commentaries; leering or obscene gestures in the workplace; staring at a person's body in a sexually suggestive manner; sexually related gestures or motions; sending sexually graphic material through the County e-mail system or other electronic communications devices (i.e., voice mail) or using the County's computers to view such material.

Physical- Unwelcome physical conduct, including but not limited to petting, pinching, grabbing, holding, hugging, kissing, tickling, massaging, displaying private body parts, coerced sexual intercourse, assault, persistent brushing up against a person's body, unnecessary touching and flashing or other unwelcome physical conduct.

#### Policy

As with discrimination involving race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, gender identity, marital status, legally registered domestic partnership status, disability, predisposing genetic characteristics, alienage, -citizenship, military or veteran status, or status as a victim of domestic violence, the County prohibits discrimination on the basis of sex or sexual orientation and will not tolerate any form of sexual harassment. The County will take all steps necessary to prevent and stop the occurrence of sexual harassment and/or sex discrimination in the workplace.

While the overwhelming majority of unlawful sexual harassment is directed at women by men, the law equally protects men from sexual harassment by women and same-sex sexual harassment.

All employees, including but not limited to County officials, supervisory personnel, and members of the Board of Supervisors, are responsible for ensuring

a work environment free from sexual harassment and sex discrimination. All employees will be held responsible and accountable for avoiding or eliminating inappropriate conduct that may give rise to a claim of sexual harassment or sex discrimination. Employees are encouraged to report violations to one of the investigating officers in accordance with the complaint procedure set forth in this policy. Officials and supervisors must take immediate and appropriate corrective action when instances of sexual harassment and/or sex discrimination come to their attention to assure compliance with this policy.

#### Retaliation

Retaliation against an individual who makes a complaint or report under this policy is absolutely prohibited and constitutes, in and of itself, a violation of this policy.

Any questions regarding the scope or application of this policy should be directed to one of the investigating officers.

#### Sexual Harassment Complaint Procedures.

Notification procedure. Prompt reporting of complaints or concerns is strongly encouraged so that timely and constructive action can be taken before relationships become strained. Reporting of all perceived incidents of sexual harassment and/or sex discrimination is encouraged, regardless of the offender's identity or position. An employee or other individual who feels aggrieved because of sexual harassment or sex discrimination has several ways to make his or her concerns known:

An aggrieved person who feels comfortable doing so should directly inform the person[s] engaging in the harassment or discrimination that such conduct or communication is offensive and must stop. Note: Confronting the offender is NOT required. All employees have the right to file a good-faith complaint without first communicating with the offender.

An aggrieved person who does not wish to communicate directly with the individual whose conduct or communication is offensive, or if direct communication with the offending party has been unavailing, shall contact his or her supervisor or one of the three investigating officers.

An aggrieved person alleging sexual harassment or discrimination by anyone with supervisory authority, or alleging failure of supervision to take immediate action on the individual's complaint, shall contact one of the investigating officers. An aggrieved person who is a member of a collective bargaining unit may also be entitled to file a grievance through the collective bargaining grievance procedure depending on the particular terms of the governing collective bargaining agreement. Such filing may not, in all cases, trigger an investigation pursuant to this policy. Consequently, aggrieved persons are encouraged to simultaneously utilize the complaint procedure set forth herein, where appropriate.

Making a complaint.

All complaints should be in writing. Because an accurate record of the allegedly objectionable behavior is necessary to resolve a complaint of prohibited discrimination, all complaints should be reduced to writing. All complaints should include the name of the complaining party, the name of the alleged offender(s), date of the incident(s), description of the incident(s), names of witnesses to the incident(s) and the signature of the complaining party. Once the complaining party has completed and dated a complaint, the written complaint should be personally delivered to one of the County's investigation officers.

Complainants are expected to cooperate with the County's investigation procedures by providing all relevant information relating to the complaint, as are other supervisory and nonsupervisory employees having relevant or related knowledge or information.

Time for reporting a complaint. Prompt reporting of all complaints is strongly encouraged. All employees should be aware that appropriate resolution of discrimination complaints and effective remedial action oftentimes is possible only when complaints are promptly filed. Furthermore, complaining parties should be aware that statute of limitations may constrain the time period for instituting legal actions outside of this policy.

Confidentiality and privacy. In recognition of the personal nature of discrimination complaints and the emotional impact of alleged discrimination, the County shall keep complaints as confidential as is consistent with a thorough investigation, applicable collective bargaining agreements, and other laws and regulations regarding employees. For the protection of all individuals who make complaints or are accused of prohibited discrimination, every witness interviewed during an investigation under this policy will be advised of the confidentiality requirement and instructed not to discuss the complaint, the investigation, or the persons involved. To the extent complaints made under this policy implicate criminal conduct, the County may be required by law to contact and cooperate with the appropriate law enforcement authorities.

Acknowledgment of complaints. Upon receipt of a written complaint, an investigations officer should endeavor to contact promptly the complainant to confirm that the written complaint has been received. If the complainant does not receive such confirmation promptly, she or he is encouraged to file a second written complaint or contact an investigations officer. The purpose of this acknowledgment procedure is to ensure that all written complaints are received by authorized individuals, carefully processed and promptly investigated.

Investigation procedures.

Timing of investigations. The County will promptly investigate all allegations of

sex discrimination and sexual harassment. The County will also attempt to complete investigations under this policy promptly. The length of the investigation will depend upon the complexity and particular circumstances of each complaint.

#### Investigation.

Investigations may include fact-finding interviews, document review, depositions, observations, or other reasonable methods. The investigating officer should pursue reasonable steps to investigate each complaint in a thorough and comprehensive manner. Any notes, memoranda, or other records created by the County employees or agents conducting an investigation under this policy shall be deemed confidential and privileged to the extent allowed by law.

#### Sexual Harassment Review Board

When the investigation is completed and within 30 days of the date the complaint was made, the investigating officer who performed the investigation shall submit a written report with recommendations to the Sexual Harassment Review Board with a copy to the department head in which the employee whose behavior has been complained of is employed.

The Sexual Harassment Review Board shall review the investigative reports and make recommendations known to the department head based on those reports, concerning the disposition of complaints of sexual harassment and any alleged instances of retaliation and/or frivolous and malicious charges arising from complaints.

The Sexual Harassment Review Board shall comprise three individuals: the County Attorney or his/her designee, a County employee selected from a designated list, and one member of the Board of Supervisors.

Prior to assuming their responsibilities, all members of the Sexual Harassment Review Board or their designee will have attended discrimination and sexual harassment training.

The Sexual Harassment Review Board will review the investigating officer's report to determine whether a recommendation for formal action shall be made. The Sexual Harassment Review Board will recommend formal action if it concludes that there is a reasonable basis for believing the alleged incident(s) occurred, and that the alleged incident(s) constitute a violation of policy. The nature and severity, as well as the context in which the alleged incident(s) occurred, shall be considered by the Sexual Harassment Review Board in determining whether formal action is recommended to the department head. The determination of whether a particular action or set of circumstances constitutes a violation shall be made from the facts, on a case-by-case basis.

The Sexual Harassment Review Board shall prepare a written opinion that renders

its judgment on at least the following issues:

- Whether or not a complete and adequate investigation has been conducted;
- Whether or not the findings are substantiated by the report; and
- Whether the Sexual Harassment Review Board agrees or disagrees with the recommendations of the investigating officer's report.

A copy of the Sexual Harassment Review Board's opinion and judgment as well as the investigating officer's report will be provided to the Personnel Office by a member of the Review Board.

The department head will review the investigating officer's report and the Sexual Harassment Review Board's opinion and, if appropriate, will institute disciplinary actions consistent with the County's policy, collective bargaining agreements and New York State law.

#### Remedial measures.

The County's primary goal in responding to complaints of prohibited discrimination under this policy is prevention. This policy is intended to prevent all forms of sex discrimination and sexual harassment in the County and put an end to any prohibited discrimination that is found to have occurred. While disciplinary action may be appropriate in certain instances, punitive measures are not the exclusive means for responding to prohibited discrimination. During the pendency of any investigation being conducted pursuant to this policy, remedial measures may be taken if appropriate and necessary.

Subject to the terms and procedures contained in any applicable collective bargaining agreement, an individual who is found to have engaged in prohibited discrimination or conduct which may be prohibited by this policy may receive education, training, counseling, warnings or discipline. Disciplinary action may include warnings, suspension, or discharge from employment. Any third party found to have engaged in sexual discrimination of an employee may be barred from County property.

#### Retaliation

Retaliation is strictly prohibited by this policy and by law against anyone who in good faith reports a suspected violation of this policy, who assists in making such a complaint, or who cooperates in a harassment or discrimination investigation. Retaliation means taking any adverse action in response to a complaint being made.

Complaints of retaliation should be brought directly to an investigation officer. Such complaints will be promptly investigated. Subject to the terms of any applicable collective bargaining agreement, a person found to have retaliated will

be subject to corrective action up to and including termination from employment, or in the case of a nonemployee, an appropriate remedy up to and including termination of the business relationship.

Because of the damage that can be done to someone falsely accused, any individual who in bad faith knowingly makes a false complaint or report of sexual harassment or sex discrimination will be subject to disciplinary action up to and including termination, subject to any applicable collective bargaining agreement.

#### Record Retention

The County Attorney shall maintain a written record of all complaints of sex discrimination and/or sexual harassment as well as conclusions reached and remedial action taken, if any, for a period of at least six years.

### **E. Code of Ethics**

#### **1. Recommendation Regarding Code of Ethics**

To be sure, not every detail of human behavior in the governmental workplace can be regulated, nor is such minute regulation desirable. At a certain point minute regulation becomes insufferable and suffocating. Civility in the workplace is highly desirable, but, while provision should be made against such clearly offensive conduct as screaming at or badgering co-workers and subordinates, to prohibit such practices, for example, as rolling one's eyes or shaking one's head while another is speaking is beyond codified rules and should properly be left to individuals to iron out. In all events, such clearly obnoxious conduct as harassment, intimidation and discrimination is dealt with under the appropriate categories, while what is commonly meant by "ethics", when we speak of "codes of ethics", subsumes only a government officer's or employee's divided interest in the performance of his/her governmental function, i.e. looking after (or appearing to look after) his/her own good when he should be looking after that of his/her employer.

As the Code of Ethics section of the Schoharie County Policy and Procedures Manual correctly points out, "[T]here are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government." Indeed, the ethical conduct itself of officers and employees of the county and the attendant perception that these officers and employees are acting properly are both necessary if the government of the county is to successfully perform its functions. The essence of a good code of conduct and its observance is to ensure that those entrusted with governmental functions are single-minded in carrying out their functions, having no other purpose in their employment activities except the common good that they have engaged themselves to further. It is also important that they be perceived to be acting properly.

Article 18 of the General Municipal Law of the State permits Schoharie County (as well as the State's other municipalities) to adopt its own code of ethics, with a

restriction, of course, that it not permit that which Article 18 itself prohibits. The present code, enacted in 1970 and amended in 2000, is 'Precisely such a code. It attempts to provide ethical guidance, but, especially in light of some of the allegations made during the course of the present survey, it appears incomplete, not comprehensive enough and, perhaps, outdated. For this reason, this report recommends the adoption of a more inclusive code, such as an analogue to that found in the Public Officers Law of the State. Adapted to Schoharie County, this code would read as follows:

## 2. Sample Code

**1. Definition.** As used in this section: The term "*county agency*" shall mean any county department, or division, board, commission, or bureau of any county department.

The term "*Board employee*" shall mean any officer or employee who serves in the capacity of clerk or deputy clerk of the Board of Supervisors ("the Board") or similar position, but it shall not include members of the Board.

**2. Rule with respect to conflicts of interest.** No officer or employee of a county agency, member of the Board or Board employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

### 3. Standards.

a. No officer or employee of a county agency, member of the Board or Board employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a county agency, member of the Board or Board employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority. .

c. No officer or employee of a county agency, member of the Board or Board employee should disclose confidential acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a county agency, member of the Board or Board employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the county for private business or other compensated non-governmental Purposes.

e. No officer or employee of a county agency, member of the Board or Board employee should engage in any transaction as representative or agent of the county with

any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a county agency, member of the Board or Board employee should not by his conduct give reasonable basis for the impression that any can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a county agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a county agency, member of the Board or Board employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a county agency employed on a full-time basis nor any firm or association of which such officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the county agency in which such officer or employee serves or is employed.

**4. Violations.** In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

The value of the suggested revision is that it is more comprehensive than the present code, adopted in 1970 and last amended in 2000. Indeed, had the suggested revision been in place and observed in recent years, the provisions contained in it might have obviated some of the problems revealed by this survey. The proposed revision contains an initially broader and less ambiguous understanding of "interest" when it states, "No officer or employee of a county agency, member of the Board or Board employee should have any interest, financial or otherwise, direct or indirect...." Especially in light of some of the concerns raised in the course of the present survey, where the cause of concern seems not to be so much financial as "otherwise", it appears

wider scope than that which exists at present could well be embraced by a new code for the county.

Subdivision 3 (f) has obvious application to some of the events and activities alleged to have taken place in the county and it would have put some of the actors on notice to refrain from certain activity or to take necessary and proper precautions, in the event that their actions were proper, that they not be misunderstood, giving rise to an impression of impropriety to the detriment of trust in the integrity of governmental administration. An ingredient of such necessary and proper precautions might well have been (more) timely and fuller disclosure of one's activity, purpose and motivation to one's superior, such as the Board of Supervisors in the case of department heads, or to one's colleagues. Of similar value to subdivision 3(f) is subdivision 3(h), which again warns against conduct that undermines confidence in governmental integrity.

Two further considerations are in order regarding a code of ethics. The first is that the code be properly promulgated. The suggestion has already been made above that the Policy and Procedures Manual be distributed, read and signed for by each county officer and employee. It is envisioned that an ethics code will be included in such a manual and therefore distributed to each person in county government. Additionally, however, it is recommended that, since such codes tend to be written in legalese (perhaps unavoidably), a plain language explanation be provided along with the official text, alerting officers and employees as to what they can and cannot do. The goal of an ethics code is prevention, not the imposition of sanctions, and it is important to alert all those who are in the service of the county to the boundaries of permitted conduct before any missteps are taken.

The other consideration has to do with the institution of the Board of Ethics. This is an important component of any governmental ethical system. It is described in General Municipal Law Section 808. Although the County Board of Ethics is referenced in section 4.10 of the present Policy and Procedures Manual, no further mention of this board has been found. It is important, nevertheless, that the county's officers and employees be aware of the board's existence and function, especially that of giving advice to those working for the county. Although in the ordinary course of business (i.e. unless there is a conflict) the County Attorney will serve as the legal counsel to the board. It is desirable that the board members not be part of the administration of the government of the county in order to preserve its independence and inspire confidence in the objectivity and impartiality of its advice and determinations. Political motivations, of course, have no place in a board's operation and the members' operating independently of all political considerations is of prime importance in instilling public confidence. In this regard all inquiries should be referred to the full board and no member should venture to give an opinion on an ethical matter except in concert with the board. It is also important that the board establish and publish procedures for investigating complaints before they are received and that such procedures be fully consistent with the principles of due process. This is required both by basic justice and by the need that justice be seen to be done. As of this date, it is not clear that such procedures have been established and published.

## **F. Conclusion**

To a great extent the impetus for the Board of Supervisors' decision to authorize the present survey were reports by individual employees of county government to various supervisors about conditions that the employees found unsettling and distressful. Chief among these concerns appear to be the publication of a layoff list that was not generated by the budget officers, by any committee of the Board of Supervisors, or at the direction of the full Board, together with actual layoffs that eventually resulted in the filing of Article 78 proceedings against the County. Also found unsettling by some employees was the conduct of some elected officials and managers in their direction of County affairs as well as what some interviewees have perceived as unbecoming behavior in meetings of the Board of Supervisors, such as squabbling, name calling and other uncivil activity. But, needless to say, there is no need to report to this Board on its own behavior nor to pass judgment on it, for the Board is already aware of how it conducts business and how its members treat one another. Nor does it belong to this report to characterize the Board's behavior as uncivil or not; that belongs to the Board's own judgment.

There are two systemic problems that present themselves through employee concerns that were reported to the various Supervisors, and it is suggested that the Board consider these in order to avoid the problems in the future. The first problem is that of an employee (and here the term "employee" includes and is especially concerned with a director or commissioner) acting outside the scope of the office or position entrusted to him or her.

In the case of the unauthorized layoff list, for example, there was no apparent authority belonging to the office of the list's creator to generate the list nor is there evidence that the Board of Supervisors or one of the Board's committees having competence in the matter ever authorized its creation. To be sure, it is assumed, for the sake of this discussion, that the list was created in good faith, intended to promote the good of the county, but the evidence is that it made its appearance to the county's staff of workers out of nowhere, on uncertain authority, causing considerable consternation among the workforce.

Another example of concern is that of one department head intruding himself or herself into the management or operations of another department and directing the affairs of that department. In a republican form of government the authority and functions of different offices are strictly limited. But unwarranted intrusions of one department head into another department can have disturbing results. Among others, it can cause justifiable resentment and animosity on the part of the department head whose department is being interfered with and this can spread to other department heads apprehensive about similar intrusions into their territory. And, where the other department is actually lacking a duly appointed head, the intruder, perhaps taking over the whole operation, besides lacking the legal competence to direct matters may also lack the substantive competence and qualifications critical to that department's operation. Another important consideration in judging such intrusion is that the people actually employed in the department in question are entitled to know the identity and status of the

individuals from whom they are properly expected to take direction. The obligation to curtail and prevent this type of overreaching clearly belongs to the Board of Supervisors, to whom are committed the legislative and most of the executive power of the county. The Board obviously has the authority to monitor and control the heads of department whom the board itself appoints. It is incumbent, therefore on the Board to instill in its appointees as well as those county employees hired by the department heads a respect for the authority of their fellows and an awareness that their own authority is limited by law and the scope of their appointment.

The second problem is similar to the one just mentioned, but has to do with a member or members of the Board going outside the limits of their own office. To be sure a Supervisor has executive as well as legislative functions with regard to the governance of his own town. But with regard to the county, his or her authority is to be exercised only in concert with his or her fellow Supervisors as members of the Board of Supervisors or, when empowered by the Board, as a member of a committee of the Board. As an individual, a Supervisor has no managerial authority in county government and should not purport to exercise any such authority or indicate that any adverse result will follow from a county employee not following the Supervisor's individual suggestions or directions. In some interviews, Supervisors expressed regret that they asked a particular employee to do certain things that in the end caused considerable disturbance in the county, saying that they had asked too much of this employee. From these interviews and from other evidence, namely the absence of any indication in board or committee meetings minutes, it is apparent that the requests in question were made not by the Board as such or by a committee of the board but only by individual Supervisors in their individual capacity. Besides apparently being outside the scope of the Supervisors authority such action had the further defect of not being known to all the other members of the Board. This further defect furnishes the clear teaching that in addition to honoring the limits of one's office, it is of supreme importance that a Supervisor's action involving county government be made known to his or her fellow members of the Board and, where appropriate, the committee.

It seems that many of the major problems revealed by the instant survey might have been avoided had these two principles been honored: observance of the limits of one's office and transparency of one's actions and dealings.

Respectfully submitted,

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