

City of Milwaukee



***Report of Investigation
Deputy City Attorney Conducts
Legal Affairs for Private Practice Clients on City Time***

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July 28, 2023

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Introduction

The office of the Inspector General (OIG) investigates allegations of misconduct by City of Milwaukee employees and contractors, which may involve violations of criminal or civil law, City of Milwaukee regulations, or employee standards of conduct. Reports authored by the OIG include findings and recommendations regarding program weaknesses, contracting irregularities, and other institutional problems that are discovered as a result of the investigations initiated by the Inspector General (IG). The OIG has adopted the Investigative Principles and Standards for an Office of Inspector General, also known as the “Green Book” – established by the Association of Inspectors General (AIG). The AIG, organized on October 26, 1996, is a national, non-profit membership organization for agencies and professionals in the inspector general community. The AIG promotes excellence in the inspector general community by establishing and encouraging adherence to office-wide and discipline-specific quality standards.

About OIG Investigations

Under the Inspector General Act of 1978, as amended, the OIG is authorized to carry out both investigations and audits to "promote economy, efficiency, and effectiveness in the administration of, and ... to detect, investigate and prevent fraud, waste, mismanagement, misconduct, and abuse of power through independent oversight of [the City's] program and operations, and seek appropriate remedies to recover public monies. Commonly known as “watchdog” agencies, OIG are found at all levels of local, state and federal government. To carry out this function, the OIG is empowered to require the gathering of records in the possession and control of individual city departments and divisions; and through the Common Council has the power to issue subpoenas, where necessary.

Through its investigations, audit findings and recommendations, the OIG helps protect and strengthen City programs and operations. As part of its mission, it conducts investigations that involve employees, management officials, and affected departmental programs and operations.



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Generally, an investigation is carried out to resolve specific allegations, complaints, or information concerning possible violations of law, regulation, or policy. In contrast, an OIG audit or evaluation is conducted to examine organizational program performance or financial management matters, typically of a systemic nature. Employees should be aware that media reports sometimes characterize OIG activity as an investigation, when in actuality the activity is an audit or evaluation.

The OIG investigates a variety of matters, including allegations of fraud involving City department grants and contracts; improprieties in the administration of City programs and operations; allegations of employee misconduct; and other issues concerning ethics and compliance reported to the OIG.

Disclaimer

The OIG initiates investigations based on information received anonymously or confidentially from a variety of sources, including (but not limited to): the OIG's website report form (reporting fraud, waste and abuse); departments, employees, and citizens; Common Council requests; and referrals regarding whistleblower disclosures. These can be written, by phone, or in-person. While anonymous complaints are accepted, they often present the greatest challenge as there is not a person for OIG to contact for particulars. An OIG investigation can result in a criminal proceeding only if the Milwaukee County District Attorney (DA) accepts it for criminal prosecution.

Generally, when an investigation is complete, the OIG will introduce a report based upon relevant witness interviews, records, and other evidence to be presented before the appropriate Common Council committee. The report will be reviewed to ensure that it is fact-based, objective, and clear. For a case that has been declined for potential criminal prosecution by DA, or did not require referral to DA or other agency, recommendations as warranted would be at the



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discretion of the appropriate Common Council committee, including management, so that they may consider appropriate corrective action(s).

Background

This report addresses alleged violations of Wisconsin Supreme Court Rule (SCR); state statute, the City of Milwaukee's Ethics Code, citywide policies and procedures, as well as the Office of the City Attorney's (CAO) policy related to outside employment and conflicts of interests. The investigation focused on a fair and impartial collection of all relevant and available evidence including, but not limited to, witness accounts and documentation.

In June 2022, the OIG received a phone call from a complainant, who requested to remain confidential, alleging misconduct, inexcusable neglect of duty, inappropriate activities, and time and attendance abuse by Deputy City Attorney Odalo Ohiku (DCA Ohiku) of the CAO. The complainant contended that DCA Ohiku had been conducting his private law firm during the Office of the City Attorney's established hours of operation. The complainant further shared the concern that it had been over one year since the City Attorney (CA) publicly stated that DCA Ohiku had been given six-months to reassign clients of his private practice of law to other attorneys within his law firm.

During a Common Council, Finance & Personnel Committee, meeting hearing held in March 2021, City Attorney Tearman Spencer (CA Spencer) reported to the Committee that DCA Ohiku, appointed on October 23, 2020, had been given six months to conclude any work involving his private practice to ensure that his work for the City is not disrupted. According to CA Spencer, DCA Ohiku had been unable to remove himself from certain cases; so he was granted additional time – a six-month extension “... *to make sure that he was able to farm out his work and*



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reassign those cases.”¹ The precise date of that deadline has never been fixed or, at least, has yet to be reported to the Committee, the public, or any other interested party.

The OIG’s primary goal in conducting this enquiry was to determine whether evidence supported a finding that DCA Ohiku engaged in misconduct involving time and attendance abuse and, if so, the extent of that abuse. The OIG also sought to understand how such abuse could occur and whether the CAO’s internal controls were adequate, efficient, and effective in monitoring and preventing time and attendance abuse.

Executive Summary

DCA Ohiku was appointed deputy city attorney in the CAO in October 2020. With this appointment, he was assigned oversight of ten CAO staff members, which includes approximately seven assistant city attorneys (ACA). However, in November 2020, apprehension regarding his appointment surfaced when it became known that DCA Ohiku had made over a half-dozen appearances in court during regular city work hours (Bice, 2020). According to the Ohiku Law Office’s website, Attorney Ohiku “specializes in divorce law, family law, and custody and placement for high-net worth individuals throughout the greater Milwaukee area” (About: Attorney Odalo J. Ohiku, 2021). Other areas of practice at Ohiku Law Office include criminal defense, will and estate planning, personal injury, bankruptcy and general practice.

The OIG investigated time and attendance abuse allegations by requesting and examining e-mail responses from CA Spencer and DCA Ohiku; and by reviewing Milwaukee County Circuit Court (Circuit Court) case details; cross-referencing the dates on which DCA Ohiku appeared or was stated to have conducted the business affairs of Ohiku Law Office against his timecards, to determine whether or not an exception/adjustment to time had been noted. The OIG sought to

¹ CA Spencer Clip, Finance & Personnel Committee (March 17, 2021), Communication File #201492, 1:10:26 through 1:12:22/1:57.07.



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interpret this data in the light most favorable to DCA Ohiku, giving him credit for hours he certified, unless there was evidence to the contrary.

The Fair Labor Standards Act (FLSA) establishes that a full-time local government employee, exempted from overtime is generally required to work at least 80 hours during a two-week period, commonly referred to as a bi-week, and must certify his or her hours in a timekeeping system at the end of each bi-week. When an employee works fewer than the required hours, but certifies that he or she performed the required hours, the employee is said to engage in “time and attendance abuse.”

CA Spencer, as the department head for the CAO, bears the responsibility to determine hours of work. However, the basic workday for all City of Milwaukee employees is eight hours of work per day. The workday generally must fall within the established hours of business. This ought not to interfere with special time schedules governing departments operating more than eight hours per day, nor should it be construed as prohibiting the creation of part-time employment or the establishment of rotated, staggered or shortened work periods. The work week is limited to five days employment or duty per week. In general, the days on which employees are not required to work are Saturdays and Sundays. If the regular schedule of departmental operation requires work on those days, this work is not considered overtime work, and the employee is entitled to time-off during such periods as the department may designate (DER).²

Under FLSA, the DCA position is exempt from overtime provisions. As such, DCA Ohiku is only required to report exceptions to his normal working schedule; otherwise, he is paid for 80 hours each pay period.

The OIG’s investigation substantiates that DCA Ohiku committed time and attendance abuse for at least eleven days, or 88 hours, by either appearing in court or performing court activity for

² DER, Working for the City of Milwaukee. At the workplace. Work Schedule, pg. 8.



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clients of his private practice. This resulted in approximately \$5,766.64 paid for hours not worked since his appointment. Considering that DCA Ohiku was given that benefit of the doubt, this analysis likely gives him credit for many hours that he may not have been performing work for the City. Taking into consideration that DCA Ohiku reported “*utilizing flex time so that no deficit in CityTime work hours resulted*”³ to engage in the business of his law firm - time that was not a benefit for him to use.

While conducting a search of court cases in the Wisconsin Circuit Courts Access (WCCA) system using DCA Ohiku’s State Bar of Wisconsin (State Bar) number, the results showed that there were only two cases; the other were cases in which the City of Milwaukee was the client.

As a result, the OIG conducted a different search using the Bar No. for other attorneys associated with the DCA Ohiku’s private practice of law. The OIG was able to identify the names of other attorneys associated with the firm from its website. The OIG searched the WCCA system utilizing the Bar No. for the following attorneys associated with Ohiku Law Office.

- ♣ Attorney Asia J. Patterson
- ♣ Attorney Felicia L. Owen
- ♣ Attorney Daniel Alejandro Bernard Deida

Using the search results from these attorneys, the OIG conducted its review to determine whether DCA Ohiku continued to engage in his private practice of law; as well as to identify whether any involvement by DCA Ohiku was done during CAO regular business hours. If during regular business hours, an investigation was also made as to whether DCA Ohiku entered an exception for that time, as well as, whether approval to engage in such court activity had been obtained from CA Spencer. Court case details included dates beginning after DCA Ohiku’s start date

³ DCA Ohiku, email message to OIG, January 23, 2023.



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(October 23, 2020). During this review, the OIG was able to determine that although DCA Ohiku withdrew his name as the attorney, he continued to perform work on many of those cases. Additionally, in some instances case details disclosed that DCA Ohiku appeared in court with one of his associates. This could have been an attempt to conceal his business involvement or any activities related to Ohiku Law Office from public scrutiny.

The OIG also requested that DCA Ohiku provide a list of court case numbers for all cases for which he performed some sort of court activity or made a court appearance with regard to his private practice of law – from his start date through the initial request date (December 15, 2022). Despite the case numbers requested by the OIG being public records and accessible on the WCCA system, DCA Ohiku responded, “*Client does not want case information disclosed; thus, ethical rules prohibit disclosure.*”⁴ As a result, the OIG conducted an advanced search, as mentioned above, of business name, Bar No., and attorney type as part of its investigation.

Legal and Regulatory Overview

Standards of Ethical Conduct City of Milwaukee Employees (Code of Ethics)

The City of Milwaukee has established a code of ethics for its elected officials, supervisory personnel, employees, and boards and commissions. High moral and ethical standards among city officials and other city employees are fundamental to the conduct of free government. The City’s ethics code offers the best guidance to assure the community that incumbents recognize their obligation to earn public trust. The code of ethics is a guide of principles to help officials and other city employees conduct city business with honesty and integrity. Ethical conduct is truly a matter of performing one’s duties and responsibilities in accordance with established rules and guidelines of good, sound judgment. Showing strict regard for ethical conduct is essential in order to maintain high public esteem. The code of ethics also helps City officials and employees

⁴ DCA Ohiku, email message to OIG, February 7, 2023.



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avoid conflicts between their personal interests and their public responsibilities, improve standards of public service, and will promote and strengthen the faith and confidence of the people of Milwaukee in their public officials and other city employees.⁵

Statement of Economic Interests Form

The Code of Ethics requires financial disclosure through the filing of a Statement of Economic Interests (SEI) Form (MCO s. 303-11 and 13). All officials, board/commission members and employees, other than those subject to the jurisdiction of the Fire and Police Commission, are covered by the Code of Ethics, found in the Milwaukee Code Ordinance (MCO), Chapter 303, which sets forth standards of conduct and addresses conflicts of interest. The ethics code applies to all public officials and city employees; however, officials, employees and board/commission/committee members with a (Y) footnote next to their job title in the Positions Ordinance, nominees for boards/commissions/committees, and candidates for elected office, are required to file an SEI.

The SEI is a public form record as defined by the Wisconsin Public Records law, Sec. 19.31-39, Wis. Stats. Any member of the public may request a copy or inspection of an SEI form. The purpose of the SEI is to disclose financial relationships. Any newly-appointed or employed individual required to file must do so within 21 days following the date he or she accepts office; unless that individual has previously filed the SEI for the respective year. Individuals required to file an SEI and who have not done so within forty-five of the deadline, may be referred to the City Attorney for charges in Municipal Court. Board and commission members, may be referred to the Common Council with a recommendation that the individual be removed from office.⁶

⁵ MCO 303.

⁶ MCO 303. Code of Ethics. Sec. 303-11-2-d



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The SEI is a form on which city officials publicly disclose their personal income, investments, business, real estate, and creditors that may materially affect their official duties and responsibilities. Section 19.59, Wis. Stats., empowers the City (and other local municipalities) to enact an ordinance establishing a code of ethics for its officials and employees.

City employees and officials covered by s. 19.59, Wis. Stats., are:

- ♣ Elected officials.
- ♣ Individuals appointed (to position with a set term).
- ♣ Appointed Individuals (serving at the pleasure of the Mayor or Common Council).

The following information as prescribed in s. 19.44, Wis. Stats., must be identified on the SEI form; and includes the official and his or her immediate family:

- ♣ **Employer** (income) – any received in the amount of \$1,000 or more.
- ♣ **Businesses** - partnership, corporation, proprietorship, firm, franchise, or other business or enterprise in which a 10% or greater interest is owned.
- ♣ **Real Estate** – any real estate located in Wisconsin in which the person required to file holds either directly or indirectly 10% interest or an interest valued at \$5,000 or more.
- ♣ **Customers, Clients and Tenants** - any source from the person required to file received \$10,000 or more in payments, excluding (a) a corporation's sources of income unless the corporation is a service corporation or an "S" corporation under the Internal Revenue Code, ((b) an individual unless the individual was a lobbyist, and (c) a decedent's estate).
- ♣ **Gifts** - any individual or organization from which the person required to file received entertainment or gifts having a total value over \$50, excluding gifts from relatives.
- ♣ **Honoraria and Expenses** - any individual or organization from which the person required to file received lodging, transportation, meals, expenses, or honoraria having a



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value over \$50 for the presentation of a talk, participation in a meeting, or a published work about issues affecting state government or state agencies.

- ♣ ***Other Sources of Income*** - Any source not already identified from which the person required to file received income of \$1,000 or more during the preceding year, including honoraria not elsewhere reported, Social Security payments, retirement benefits and directors' fees.
- ♣ ***Securities (investments)*** – stocks, bonds, limited partnerships, Wisconsin governmental securities valued at \$5,000 or more for the current year up to the date of appointment.
- ♣ ***Offices and Directorships*** - Any business or organization (other than a charitable, political, non-profit social or community service organization; trust; or federal, state, or local government or governmental agency) for which the person required to file was an officer or director.
- ♣ ***Representative of Organization*** - Any business or organization (other than a charitable, political, non-profit social or community service organization; trust; or federal, state, or local government or governmental agency) for which the person required to file was an authorized representative or legal agent.
- ♣ ***Creditors*** - Any creditor to whom the person required to file owed more than \$5,000.⁷

Chapter 520 Fair Labor Share Standards Act (FLSA)

FLSA is a federal law administered through the Department of Labor, which establishes labor standards for employers in both public and private sectors. However, the FLSA contains provisions specific to public employers. For example, only public employers are authorized to substitute compensatory time for premium overtime pay.

⁷ City of Milwaukee. Statement of Economic Interests Form (instructions).



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The FLSA establishes a national minimum wage; sets parameters for working minors and defines a standard work week. It also guarantees overtime for certain types of positions. A set of standards provided by the FLSA determines which jobs are “exempt” and “non-exempt.”

- ♣ “Non-exempt” positions are hourly, must be overtime eligible or receive compensatory time for work in excess of his or her normal 40-hours in a workweek.
- ♣ “Exempt” positions are salaried positions that are not normally compensated for overtime (i.e. executive, administrative and professional exemptions).

An employee’s position must satisfy the following to be considered exempt.

- ♣ Perform certain duties that qualify as an exemption;
- ♣ Paid on a “salary basis”; and
- ♣ A salary that exceeds the minimum salary threshold.

Additionally, employers, in Wisconsin, must consider the impact of state law. Employment laws in Wisconsin are administered by the Wisconsin Department of Workforce Development (DWD). While Wisconsin has certain state labor laws different from federal labor laws, it only applies to conditions in which it provides greater rights or protections than federal law. The law rendering the most favorable outcome (state or federal) to the employee applies in that instance⁸.

City Charter – Chapter 4 Common Council, s. 4-28-1

The Milwaukee Common Council (Common Council), by majority vote, has the power to dismiss from office, for malfeasance in office any person elected or appointed to office, except for justices of peace.⁹

Wage Payment Compliance Policy for General City Employees

⁸ Wis. Stat. sec. 520.

⁹ City Charter, Chapter 4 Common Council. 4-28.1 Malfeasance.



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The City's Department of Employee Relations (DER) oversees positions and classifications covered under the FLSA and is responsible for determining which positions are classed as "non-exempt" or "exempt". The guidelines and instructions for provisions applicable to the FLSA for City departments and agencies are covered in the Milwaukee Code of Ordinance, Chapter 350 Employee Regulations and Benefits, s. 350-6 (Compliance with the FLSA Act). There are specific deductions available for an employee determined to be "exempt".

- ♣ An absence of one or more workdays for a personal reason (excluding sickness or disability);
- ♣ An absence caused by sickness or disability for one or more full workday; however, the deduction must be in accordance with a *bona fide* plan, policy or practice that provides compensation for missed salary caused by illness;
- ♣ Payments employees received for jury duty, witness fees, or military service are offset;
- ♣ Infractions of safety rules of major significance when a penalty is imposed in good faith; or
- ♣ Workplace conduct rule infractions imposed in good faith (other than job performance) resulting in an unpaid suspension of one or more full workdays (e.g. violation of the anti-harassment policy).

Suspensions issued to must be issued in full week increments. Any exceptions must be communicated in a written policy that applies to all employees. This type of policy must be discussed with the DER or the CAO before execution.¹⁰

Note: An exception to time for an employee classified as FLSA exempt must be recorded in the CityTime online time card.

¹⁰ Citywide Wage Payment Compliance Policy for General City Employees.



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City Attorney's Office Employee Handbook

The CAO employee handbook prohibits attorneys from engaging in the private practice of law during the office hours of operation without obtaining prior authorization from the City Attorney. Deputy City Attorneys engaging in private practice activities during office hours, must use vacation. Further, DCAs and ACAs are restricted from involvement in any legal matter considered to be a conflict of interest with the City Attorney's Office. Attorneys are also prohibited from having their name on the letterhead of any private law partnership or service corporation.

Vacation time for an employee begins to accrue on the first day of employment and is based on the employee's actual time on the payroll. CAO staff are required to submit vacation requests in writing to his or her supervisor. DCAs requesting vacation for three or more days are required to issue a written memo to the City Attorney. The copy of the request should also be furnished to the receptionist. Such requests must be submitted at least 24-hours before the requested vacation dates. The request should disclose the length of time the attorney will be gone, where he or she can be reached (if possible), as well as, the designated staff who will be responding to phone calls and checking any mail. Additionally, the attorney is required to ensure that out of office messages have been activated – the message should include the office return date, the person who should be contacted in his or her absence and their email and telephone number.¹¹

Human Resources Workforce Management System (HRMS)

Salaried employees' ineligible for overtime are only required to record hours of work if it varies from the predetermined work hours. It is referred to as exception time reporting (time tracking by exception). Essentially, these types of employees engage in the same type of work activities daily and/or weekly. An exception hourly employee can also be FLSA exempt. An employee with this

¹¹ CAO Office Employee Handbook. Version 1.8, Updated June 2019.



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designation is only required to certify an exception to his or her regular work schedule. An example of an “exception to time” entry is time taken off that is unpaid (i.e. vacation, sick day, etc.). However, pay received for a city classified holiday is automatically recorded.

OIG Review of DCA Ohiku’s Timecard Record Data

The OIG examined the following records during the investigation:

♣ **Timecard Record Data:** The City maintains a time and attendance system that employees use to report and certify work and leave hours. The OIG reviewed the hours DCA Ohiku certified in the time and attendance system, to determine whether he reported an exception to time for the days he conducted work for his private practice of law (as documented in the WCCA case details).

♣ **WCCA Case Details¹²:** The Wisconsin circuit courts are the state's trial courts. Circuit courts have original jurisdiction in all civil and criminal matters within the State, including probate, juvenile, and traffic matters, as well as civil and criminal jury trials. The WCCA’s website provides access to certain public records of the Wisconsin circuit courts. The information displayed is an exact copy of the case information entered into the circuit court case management system by court staff in the counties where the case files are located. The court record summaries viewed here are all public records under Wisconsin open records law. The data available on the WCCA website is limited in the following ways:

1. Case information is uploaded to the website hourly unless maintenance is being performed or the site is experiencing technical problems. The information is accurate as of those updates.

¹² WCCA System.



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2. Each county began using the circuit court case management system at different times and made independent decisions about the conversion or back loading of old cases. Converted information may display less information.
 3. Records not open to public inspection are not displayed on the website. Confidential court records include adoptions, juvenile delinquency, child protective, termination of parental rights, guardianship, and civil commitments.
 4. The official judgement and lien docket is located in the office of the clerk of circuit court for each county. While WCCA is not the official judgement and lien docket, it does accurately reflect the information entered into the circuit court case management system for that purpose (Wisconsin Circuit Court Access, n.d.).
- ♣ **City Building Access:** One of the core security needs for a business is to control who can access its buildings and assets. City employees are granted access to particular areas of various city buildings. Access is generally granted based on the specific rooms that contain either confidential or valuable information/items that only certain employees should have access to.
- ♣ **Virtual Private Network (remote access):** A virtual private network (VPN) enables a user, through remote access, to connect to a private network. VPN is available to City employees who are authorized to access the network off-site. City networks or computers cannot be accessed without a VPN.

In general, the OIG interpreted the data in the light most favorable to DCA Ohiku. For instance, the OIG gave DCA Ohiku credit for hours he certified he was performing work for the CAO unless there was evidence to the contrary. If there were no reported exceptions to his normal working hours, it was presumed that he worked the entire time he certified. The time record data, Department of Public Works (DPW) building access records, Information Technology Management Division (ITMD) remote VPN access records and WCCA case details were used to



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identify whether there was evidence of unsupported certified hours where DCA Ohiku was performing court work on behalf of his private law office. However, due to the COVID-19 pandemic, various City of Milwaukee employees started working from home in March 2020. Many have not returned, now working a remote schedule. As such, the OIG was unable to rely on DCA Ohiku's physical access to the building. Additionally, the fact that DCAs may access to more than one city building further minimized the OIGs ability to completely rely on building card access.

In addition, the OIG was unable to analyze access logs for local system access or use from the City's ITMD as those records are only maintained for up to thirty days. In contrast, remote access VPN access records dated back to the beginning of 2023. A search of VPN access records only confirmed access to one day in the scope of this investigation, whereas circuit court case details indicated court action other than a court appearance. DCA Ohiku did document an exception to his time for that date.¹³

The OIG's analysis suggests that the total number of hours would likely increase significantly if the approach was less conservative.¹⁴ The OIG was unable to analyze video records from the DPW cameras; since cameras are on a 30-day loop and anything older than 30-days is overwritten. The DPW also conducted a search of card reader access with a date range of October 23, 2020, through May 12, 2023. The results from the card reader scan, captured three dates where WCCA court details showed court appearances or action.

However, since DCA Ohiku could have gained building access (e.g... elevator, CA office, etc.) through another employee, the OIG was unable to determine whether he was physically present

¹³ The OIG was unable to compare local access or use as such access logs as these are only maintained for 30 days; and VPN records only dated back to the beginning of 2023.

¹⁴ The OIG's approach could not account for hours when Attorney Ohiku did not have any court appearances or events in the case details where unsupported certified hours in the City's time and attendance system may have been used to conduct business of Ohiku Law Offices at a location other a City building, making use of a City-issued electronic device, or working at any other unidentifiable location.



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in the building on other days. Additionally, since local access records only date back thirty days and VPN access records date back to the beginning of the current year (2023) the OIG was not able to confirm building, local system, or VPN access.

By cross referencing and analyzing the data sets below, the OIG identified DCA Ohiku's unsupported hours and placed them into one of the following groups:

- ♣ **Category 1:** Breakdown of both supported and unsupported hours (excluding court actions other than appearance). The supported hours are hours during which DCA Ohiku appeared in circuit court on behalf of his outside clients with an exception included on his timecard. Unsupported hours are the dates and hours where DCA Ohiku appeared in circuit court with no exception to time on his timecard. The data also includes the total hours by hours as well as total wages – calculated using the hourly salary amount.
- ♣ **Category 2:** Consist of hours certified in CityTime with no exception to time on his timecard. WCCA court detail records indicate DCA Ohiku appeared in circuit court (via video conference), as well as, court action (other than an appearance) on behalf of his private practice of law. However, evidence revealed DCA Ohiku also accessed a City building on those days. Additionally, DCA Ohiku accessed the city's network via VPN, for one of those days.

Review of the OIG's Data Analysis

Using the above-referenced methodology, the OIG reviewed approximately 152 hours during which DCA Ohiku had court interactions related to Ohiku Law Office, which included supported, unsupported and unverifiable hours. Through this review, the OIG determined that based on the evidence examined, DCA Ohiku conducted business affairs associated with private law firm on 11 days from 2020 to present totaling 88 or 58% of unsupported hours. Further, the OIG determined, DCA Ohiku did not report an exception to his timecard to make a correction to



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hours worked for those days. As a result, DCA Ohiku received payment for a standard 8-hour workday – even though he was conducting business affairs for clients of Ohiku Law Office. Additionally, 16 of the 88-hours were unable to be verified and were not included in the total supported or unsupported hours.

DEPUTY CITY ATTORNEY OHIKU HOURS OF COURT APPEARANCE/ACTION		
CATEGORY	# OF CERTIFIED HOURS	AMOUNT
CERTIFIED SUPPORTED AND UNSUPPORTED HOURS - COURT APPEARANCES & COURT ACTION	152	\$ 9,960.56
CERTIFIED HOURS SUPPORTED - COURT APPEARANCE	48	\$ 3,145.44
CERTIFIED HOURS UNSUPPORTED - COURT ACTION (OIG UNABLE TO VERIFY)	16	\$ 1,048.48
CERTIFIED HOURS UNSUPPORTED - COURT APPEARANCE	88	\$ 5,766.64
<i>Supported hours: Hours certified in CityTime with an exception for time off - court appearance/action per WCCA Circuit Court case details.</i>		
<i>Unsupported hours: Hours certified in CityTime with no exception for time off - court appearance/action per WCCA Circuit Court case details.</i>		

Note: The OIG was only able to identify instances where DCA Ohiku appeared in court or conducted some type of court activity after using the Bar No. of other attorneys identified as being affiliated with Ohiku Law Office. There appeared to be a pattern of DCA Ohiku withdrawing as the attorney on various cases, where he continued to appear in court for those cases.

Category 1: Court Appearance & Court Actions (supported and unsupported hours)

The OIG determined that 88 hours (or 58%) – of the total number of hours certified by DCA Ohiku were unsupported – evidence examined did not give credence to those hours declared and certified on his timecard in CityTime. Hence, the OIG discovered that DCA Ohiku was compensated \$5,766.64 for time, in which the OIG learned he was in a Milwaukee, Waukesha, or Winnebago County Circuit Court as counsel for cases associated with his private practice of



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law. The OIG based the 88 hours of unsupported time on a standard 8-hour workday as there was no way to determine exactly how long DCA was in court as representation for those cases; or the amount of time it took to travel to and from the court. Additionally, DCA Ohiku indicated that ...”such legal work has occurred utilizing flex time schedule so that no deficit in CityTime work hours resulted”;¹⁵ however, per CA Spencer “...deputies do not accrue flex time and unpaid time off would have to be approved by the City Attorney.”¹⁶

DEPUTY CITY ATTORNEY OHIHU COURT APPEARANCES (excluding court action other than court appearance)					
CIRCUIT COURT	CASE NO.	DATE	COURT APPEARANCE	SUPPORTED HOURS	UNSUPPORTED HOURS
WAUKESHA COUNTY COURT	2020CM000469	12.11.2020	OHIKU ZOOM VIDEO		8
MILWAUKEE COUNTY COURT	2021FA001730	12.03.2021	APPEARED OHIKU & PATTERSON (ZOOM)	8	
		02.24.2022	APPEARED OHIKU & PATTERSON (ZOOM)	4	
		06.03.2022	APPEARED OHIKU (ZOOM)	4	
		03.22.2023	APPEARED BY VIDEO OHIKU		8
		11.21.2022	APPEARED BY VIDEO ODALO OHIKU		8
WINNEBAGO COUNTY	2022CF000072	04.04.2022	OHIKU IN COURT W/CLIENT		8
MILWAUKEE COUNTY COURT	2019CF001073	11.03.2020	OHIKU APPEARED BY ZOOM		8
		11.18.2020	OHIKU IN COURT W/DEFENDENT		8
		11.23.2020	OHIKU IN COURT W/O DEFENDENT		8
			OHIKU IN COURT W/DEFENDENT		8
		11.24.2020	OHIKU IN COURT W/DEFENDENT		8
		03.03.2021	PATTERSON & OHIKU - IN COURT VIDEO		8
		03.08.2021	PATTERSON & OHIKU IN COURT W/CLIENT	8	
			PATTERSON & OHIKU IN COURT W/CLIENT (OTHER)		
		03.09.2021	PATTERSON & OHIKU IN COURT W/CLIENT	8	
		03.10.2021	PATTERSON & OHIKU IN COURT W/CLIENT	8	
03.11.2021	OHIKU IN COURT W/ CLIENT	8			
	07.27.2021	PATTERSON & OHIKU IN COURT W/CLIENT		8	
	10.01.2021	PATTERSON & OHIKU IN COURT W/CLIENT		8	
			TOTAL HOURS	48	88
			TOTAL AMOUNT - PER SALARY HOURLY AMOUNT	\$3,145.44	\$5,766.64
Supported hours: Hours certified in CityTime with an exception for time off - court appearance/action per WCCA Circuit Court case details.					
Unsupported hours: Hours certified in CityTime with no exception for time off - court appearance/action per WCCA Circuit Court case details.					

Category 2: Court Appearance & Court Actions (building access / remote VPN access)

¹⁵ DCA Ohiku, email message to OIG, January 23, 2023.

¹⁶ Michelle Caples, on behalf of CA Spencer, email message to OIG, January 24, 2023.



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The OIG noted that for three days, or 24 hours, DCA Ohiku appeared before a circuit court or conducted a court action (other than an appearance) for a matter involving a client of his private practice of law; however, evidence confirmed that he accessed a city building and/or logged into the City’s VPN. The OIG determined that on one day DCA Ohiku appeared in court for a case via video conference and although DPW building access records confirmed DCA Ohiku accessed a city building, the OIG determined that the eight hours certified were unsupported. On the other two days, DCA Ohiku conducted court action other than an appearance where evidence confirmed that he accessed a City building. However, in addition to accessing a City building, he also utilized the City’s VPN. The OIG was unable to verify these hours because the court actions could have been performed by an associate of the Ohiku Law Office or handled after CAO standard business hours.

DEPUTY CITY ATTORNEY OHIKU - BUILDING ACCESS / REMOTE VPN ACCESS (SYSTEM)							
CIRCUIT COURT LOCATION	CASE NO.	DATE	COURT ACTION	CARD SCAN	VPN ACCESS	HOURS UNABLE TO BE VERIFIED	UNSUPPORTED HOURS
MILWAUKEE COUNTY COURT	2021FA001730	11.21.2022	VIDEO CONFERENCING	YES	NO	N/A	8
		03.06.2023	CONTACTED COURT	YES	YES	8	N/A
MILWAUKEE COUNTY COURT	2009PA005457PJ	07.26.2021	LETTERS/CORRESPONDENCE	YES	NO	8	N/A
<i>Unsupported hours: Hours certified in CityTime with no exception for time off - court appearance per WCCA Circuit Court case details.</i>							
<i>Unverified hours: Hours certified in CityTime with no exception for time off - court action per WCCA Circuit Court case details. The OIG was unable to determine whether DCA Ohiku or one of his associates completed the action or the time of day the action took place.</i>							

Note: Beginning in March 2020 through approximately September 2021 (with some employees still continuing to work remotely) City employees worked in a remote capacity as their positions allowed as a result of the COVID-19 pandemic.

Legal Analysis and Findings

The OIG concluded that sufficient evidence exists to support the findings that DCA Ohiku violated certain regulations covering the basic obligations of public service and City policy with regard to outside employment as well as conflicts of interest.



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DCA Ohiku Violated Section 946.12, Wis. Stats., MCO Chapter 303 and MCO Section 5-12 by Certifying Hours of Work During Which He Was Conducting Legal Work for His Private Practice of Law.

DCA Ohiku's conduct involves one criminal statute: s. 946.12, Wis. Stats., (misconduct in public office). Any public officer or public employee who does any of the following is guilty of a Class I felony: **(1)** Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law; or **(2)** In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or **(3)** Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or **(4)** In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or **(5)** Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.¹⁷

Since private practice legal work must be conducted outside of CAO regular office hours, inaccurate hours for which the data indicates DCA Ohiku conducted the business of his private practice of law during standard CAO business hours, and the pattern of claiming hours, in which he was not conducting legal affairs of the city, the OIG concluded that DCA Ohiku must have

¹⁷ Wis. Stat. sec. 946.12.



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known that the information he submitted and certified into the city's time and attendance system was false. In making this determination, the OIG considered that there may be times when an innocent mistake could result in a disparity between actual hours worked and hours submitted, e.g. typographical errors or that the official or employee forgot that they were out of the office for an hour or two during a bi-week. All things considered, the OIG believes, though not large, it is implausible to attribute this consistent, incorrect reporting to simple mistakes.

The OIG found that DCA Ohiku certified approximately 88 hours of work during which he was performing legal work as counsel for clients associated with his private practice of law (Ohiku Law Office), and that his entries into the CityTime time and attendance system were misconduct by a public officer or employee in a public office. The OIG found that DCA Ohiku received approximately \$5,766.64 as a result of his misconduct.

DCA Ohiku's conduct implicates one principle within the Code of Ethics: MCO 303 (Code of Ethics). **1.** It is declared that high moral and ethical standards among officials and other city employees are essential to the conduct of free government; that the common council believes that a code of ethics for the guidance of officials and other city employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of Milwaukee in their public officials and other city employees.¹⁸

MCO 5-12 (False Certification of Work). If any member of the common council, or other officer or agent of the city government, or any person employed, appointed or confirmed by the common council or appointed by any department of the city government, shall knowingly certify that any work has been done for said city, or any contract with said city has been completed in compliance with the terms thereof when in fact such work had not been done, or said contract

¹⁸ MCO 303.1.1.



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had not been completed, such member of the common council, officer or agent, shall be removed from office, and his office declared vacant, and no such officer, agent or employee, shall again be elected, appointed or employed by, or for the city of Milwaukee, to any office, place or position whatever. (*S. 45, Ch. 144, L. 1875.*)¹⁹

DCA Ohiku's failure to comply with company and CAO policies, providing false information, and dishonesty are all inconsistent with the principles of the code of ethics. The actions of DCA Ohiku support the conclusion that he knew his time and attendance certifications were false. His actions demonstrate an act of both commission and omission, in his capacity as a public official, when he certified hours of work, whereas he was conducting legal business affairs of his private practice – which in an evident respect, he knew the hours reported were inaccurate, and subsequently he was compensated by the City of Milwaukee.

Moreover, DCA Ohiku's actions following the initiation of the OIG investigation reinforced that he knowingly falsified his time and attendance records. In particular, when the OIG questioned DCA Ohiku about his work for his private practice he indicated that he was working with one client and that his work was a limited and rare occurrence. More specific, DCA Ohiku stated, *“There is one client who I have assisted representing in a family law case. Time spent on this case has been de minimis and extremely limited. Further, any such legal work has: 1) occurred utilizing flex time schedule so that no deficit in CityTime work hours resulted, 2) occurred during vacation time from City Attorney's Office, or 3) occurred outside of CityTime work hours. I have not obtained permission; this is an extremely limited and rare occurrence.”*²⁰

However, evidence revealed that DCA Ohiku continued to work on cases for the Ohiku Law Office, even though a request for removal of counsel request had been submitted for many of the court cases. The OIG concludes that based on the evidence described above, the finding

¹⁹ MCO 5-12.

²⁰ DCA Ohiku, email message to OIG, January 23, 2023.



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substantiates that DCA Ohiku violated Wis. Stat. sec. 946.12 and the City of Milwaukee's Code of Ethics.

DCA Ohiku Violated Wis. Stat. §946.12(3) and MCO-303 for his Failure to Follow Lawful and Reasonable Instructions by not Filing a Complete Statement of Economic Interests.

DCA Ohiku's conduct implicates one criminal statute: Wis. Stat. §946.12(3) (misconduct in public office) and two standards of conduct codified at MCO 303-11.1, 11.1a, 11.1b (financial disclosure) and 303-11.2.d (failure to file) and MCO 303-13, 13.1, 13.1a, 13.6 (form of statement). A misconduct in public office violation provides in relevant part: any public officer or public employee who does any of the following is guilty of a Class I felony: ...whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another.²¹

A financial disclosure requires that an SEI shall be filed with the board as follows: a. Except as provided in par. d, any individual who in January of any year is an official and is required to file as so designated by the city positions ordinance shall file with the board no later than February 28 of that year a statement of economic interests. The information on the statement shall be current as of December 31 of the preceding year. b. Except as provided in sub. 4-c, any newly appointed or employed individual required to file as so designated by the city positions ordinance shall file a statement of economic interests within 21 days following the date he or she assumes office if the individual has not previously filed a statement of economic interests with the board

²¹ Wis. Stat. sec. 946.12(3).



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during that year. The information on the statement shall be current as per the date he or she assumes office.²²

If after 45 days from the date required for filing of an SEI, a public official who is not a member of a city of Milwaukee board, committee, or commission subject to filing requirements, or an employee who is not a member of a city of Milwaukee board, committee, or commission subject to filing requirements under this section has failed to file a complete statement, the chair of the ethics board or designated staff member may cause an affidavit to be prepared and delivered to the city attorney stating upon knowledge and belief that an individual is in violation of the reporting requirements of this section, identifying the individual by name and position, declaring that the notice to be provided the individual in accord with par. c. was sent, and identifying the date the notice was sent and the address to which it was mailed. Upon receipt of the affidavit, the city attorney may file charges with the municipal court for violation of this section. Any person convicted of a violation of this section for failure to file a required and complete statement of economic interests within 45 days of the required date, shall be subject to a forfeiture of not less than \$250 nor more than \$1,000, and shall upon failure to pay the forfeiture be imprisoned in the county jail or house of correction for not less than 10 days nor more than 40 days.²³

Every SEI is to be on the form prescribed by the board. Information required shall be provided on the basis of the best knowledge, information and belief of the official filing the statement. The statement shall contain the following information:²⁴ ...the identity of every organization with which the individual required to file is associated and the nature of his or her association with the organization, except that no identification need be made of: any organization which is described in section 170-c of the internal revenue code²⁵ ...if the individual who is required to file or a

²² MCO 303 sec. 11-1, 11-1-a, 11-1-b.

²³ MCO 303-11-2-d.

²⁴ MCO 303-13

²⁵ MCO 303-13-1, 1-a



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member of his or her immediate family received \$1,000 or more of his or her income for the preceding taxable year from a partnership, limited liability company, corporation electing to be taxed as a partnership under subchapter S of the internal revenue code, corporation taxed under subchapter C of the internal revenue code or service corporation under ss. 180.1901 to 180.1921, Wis. Stats., in which the individual or a member of his or her immediate family, severally or in the aggregate, has a 10% or greater interest, the identity of each payer from which the organization received \$1,000 or more of its income for its preceding taxable year, except that if the individual who is required to file identifies the general nature of the business in which he or she or his or her immediate family is engaged then no identification need be made of a decedent's estate or an individual, not acting as a representative of an organization, unless the individual is a lobbyist as defined in s. 13.62, Wis. Stats. In addition, no identification need be made of payers from which dividends or interest are received.²⁶

The OIG found that DCA Ohiku failed to file an SEI within 21 days following the date he assumed office; and within 45 days of the required due date, for the years 2021 and 2022. Persons required to file an SEI, for the information required, must do so on the basis of the best knowledge, information and belief of the individual filing the SEI. An individual (or his or her immediate family member) required to file form received \$1,000 or more of his or her income for the previous tax filing year. This includes income from a partnership under subchapter S of the internal revenue code (IRC), limited liability company (LLC), subchapter C corporation under the IRC in which the individual (or his or her immediate family member) directly or indirectly, separately or together, owned or controlled at least 10% interest; and from which the individual or his or her immediate family has received at \$1,000 or more – must identify the name of the business and provide the name for each payer (organization) that paid \$1,000 or more.

²⁶ MCO 303-13-6



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Review of the 2020, 2021 and 2022 SEI forms from DCA Ohiku revealed that he filed an incomplete SEI for each year because he omitted disclosure of his economic interest in the Ohiku Law Office. Yet, for sources of income from an employer, he included the City of Milwaukee.

Given that DCA Ohiku included his financial association with the City of Milwaukee, it is reasonable to conclude that he knew was required to disclose his economic interest with Ohiku Law Office. Therefore, DCA Ohiku filing of an incomplete SEI was an abuse of discretionary power in a manner inconsistent with the duties and requirement as a condition of his appointment as a deputy city attorney in violation of §946.12(3); MCO 303-11-2.

The OIG concluded that sufficient evidence exists to support the findings that DCA Ohiku violated a criminal statute for misconduct in a public office, regulations covering the basic obligation of public service. Sufficient evidence also exists to support the findings that DCA Ohiku violated the City's standards of conduct as well as both citywide and CAO departmental policies.

DCA Ohiku Violated Wis. Stat. §946.12 and MCO 303-5 by not Complying with Established Guidelines as Required by Citywide and CAO Departmental Policies.

DCA Ohiku's conduct implicates one criminal statute: Wis. Stat. §946.12(2) (misconduct in public office) and two standards of conduct codified at MCO 303-1 (code of ethics). A misconduct in public office violation provides in relevant part: any public officer or public employee who does any of the following is guilty of a Class I felony: ... In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or



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employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity.²⁷

A code of conduct violation in public service occurs when officials and other government employees violate organizational and departmental policies creating an illegal breach of public confidence and trust, partake in acts of fraud or deception, acts of dishonesty, partake in acts inconsistent with their responsibility and accountability to the public and conflicts of interest. The City's Code of Ethics states that high moral and ethical standards among officials and other City employees are essential to the conduct of free government; that the Common Council believes that a code of ethics for the guidance of officials and other city employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of Milwaukee in their public officials and other city employees.²⁸

Employment outside of the CAO is at the discretion of the employee. However, the employee must be able to meet the scheduling needs of his or her department. Further, at no time should there be any conflict of interest between an employee's City position and outside employment. Before accepting outside employment, an employee should check with his or her supervisor to make certain there are no violations of City rules or conflicts of interest. Attorneys may not appear before Milwaukee Municipal Court as an attorney on a private matter. Attorneys engaging in the private practice of law are expected to strictly adhere to SCR 20:2.4, as well as the City's Code of Ethics. Attorneys are prohibited from conducting private practice legal work during CAO office hours, unless it is regarding an immediate family member; and private legal work during office hours must be done utilizing vacation, for a deputy city attorney.²⁹ A violation of the CAO departmental policies is said to occur when an employee does not comply

²⁷ Wis. Stat. sec. 946.12.2.

²⁸ MCO 303-1.

²⁹ CAO Employee Code of Conduct. Outside Employment.



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with the work rules and employment policies. However, the CAO's work rules and policies do not supersede City ordinances, City Service Rules, or provisions of the City Charter.

The OIG found that DCA Ohiku conducted legal work on behalf of Ohiku Law Office during CAO business hours, without approval from the City Attorney and without recording an exception to his time so that he would not be paid by the City for that time. DCA Ohiku conveyed to the OIG that any legal work related to his private practice of law "... *occurred utilizing flex time scheduled so that no deficit in CityTime work hours resulted.*"³⁰ However, "*deputies do not accrue flex time*"³¹, according to CA Spencer. Hence, by claiming the use of flex time to which he was not entitled, DCA Ohiku was paid for time that he was not entitled to receive. DCA Ohiku further stated that private practice legal work "*occurred during vacation time from City Attorney's Office or occurred outside of CityTime work hours.*" He further stated that he had been assisting with representing a client in a family law case, but that he had "*not obtained permission*" because it was "*an extremely limited and rare occurrence.*"

Per CAO policy, approval to conduct legal work for private practice of law during CAO business hours must be obtained from the CA prior to engaging in the legal work. However, the review of WCCA court details compared to the respective time report cards disclosed several instances in which DCA Ohiku appeared in court conducting work for a client of his law firm. Yet, neither DCA Ohiku nor CA Spencer was able to provide evidence to support the contention that DCA Ohiku had received approval to take time off to conduct private practice legal work. Attorney Ohiku responded with, "... *it is my understanding that this information was already provided.*"³² It was not provided. An additional email requesting the contact information was sent asking who

³⁰ DCA Ohiku, email message to OIG, January 23, 2023.

³¹ Michelle Caples, on behalf of CA Spencer, email message to OIG, January 24, 2023.

³² DCA Ohiku, follow up email message to OIG, February 7, 2023.



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might have provided such documentation. However, DCA Ohiku did not respond to the OIG's request for contact information. To date, the OIG has not received any contact information.

Evidence Raises Concerns that Sections of the City's Code of Ethics Ought to be Revised to Strengthen Guidelines to Prevent Potential Conflicts of Interest and Deter Fraud.

The OIG's review of allegations surrounding time and attendance committed by DCA Ohiku and the supporting evidence, raises concerns that sections of MCO 303, Code of Ethics should be revised to strengthen oversight to prevent conflicts of interest and reduce the possibility of fraud. Revisions to sections of the standards of conduct in the Code of Ethics should also be made to strengthen controls to resolve conflicts of interest. The guidelines do not employ adequate controls or they are not functioning as intended to properly establish essential facts, apply relevant law and policy, and distinguish between actual, apparent, real, and potential conflict issues or situations.

Transparency is crucial for maintaining the public's trust; and being transparent regarding conflicts of interest is essential for sustaining that trust. A conflict occurs when a person(s) is in a situation that has the potential to undermine their impartiality. When not addressed, a conflict(s) of interest, could result in abuse of authority (in public office), unethical conduct, and misconduct, breach of public trust or unlawful action. Nevertheless, conflicts of interest are a normal and an unavoidable part of decision-making and seeking to eliminate conflicts of interest entirely is neither feasible nor desirable. A conflict of interest between private interests and the public duties of a public official must be appropriately identified, correctly supervised, and resolved in an efficient and effective manner. Still, the appearance of a conflict of interests has nothing to do with honesty or whether the conflict is enough to influence the individual. However, without regard to one's ability to suspend his or her personal interests or their degree of integrity or honesty – holding of public office is public trust; and where possible, public



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officials should refrain from engaging in an activity that could damage the city's representation – or through transparency, disclose the activity(s).

Conflicts can present significant fraud risks; they can be one of the most difficult areas of fraud to investigate and obtain evidence. The fraud triangle identifies high risks of fraud, which highlights three factors that lead to fraud. They are motivation, opportunity, and rationalization (Albrecht), see the fraud triangle below.³³ The fraud triangle suggests that people are motivated to commit fraud when three elements exist: (1) some kind of perceived pressure, (2) some perceived opportunity, and (3) some way to rationalize the fraud as not being inconsistent with one's values (Albrecht).

According to the Association for Certified Fraud Examiners (ACFE), 2020 Report to the Nations, 35% of reported fraud cases arise in organizations that lack internal controls. However, even in organizations with a robust control environment, if an employee circumvent controls it is still possible for fraud to occur. This can be accomplished in a number of ways, including collusion among employees or a lack of adequate management review (ACFE).³⁴

³³ National Whistleblower Center. The Fraud Triangle. <https://www.whistleblowers.org/fraud-triangle>.

³⁴ ACFE. Report to the Nations. 2020 Global Study on Occupational Fraud



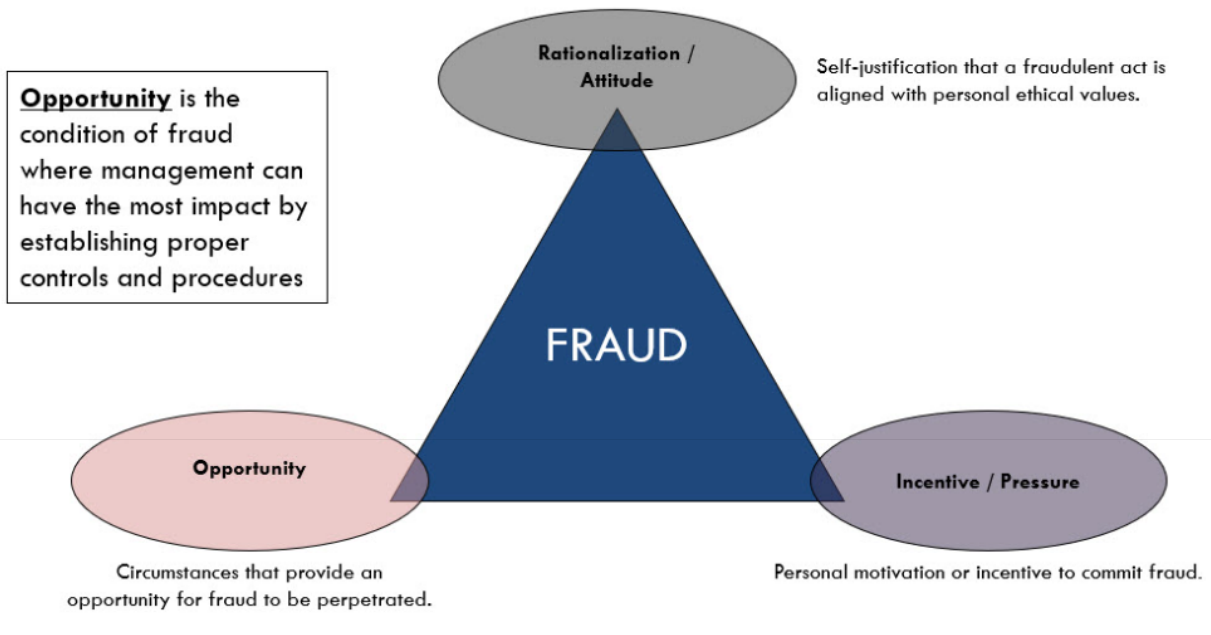
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The Fraud Triangle

The three conditions present when fraud happens



As you can see from the fraud triangle, “opportunity” is the one element that allows fraud to occur – without opportunity, fraud is impossible. It is the one component in which an organization can maintain significant, or in some instances complete control.

The City’s Code of Ethics require individuals in public office to disclose their economic interests. The Code of Ethics, MCO 303 describes the standards of conduct and conflicts of interest; and all city officials, employees’ board and commission members are covered. The city’s Common Council determines which individuals are required to file an annual statement of economic interests. These persons include all elected officials, employees identified by department heads (having discretionary powers), nominees and members of designated commissions and boards; and candidates for elective office. The statement of economic interests



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form must be filed within twenty-one days of employment, assuming office or of being nominated. In subsequent years, said individuals, are required to file annually to the Ethics Board no later than February 28 of that statement of economic year. The information on the statement must be current as of December 31 of the preceding year. Information provided on the statement is taken seriously by the Board.

Each statement is received, checked for completion (name and signature only) and stored by the Board's staff assistant (Yadira Melendez). The statements are stored in a filing cabinet the Common Council, City Clerk's Office. In January 2023, a paperless system, using electronic signatures, was implemented. Statements filed electronically are stored on one of the City Clerk's network drives and are only accessible to the staff assistant. Per the Board, a random review of the entire SEI form population is conducted annually. However, the current staff assistant has been in the role since October 2021, and has not been contacted by a Board member regarding a review. Additionally, the staff assistant was unable to determine whether a review had been conducted in at least three years.

As the public sector rapidly changes, conflicts of interest will likely remain an issue of concern. Identifying and resolving conflicts of interests is critical to good governance, as well as, maintaining public trust. In government, conflicts of interests are important and must be recognized and controlled appropriately – if not, they can undermine the integrity of the respective government entity. A conflict of interest is both a straightforward and complex issue. A conflict of interest arises when a public official's private interests, could improperly influence the performance of his or her official duties and responsibilities. Establishing an effective policy to control conflicts of interests can be a daunting and complex task. However, it is critical to establish relevant facts, apply the relevant law and policy, and distinguish between actual, apparent, real, and potential conflict situations to resolve a specific conflict. It is also important to understand that a conflict of interest between an official's personal interest and his or her roles



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and responsibilities as a public servant, regarding what they could gain – does not necessarily mean financially.³⁵

The city's Code of Ethics provides guidance to address and control conflicts of interest. To minimize the risk of damage to the city's image and reputation, as well as, an elected, appointed official, employee or nominee, for integrity even the appearance of a conflict should be avoided when possible. However, conflicts cannot be avoided by merely banning all private interests; instead, public officials must take personal responsibility for identifying and resolving problem situations, and public institutions must provide realistic policies, set enforceable compliance for standards of conduct, and establish effective management systems.³⁶ A conflict of interest is not in itself corruption – which is an abuse of public office for private interest advantage. However, it does have the potential to influence corrupt conduct or misconduct. Hence, actual, apparent, real, and potential conflicts of interests must be disclosed, managed, and resolved.

Since an apparent or perceived conflict of interest could be significantly harmful to public trust – with respect to decision making - department heads, managers or elected officials (i.e. CA Spencer) should consider the perception of a conflict of interest – even with making a decision to appoint an official, such as a deputy city attorney. Public trust can be improved and protected by ensuring there is no improper connection between a public official's roles and responsibilities and his or her private interests, including the interest of family members, business, other sources of income, etc.; hence, making such conflicts known to the city, common council, the public and all other interested parties.

³⁵ Organization for Economic Co-Operation and Development (OECD), 2005. Managing Conflict of Interest in the Public Sector – ISBN 92-64-01822-0.

³⁶ OECD (2005). Managing Conflict of Interest in the Public Sector – ISBN 92-64-01822-0.



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Evidence Raises Concern that the City Attorney does not Enforce or Adhere to Official Citywide or Departmental Internal Controls to Properly Identify and Certify CAO Staff Hours of Work and Time-off.

The OIG's review of allegations of time and attendance abuse by DCA Ohiku and the evidence to support it, raises concerns that although both citywide and CAO departmental policies provide guidelines for certifying hours of work by officials and employees, CA Spencer does not enforce or does not have adequate internal controls in place to prevent or deter this type of abuse. It is not certain that staff hours of work identify actual hours of work to conduct city business, an exception to time has been recorded in CityTime for attorneys conducting outside legal work (during CAO office hours), and that all hours certified are accurate prior to certifying those hours.

The CAO policy for outside employment states "attorneys engaging in the private practice of law are expected to adhere to SCR 20:2.4 and the City's Code of Ethics", "attorneys are expected to be available to conduct office business during the hours in which the office is open", "vacation requests must be submitted in writing to your supervisor", "if an attorney is going to be out of the office for three or more business days, a memo should be written to the city attorney... at least 24 hours in advance of leaving... with a copy to the receptionist...", "...attorneys are prohibited from engaging in the private practice of law during the hours the office is open without first obtaining the approval of the City Attorney," and "attorneys performing private legal work during office hours must use vacation...". The CAO has a designated payroll clerk to handle payroll responsibilities. However, DCA Ohiku, with his supervisory role, also has the capacity to record exceptions to his hours of work.

Although it is the official or employee's responsibility to follow departmental rules and policies for scheduling vacation hours, management has oversight and is responsible for ensuring that his or her staff adhere to departmental vacation procedures and that proper reporting of time worked



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and time off is reviewed and approved each pay period (MCO 350-40.4). While the CAO has a designated payroll clerk for payroll duties and responsibilities, CA Spencer is still responsible for ensuring the accuracy of hours worked and time off reported and certified in CityTime. Neither CA Spencer nor DCA Ohiku were able to provide the OIG with evidence to support the claim that DCA Ohiku was approved to conduct legal work for his private practice of law or to use vacation hours for those instances for which vacation hours were used. Lacking this, DCA Ohiku was compensated for hours of work in which he conducted legal work for private practice as well as the business affairs of the city.

Additionally, per CAO policy, attorneys are prohibited from having their name on the letterhead of any private law partnership or service corporation. When the OIG requested blank letterhead of the Ohiku Law Firm, DCA Ohiku declined the OIG's request. Instead, the OIG was able to obtain a physical copy of a letter from the Ohiku Law Firm using a case number from the WCCA from the Milwaukee County Courthouse. Although DCA Ohiku's name is not on the letterhead, language included on the Ohiku Law Office website indicating that "... Attorney Odalo Ohiku and his team work..." strengthens DCA Ohiku's association with his law firm and is an indirect violation of CAO policy. This is an issue that further suggests inadequate or unenforced internal controls.

The OIG determined that CA Spencer disregarded his duty of public trust as the CAO's department head and his responsibility to follow the Rules of Professional Conduct for lawyers. CA Spencer's failure to abide by City ordinance, citywide and CAO departmental policies and rules of conduct for lawyers demonstrates a disregard for established rules and regulations. CA Spencer's inability to follow and enforce applicable rules and regulations is a betrayal of public trust, ignores the City's best interests and fails to provide impartial, timely, and quality legal services consistent with the highest professional and code of ethical standards. As a result, the



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City Attorney is in direct violation of City ordinance, citywide and CAO policies, and state regulations.

Evidence Raises Concerns that CA Spencer Violated SCR 20:4.1, SCR 20:8.2(a), 20:8.4, Wis. Stat. §946.12, MCO 303 by Engaging in Misconduct Involving Dishonesty, Deceit and Misrepresentation.

The OIG's review of alleged time and attendance abuse by DCA Ohiku and the evidence to support it, raises concerns that CA Spencer's misconduct concerning dishonesty, deceit and misrepresentation that could damage the City of Milwaukee's reputation and lessen public trust with regard to its impartial administration and transparency. Impaired public trust is a significant and concerning problem that weakens the City's ability to fulfill its obligation to uphold the rule of law, keep our City safe and protect the rights of its citizens. Ensuring that decision making adheres to established citywide and departmental policies and practices, is free from inappropriate influence, and complies with conflict of interest rules is a key element in meeting this challenge.

The OIG found that City Attorney Spencer violated the fundamental obligation of public trust, codified at SCR 20:8.4; as well as, unfairly undermined public confidence as an attorney through his false statements (SCR 20:8.2(a)) & SCR 20:4.1, S. 946.12, Wis. Stats., and MCO 303 by engaging in conduct involving dishonesty, deceit, and misrepresentation.

Through two types of deception, acts of commission and omission, CA Spencer violated Wis. Stat. §946.12.3. CA Spencer engaged in a persistent pattern of knowingly, intentionally, and wrongfully jeopardizing the City's public reputation, trust and image - by way of misconduct through his disingenuous statements during public committee meetings, statements during local media press conferences, and responses provided to the OIG during this investigation. CA



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Spencer, ignored his obligation as a public officer to perform his job duties and responsibilities in accordance with established rules and guidelines through good, honest and sound judgment.

Specifically,

Misrepresentation - with a false and misleading statement to the Common Council, Finance and Personnel (F&P) Committee, during a public meeting in March 2021, (during discussion of Common Council File Number 201492) when he stated that DCA Ohiku “... *had been given a certain amount of time to make sure that he was able to farm out his business and reassign those cases, that’s being transferred right now...*” “... *if someone is hired in with a practice should be given a reasonable amount of time to remove their practice and that is what’s occurring now*” (Spencer, n.d.).³⁷

Deceit – committed an act of misconduct knowingly, with a false, untrue statement, by which he intended to deceive the F&P Committee, as well as, the public and expect them to believe and rely on the statement he made “...*he was given a certain amount of time to make sure he was able to farm out his work and reassign cases – that’s being transferred as of right now... he should be finished with what he’s doing within the next, I gave him six months to clear out his book of business, with the condition that he take off his work*” (Spencer, n.d.). However, through electronic communication, Mr. Ohiku indicated that although he was uncertain of how long it would take for him to transition his cases, he told Mr. Spencer verbally “*I told him from the time I joined the City Attorney’s Office, I thought it would take me about six-months to transition cases.*”³⁸

³⁷ CA Spencer Clip, Finance & Personnel Committee (March 17, 2021), Communication File #201492, 1:10:26 through 1:12:22/1:57.07.

³⁸ DCA Ohiku, email message to OIG, January 23, 2023.



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Also during the OIG investigation, when requesting supporting documentation from Mr. Ohiku, questions and responses went as follows:

- ♣ **OIG:** *“Regarding the client you assisted in representation in the family law case, did you obtain approval from the City Attorney? If yes, how was the City Attorney informed? Please provide me with supporting documentation to support the request for time off to provide private legal work all cases that you have been a part of since becoming Deputy City Attorney.”*
- ♣ **Mr. Ohiku:** *“No. It is my understanding that this information was already provided.”*

The OIG has not received any documentation as evidence that City Attorney authorized Deputy City Attorney Ohiku for any of the court cases that Deputy City Attorney Ohiku engaged in during regular CAO hours. Additionally, when the OIG requested that Mr. Ohiku provide the contact information for the CAO staff providing such information, contact information was never provided.

Dishonesty – through omission of all or parts of the truth and twisting the truth, when the OIG questioned *“on what date did you inform Mr. Ohiku that he needed to wind down his business with Ohiku Law Office?”* and he replied *“he was never told he had to wind down his business but was told to make arrangements so that it did not interfere with City Attorney Office assignments”*. Further, Mr. Spencer told the OIG that he was aware Attorney Ohiku was conducting business of private practice – *“yes, I am aware that Mr. Ohiku has other business affiliations other than the Office of the City Attorney”* (Spencer, 2023).

Also during the OIG investigation, when requesting supporting documentation from Mr. Ohiku, questions and responses went as follows:



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- ♣ **OIG:** *... since there is a chance that that you may be involved in cases based on your level of experience, have you had follow up discussion with City Attorney Spencer to ensure he is aware of such instances?"*
- ♣ **Mr. Ohiku:** *"No."*

However, and in a separate email communication (October 2022) with the City Attorney³⁹:

- ♣ **OIG:** *"What date was the last communication between you and Atty. Ohiku regarding this matter?"*
- ♣ **City Attorney Spencer:** *"This is an ongoing conversation due to harassment of others."*
- ♣ **OIG:** *"Please provide email communications whereas the following searchable keywords may have been included in the subject line, body of the email, etc." **Keywords** - private practice; Ohiku Law Office; dissolve; paid time off; PTO; unpaid time off; UTO; discontinue; 6-months; six months; request; handbook; employee; follow-up.*
- ♣ **City Attorney Spencer:** *"An Open Records request was made and there are none."*

Based on the city attorney's response above, the OIG contacted Assistant City Attorney Peter Block (ACA Block), in January 2023, to confirm whether or not he had received a directive or instructions from CA Spencer or any other CAO staff on behalf the CA and asked to fulfill my open records requests from June 2022. According to the response from ACA Block, he had not been assigned to complete the request. But based on a conversation with CA Spencer and a few other individuals, his understanding was that the request from the OIG it "... was treated as a request for information, and not a formal public records request, based on how it was received."

³⁹ All electronic (email) responses to the OIG received from Michelle Caples, CAO Administrative Specialist Senior. Based on the email questions to the City Attorney from the OIG were answered by Sharon Crowe (a CA City Hall Support Staff). Additionally the City Attorney was not accessible to the OIG, nor did he respond to any request made to him by the OIG.



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Additionally, the OIG sent an email (December 2022) to the Department of Administration, Information Technology Management Department (ITMD), Chief Information Officer, David Henke (CIO Henke), requesting confirmation as to whether or not his department had received an open records request from the CAO or a representative of the office with the same searchable key words contained in the subject line or within the body of the email text asked of the CAO⁴⁰. After his review, Mr. Henke replied, *“A review by ITMD staff has not located any request since June of this year from the City Attorney’s office for emails associated with any of the keywords referenced below.”*

Below is electronic conversations, via email, as a result of some of CA Spencer’s responses from email communication with the OIG (October 2022). The OIG submitted an email with follow up questions, where clarity was necessary or there was an appearance of deception, disingenuousness, or deceit:

- ♣ **OIG:** *“Regarding ongoing conversations, how are such conversations documented; how often does such conversations occur; what is the most recent date of the last conversation with Mr. Ohiku regarding conducting business of his private law firm?”*
- ♣ **City Attorney Spencer:** *“This is not immediately clear: however, any such conversation would be fairly limited and infrequent. As stated previously, it is my understanding that he does not actively nor regularly conduct business on behalf of Ohiku Law Office during CityTime hours. This, in and of itself, necessarily limits the frequency and need for such conversations.”*
- ♣ **OIG:** *“Can you please clarify, “an open records request was made and there are none”, who specifically were Open Records related to any of the keywords included in my request(s) submitted to Assistant City Attorney Block for other documentation related to*

⁴⁰ The first request to the CAO notifying him that the OIG was in receipt of a complaint from a confidential source was in June 2022. However, the first response from the CAO regarding this investigation was in October 25, 2022; after the OIG sent a follow up October 21, 2022.



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any of the keywords included in my request, David Henke on behalf of ITMD for email communications, etc.?”

- ♣ **City Attorney:** *“Peter Block has made a request to ITMD for such email communications. He is in direct communication with you regarding this request.”*

Note: The OIG received the January 2023 email regarding the open records request from CA Spencer after CIO Henke made an effort to contact CA Spencer to confirm whether or not he would authorize ITMD to search and release email records submitted in the OIG’s open records request. The CA’s response to the OIG was another instance of misconduct that unquestionably substantiates dishonest, deceitful, and inexcusable behavior through his actions of lying by both commission and omission while serving in public office. CA Spencer actions are inconsistent with requirements outlined in Wisconsin’s Lawyer Professional Standards, Rules and Cases delineated in SCR Chapter 20, specifically SCR 20:4.1, SCR 20:8.2(a) and 20:8.4, as well as, Wis. Stat. §946.12 and MCO 303.

Evidence Raises Concerns that MCO §303-5-9 should be Amended or Modified to also Prohibit a Deputy City Attorney from Engaging in Private Practice of Law.

The OIG’s review of allegations of time and attendance abuse by DCA Ohiku and the evidence to support it, raises concerns that the Common Council should consider amending or modifying the standards of conduct section of the Code of Ethics to prohibit a deputy city attorney from private practice of law. The City’s Ethic’s Board was established to uphold the highest degree of ethical standards within City government.



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The Code of Ethics, MCO 303 prohibits business associations, financial interests or other activities which could give rise to conflicts of interest in fact or appearance. The ethics code provides the best approach to assure citizens that its officials and employees recognize that the upholding of public office is a public trust. Ethical conduct is a matter of performing the duties and responsibilities, of the city, in accordance with established rules and guidelines of good, sound judgment. Maintaining a strict regard for ethical conduct is crucial for maintaining high public esteem. CA Spencer addressed surfaced concerns surrounding DCA Ohiku's private practice of law as a defense attorney in a March 2021 committee meeting.

The OIG determined that because the success of the City depends on maintaining the confidence of the public and its impartiality in an official's ability to perform his or her duties; and given the public's level of concern regarding DCA Ohiku's appointment, §303-5-9 (*Private Practice of Law Prohibited for City Attorney*) should be modified or amended to prohibit the private practice of law for all deputy city attorneys.

While the Code of Ethics' standards of conduct (MCO 303-5.9) prohibits the CA for compensation from private practice of law, it does not provide any guidance specific or strict guidelines for the deputy city attorney position. Additionally, while CA Spencer confirmed



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during a press conference that DCA Ohiku was hired from private practice, he did not clarify that DCA Ohiku was not just hired from private practice, but that was the owner of the law firm. The DCA position is full-time and is one of the top appointments in the city – and being the sole proprietor of an LLC requires more than just engaging in private practice of law. Despite the fact that the CAO has a policy regarding outside employment, it only restricts them from appearing before a Milwaukee Municipal court as an attorney on private matters. Additionally, the CAO policy bars attorney’s “...from having their name on the letterhead of any private law partnership or service corporation.” However, neither the CAO internal policy nor the standards of conduct provide guidelines, instructions or regulations for the deputy city attorney.

Evidence Raises Concerns that the Code of Ethics’ Standards of Conduct (MCO 303.5.12.c) and Citywide Policies should be Revised, Amended or Modified Concerning a Request for an Advisory Opinion.

The OIG’s review of allegations of time and attendance abuse by DCA Ohiku and the evidence to support it, raises concerns that the Common Council should consider amending or modifying standards of conduct in MCO 303-5-12-c concerning a request for an advisory opinion.

Government entities, agencies or businesses owned by local, county, state, federal, etc. ought to be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Programs, operations and transactions associated with public funds require the highest degree of public trust and an impeccable standard of conduct. In general, conflicts occur when the private interest and public duties of individuals overlap, which could result in an actual or perceived lack of independence or impartiality. When a conflict of interest occurs, officials, other city employees, and potential officials or candidates must identify, disclose, and manage all conflicts actual, appearance of or potential, in accordance with the respective state and local rules and regulations.



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Apparent, disregarded, or concealed conflicts of interest potentially create significant problems, for example, lack of public confidence, inexcusable negligence of public duty, betrayal of public trust, or oppressive abuse of power; and in turn, may cause disparities between the public officers and a governing body. To the extent possible, officials and employees should avoid all potential conflicts of interest. City of Milwaukee elected and appointed officials, and all other employees, should conduct themselves and handle city business in a way that demonstrates high ethical standards and adherence to ethical standards and rules; consistent with all federal, state and local rules and regulations.

Any individual, appointing official, former official, or other city employee, either personally or on behalf of governmental body or organization, may submit a request for an advisory opinion to the Ethics Board; the request must be in writing. The advisory opinion provides guidance regarding the suitability of any matter affecting an individual, organization, or legislative body; it is formulated by interpreting and applying the law based on a specific set of facts and information. Advisory opinions provide guidance based on the Ethics Board's interpretation of the applicable laws, regulations, and standards.

The OIG determined that DCA Ohiku's conflict between his public duties and his interests inappropriately influenced his ability to perform his public official duties and responsibilities.

However, the existence of a conflict of interest does not mean that an illegal act was committed. Nonetheless, without properly handling the conflict, the official or employee risk being in violation of applicable laws, rules, and regulations. Despite the fact that there may or may not be an actual conflict of interest, given that DCA Ohiku engages in private practice of law with the Ohiku Law Firm, it creates an appearance that a conflict of interest exists. The circumstances are such that a reasonable person having knowledge of the relevant facts would question his ability to impartially represent the city in legal matters. The public's perception regarding the integrity of any public servant is critically important.



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Though the appearance of a conflict of interest was evident when DCA Ohiku was first appointed in October 2022, a request for an advisory opinion was not sought until after a heated discussion during a March 2021 F&P Committee meeting. Because the conflict was evident at the time of appointment and an opinion was not requested of the Ethics Board, it caused tension between the City Attorney and the Common Council, and per other complaints and concerns received by the OIG, other city departments, including the CAO and the Office of the Mayor. This has caused a lack of confidence amongst city departments, represented by the CAO. It is a betrayal of public trust, an abuse of power, and an inexcusable neglect of public duty.

Per the Code of Ethics (MCO 303-12- a and b) any individual, prospective appointee, or appointing official may submit a written request to the Ethics Board, for an advisory opinion regarding "...the propriety of any matter to which the prospective appointee is or may become a party" – an advisory opinion was never and has yet to be requested of the Board. The advisory opinion(s) requested by DCA Ohiku, was requested of an outside individual.

Recommendations

Even when viewed in the light most favorable to Mr. Ohiku, the evidence gathered by the OIG reveals that he defrauded the City of Milwaukee and taxpayers out of \$5,766.64 by submitting fraudulent claims for 88 hours of work he did not perform. Finding no evidence to explain or excuse the questionable hours, the OIG concluded that there is sufficient evidence to show that Mr. Ohiku violated Wis. Stat. §520 and §946.12; MCO 303-5 and MCO 350-40; SCR 20:4.1, 20:8.2(a) and 20:8.4; the City Attorney Employee Handbook; and DER policies on Human Resources Workforce Management System, Wage Payment Compliance Policy for General City Employees.

Equally, finding no evidence to explain or uphold the neglect of public duty and his abuse of power, the OIG determined there is sufficient evidence that City Attorney Tearman Spencer



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violated Wis. Stat. §520 and §946.12; MCO 303-5 and MCO 350-40; SCR 20:4.1, 20:8.2(a) and 20:8.4; the City Attorney Employee Handbook; and DER policies on Human Resources Workforce Management System, Wage Payment Compliance Policy for General City Employees.

The OIG also concluded that the CAO, city-wide internal controls in place and the City's legislative rules offering guidance to mitigate the risk of time and attendance abuse, as well as to eliminate, diminish or minimize potential, apparent or actual conflicts of interest, are insufficient to deter misconduct and are inadequate to prevent comparable abuses by other city officials and employees – both current and future.

In light of the findings contained in this report, the OIG makes the following recommendations:

1. The Office of Inspector General will refer Deputy City Attorney Odalo Ohiku to the Milwaukee County District Attorney for violations of Wis. Stat. sec. 946.12 concerning the acts of misconduct whether by act of commission or omission, in his capacity as a public official:
 - a. Certified approximately 88 hours of work in the City of Milwaukee, electronic time entry system, in which he received compensation from the City of \$5,766.64; and during which time he was conducting the legal work for his private practice of law, Ohiku Law Office.
 - b. Neglected his duty to timely file a complete Statement of Economic Interests wherein financial relationships including personal income, investments, real estate and creditors that could materially affect his official duties and responsibilities, must be disclosed. DCA Ohiku omitted disclosure of his financial relationship with his private practice of law (Ohiku Law Firm). This is an act of misconduct in public office, and violation of Wis. Stat. sec 946.13.3.



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DCA Ohiku filed incomplete financial disclosure for economic interest years 2020, 2021 and 2022, by not disclosing his economic interest for his private law firm.

2. The Office of Inspector General will refer City Attorney Tearman Spencer to the Milwaukee County District Attorney for violations of s. 946.12, Wis. Stats., concerning the subsequent acts of misconduct whether by act of commission or omission, in his capacity as a public official:
 - a. Through an act of commission, he certified hours of work for DCA Ohiku for a time during which compensation was paid for legal work other than that of the city.
 - b. Lying by commission, by engaging in a persistent pattern of knowingly, intentionally and wrongfully jeopardizing the city's public reputation, trust and image - by way of misconduct through his false statements during public committee meetings, statements during local media press conferences, and responses he provided to the OIG during their investigation.
 - c. Exercised discretionary power in a manner inconsistent with the duties, powers, and trusts that are placed in public servants; neglected to serve in the capacity as City Attorney ethically and with integrity, loyalty, impartiality, and objectivity; he disregarded his obligation to put the interests of the public and the public service ahead of his own personal interests; and failed to maintain and enhance the public's trust and confidence in the public service. He further demonstrated a lack of consideration for his commitment as a public servant to employ fair and transparent governance – to uphold the highest professional and ethical standards.



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- d. Lack of evidence to justify negligence of public duty and his abuse of power, and through acts of omission failed to perform his legal obligation as the City Attorney to take necessary precautions to confirm that DCA Ohiku suspended his private practice of law while in public office.
 - e. Impaired public trust by disregarding his responsibility to fulfill his obligation to uphold the rule of law, keep our city safe, and protect the rights of its citizens.
 - f. Exercised discretionary power in a manner inconsistent with city ordinance as well as established citywide and departmental policies and practices with the intent to obtain a dishonest advantage – allowing DCA Ohiku to continue to hold his appointment as deputy city attorney.
3. The Office of Inspector General recommends the Common Council should consider removal from office for Deputy City Attorney Odalo Ohiku for neglect of duty, misconduct, and malfeasance in accordance with the Laws of Wisconsin (*S. 45, Ch. 144, L. 1875*) and consistent with either s.17.12, Wis. Stats., (Removal and Suspension of City Officers) or MCO 5-12 (False Certification of Work), whichever is deemed appropriate.

Section. 17.12, Wis. Stats.

General and Special Charter. Officers of cities, except public officials, as defined in s. 62.51 (1) (b), operating under the general law or under special charter including school officers, may be removed as follows:

- a. An officer appointed by the common council, by the common council, at pleasure.
- b. An officer appointed by an officer by an officer or body other than the common council, whether or not the appointment was confirmed by the common council, in any of the following manners:



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- i. By the appointing officer or body at pleasure.
 - ii. By common council for cause.
- c. **Votes Required (17.12.1.d)** Removals by the common council may be made only by an affirmative vote of three-fourths of all the members thereof, and by any other body consisting of 3 or more members, by an affirmative vote of two-thirds of all the members thereof.

MCO 5-12 (False Certification of Work)

- d. Remove DCA Ohiku from office;
 - e. Declare his office vacant;
 - f. Prohibit DCA Ohiku be elected, appointed or employed by, or for the City of Milwaukee to an office, place or position.
4. The Office of Inspector General recommends the Common Council should consider removing City Attorney Tearman Spencer from office for neglect of duty, misconduct, and malfeasance by affirmative vote of three-fourths of all members of the Council in accordance with Wis. Stat. sec. 17.12(1)(a); in accordance with the Laws of Wisconsin (S. 45, Ch. 144, L. 1875); and consistent with MCO 5-12 (False Certification of Work), whichever is deemed the more stricter or appropriate:

Section 17.12, Wis. Stats.

General and Special Charter. Officers of cities, except public officials, as defined in s. 62.51 (1) (b), operating under the general law or under special charter including school officers, may be removed as follows:

- a. Elective officers by recall as provided in s. 9.10, or by the common council, for cause.



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- b. **Votes Required (17.12.1.d)** Removals by the common council may be made only by an affirmative vote of three-fourths of all the members thereof, and by any other body consisting of 3 or more members, by an affirmative vote of two-thirds of all the members thereof.

MCO 5-12 (False Certification of Work)

- a. Remove CA Spencer from office;
 - b. Declare his office vacant;
 - c. Prohibit CA Spencer be elected, appointed or employed by, or for the City of Milwaukee to an office, place or position (Wis. Stat. sec. 17.16(10) – (Removal; definition; procedures; disqualification).
-
5. The Office of the Inspector General will refer City Attorney Tearman Spencer to the Office of Lawyer Regulation for violating the Rules of Professional Conduct SCR 20:4.1 (misrepresentation, dishonesty, and failure to disclose material fact); 20:8.4 (misconduct involving dishonesty, deceit, misrepresentation and the attorney's oath).
 6. The Office of Inspector General will refer Deputy City Attorney Odalo Ohiku to the Office of lawyer Regulation for violating the Rules of Professional Conduct through misuse of company time - by conducting legal work for private practice of law and receiving compensation from the City of Milwaukee for those hours of work.
 7. The Ethics Board should initiate a Notice of Delinquent Filing Letter to be mailed first class, postage prepaid, and addressed to the last known address for DCA Ohiku. The letter should include the following filing requirements:
 - a. Assessment of Late Fees as provided in par. a. (303-11-2).



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- b. Notification that the Matter of the Delinquent Filing may be referred to the City Attorney for prosecution.
8. The Chair of the Ethics Board or designated staff member should cause an affidavit be prepared and delivered to the City Attorney.
 - a. The affidavit should state DCA Ohiku is in violation of the financial disclosure reporting requirements for each year DCA Ohiku filed an incomplete Statement of Economic Interest by not disclosing economic interest in the Ohiku Law Firm. The affidavit should:
 - i. Include DCA Ohiku by name and position;
 - ii. Declare that the Notice of Delinquent Filing Letter was mailed to DCA Ohiku (in accordance with s. 303-2-c); and
 - iii. Identify the date in which the Notice of Delinquent Filing Letter was sent and the address to where it was mailed.
9. Upon receipt of the affidavit, the City Attorney should consider filing charges with the municipal court for failure to file financial disclosure for economic interest years 2020, 2021 and 2022.
10. The City Attorney and Common Council should consider disciplinary action up to and including termination of appointment, against DCA Ohiku for violating the city's code of ethics, standards of conduct by not complying with established guidelines as required by CAO policy for outside employment and citywide time reporting and entry, as well as, city ordinance (MCO 303 and MCO Chapter 5).
11. The Common Council should revise the Code of Ethics (MCO s. 303-5-11) to ensure conflicts of interest are prevented, recognized and promptly addressed. In addition, the



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standards of conduct should provide more specific information, especially since not all City positions require an employee to file financial a statement of economic interest.

The U.S. Office of Government Ethics (OGE) provides resources on ethics to assist government officials responsible for codes of ethics; and has developed a series of guides on identifying potential conflicts of interest that can arise from various types of employment interests, investment interests and liabilities.⁴¹

The Common Council should review and use the OGE's resources for ethics officials as a guide when revising, amending or modifying the standard for conflicts of interest (as applicable with city ordinance, state and all other applicable regulation).

Conflicts of Interest Considerations include (OGE):

- ♣ Law firm or consulting employment
- ♣ Assets (from non-employment-related stocks, stock derivatives, and bonds, as well as other types of assets that are not investment vehicles.)
 - Legal entities that hold assets
 - Private investment funds and employment with an investment Fund
- ♣ Common employment interest
- ♣ Business or farm ownership
- ♣ Corporate employment
- ♣ Employment with institutions of higher education and related research, speaking and writing activities.

⁴¹ U.S. Office of Government Ethics (OGE). Resources for Ethics Officials. Analyzing Potential Conflicts of Interest. <https://www.oge.gov>.



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12. The Common Council should revise MCO s. 303-5-9 to prohibit the deputy city attorney from engaging in the private practice of law for compensation during the period in which he or she holds office.

13. The Common Council should revise the code of ethics ordinance (MCO 303-5-2-a and b) and citywide policies concerning a request for an advisory opinion as a matter of course, to be consistent with other government entities.

Specifically, revise, modify or amend the ordinance

- a. To clarify that an advisory opinion should be requested of the Ethics Board (i.e. Wis. Stat. sec 19.46.2, sec. 19.59).
- b. To state that when it is not possible for the Board to respond to an advisory opinion request, and under s. 19.59 (6), Wis. Stats., the Board may refer the requesting individual to Wisconsin Election Commission.

14. After the provisions of the Code of Ethics relating to advisory opinions have been revised the Ethics Board should update its website to explaining the process for an advisory opinion.

Specifically explaining,

- a. Requesting advice from the Ethics Board
- b. Confidentiality
- c. How to request an advisory opinion
- d. Advisory opinion request process
- e. Requesting opinion from the Wisconsin Election Commission (when referred by the Ethics Board)
- f. Informal advisory opinions (if applicable)



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- g. Evidence of intent to comply with MCO 303 (if the materials facts are as stated in the opinion request)
15. The Ethics Board should revise its rules and procedures, Rule III, Article 1 to include an explanation of the circumstances for which the Board may issue a complaint on its own motion or amend any complaint before it on its own motion.
- a. The Board should include examples of the types of instances in which the Board would issue a verified complaint.
 - b. Include a definition of a verified complaint.
 - c. Provide an explanation and examples of where of how the Board becomes aware of a verified complaint (i.e. media outlets, anonymous, etc.).

Additionally, the Ethics Board should review its rules and procedures on as processes change, or at least on an annually. Even if there are no changes to the rules and procedures, the revision date or number should be included on the procedure.

16. The Ethics Board should collaborate with City Records Management to ensure its record retention schedules are kept current; as well as, to ensure that their records are maintained, preserved, and destroyed according to MCO 320-31-3-f and s. 19.21, Wis. Stats.

Concluding Investigation Disclaimer

During an investigation, employees are obligated to provide the best, most accurate, and complete information. To prevent even the appearance that they are withholding pertinent information, employees should avoid narrowly construing interview questions or record requests, and promptly provide requested records. Even when only a general question or issue is posed,



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the employee should still respond with specific information they recognize as being potentially relevant.

Management has a greater responsibility to avoid any action that could create a chilling effect on employee cooperation with an OIG investigation. In order to protect witness confidentiality, preserve the integrity of OIG's investigations, and other reasons (such as fairness and privacy considerations), OIG commonly requests that employees not discuss OIG interviews with their coworkers, subordinates, or supervisors. Thus, an employee's obligation to cooperate with OIG's investigation extends beyond the time during which the employee is interviewed.

The OIG declares that neither CA Spencer nor DCA Ohiku imparted their full cooperation during the course of the investigation. The OIG opined that they were withholding pertinent information by barely or not replying to interview questions or record requests, and negligently provide requested records.

The investigative report will be provided to appropriate individuals, including management, accompanied by recommendations as warranted, so that they may consider any appropriate corrective actions based on the results of OIG's investigation.