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CATHERINE LEAHY SCOTT
INSPECTOR GENERAL

May 30, 2018

Denise Miranda, Esq.
Executive Director
Justice Center for the Protection of
People with Special Needs
161 Delaware Avenue
Delmar, New York 12054

Re: NYS IG 3777-320-2017

Dear Executive Director Miranda:

On October 26, 2017, Patricia Gunning, former special prosecutor/inspector general of the New York State Justice Center for the Protection of People with Special Needs (Justice Center) notified Melissa DeRosa, Secretary to the Governor, of a New York Post article entitled "Top Cuomo official claims former boss sexually harassed employees." The article outlined Gunning's complaints of being subjected to workplace violence by the then-executive deputy director of the agency, James (Jay) Kiyonaga. The article also outlined Gunning's complaint that the Justice Center failed to properly investigate the matter and retaliated against her, forcing her to resign. Gunning stated that she notified DeRosa of her issues after hearing DeRosa speak publicly about her experiences with sexual harassment as part of the #MeToo Movement. DeRosa immediately referred Gunning's complaint to my office and I immediately commenced an investigation.

My investigation, which involved numerous witnesses who testified under oath, revealed Kiyonaga's history of improper and sexually inappropriate acts towards and comments to fellow staff members and subordinates at the Justice Center. The specific acts and pattern of conduct described to my office under oath— ranging from inappropriate sexual comments and comments about employee's sexual preferences to an unwanted sexual physical contact with an employee—are reprehensible and indefensible.

My investigation learned that the Justice Center's investigation into Gunning's allegations of workplace violence was conducted by the then-general counsel Robin Forshaw. Forshaw determined that the incident did not reach the threshold for workplace violence. During Forshaw's interview of Gunning, Gunning stated that Kiyonaga was also openly engaged in an inappropriate relationship with a female staff member which was creating a distracting and uncomfortable environment in the office. At the conclusion of her investigation, Forshaw verbally advised Kiyonaga to be mindful of the manner in which he speaks to people and that he was no longer permitted to meet with Gunning alone for several months. Kiyonaga was also advised to be careful of his staff interactions to ensure there was no perception that an inappropriate relationship exists with the female staff member.

Subsequently, an anonymous complaint was received by the agency's affirmative action officer alleging a relationship between Kiyonaga and the same female Justice Center employee. This was investigated as a quid pro quo arrangement and was unsubstantiated by the affirmative action officer. Forshaw investigated this allegation as a sexual harassment claim against Kiyonaga of that same staff member and ultimately found that allegation to be without merit.

During my investigation, a number of Justice Center employees testified to my office of other inappropriate acts by Kiyonaga in the workplace and at off-site social gatherings with staff members, including sexual comments to and about female employees and unwanted advances towards female staff members.

Witness 1 testified of unwanted behavior that occurred during a March 2015 after-hours social gathering with staff members at a restaurant, when Kiyonaga attempted sexual physical contact with the witness.¹ Additionally, Witness 1 testified that Kiyonaga spoke several times at after-work staff gatherings "about dreams that he had that were of a sexual nature involving staff members." Witness 1 further testified that Kiyonaga had once claimed he had "saved" Witness 1 from a purported internal investigation into employee allegations that Witness 1 "was telling everybody [in the office] how I had fucked three guys over the weekend." Witness 1 stated this was patently false.

Witness 2, who was also present at the above-referenced social gathering at a restaurant, testified that Kiyonaga had "been drinking a fair amount through the night" and "tried to get me to say like what my type is and who I find attractive at the office." At subsequent events, Witness 2 testified, Kiyonaga was "fixated" on her sexual life and

¹ According to Witness 1's testimony, Kiyonaga's sexual physical contact was not observed by other staff members at the event, but Witness 1 contemporaneously informed a colleague, Witness 2, who was present at the restaurant on the night of Kiyonaga's actions. Witness 2 confirmed this fact in testimony to my office. Additionally, Witness 1 informed Witness 3 of Kiyonaga's sexual physical contact the following day. Witness 3 confirmed this fact in testimony to my office.

continued with his “frat house” behavior, making comments about who she should pursue, like, “Hey, go get that.” In all, Witness 2 testified, she felt “very cornered” by Kiyonaga at these events.

Witness 3 described Kiyonaga at social gatherings as “a kind of a perve” who was “sexually preoccupied.” Witness 3 testified that during an after-work event in the summer of 2015, while discussing a new agency policy barring employees from wearing jeans to work on Fridays, Witness 3 asked Kiyonaga if the blue pants she was wearing resembled jeans. In response, Kiyonaga said he did not know and “reached over and kind of caressed my leg to feel the fabric.” Kiyonaga’s actions, which she said made her feel uncomfortable, were reportedly witnessed by at least six other staff members. At another after-hour office social gathering, Witness 3 testified, Kiyonaga asked her if she knew the definition of the word “Blumpkin.” According to Witness 3, when she responded she did not, Kiyonaga stated, “It’s when the guy sits on a toilet, gets oral sex and passes feces at the same time.” Witness 3 noted that, given Kiyonaga’s position at the Justice Center, she “certainly wouldn’t feel comfortable kind of calling him out and saying you are really being inappropriate”

Witness 4, who has since retired from the Justice Center, described Kiyonaga as “sort of flirty” and noted he made “sexual . . . innuendos to people at times.” Of his actions, Witness 4 testified, “[T]here were times that I kind of cringed at comments I heard.” Witness 4 also recalled an occasion at an after-work event where Kiyonaga spoke of a dream or “more like a fantasy” that he had which involved a female Justice Center employee.

Witness 5 testified that Kiyonaga “made inappropriate comments to me that made me feel . . . in some ways uncomfortable. . . He would make comments about the outfit that I’m wearing, like how I look in it. He would make, specifically . . . comments regarding other women too. . . Something to the degree of, like, ‘Nice boobs, nice ass.’” Additionally, at another event in 2015, Witness 5 alleged that Kiyonaga “made some comment about, you know . . . going out to his car with me.” According to Witness 5, Kiyonaga suggested that he had an open relationship and he implied “that we, like, sleep with each other, or something of that nature.”

Gunning too observed inappropriate sexual comments and interactions with staff members by Kiyonaga, although she did not report this conduct to Forshaw or others prior to testifying under oath to my office. According to Gunning, Kiyonaga was “inappropriate on a regular basis” and “would always turn the conversation to something sexual.” Gunning testified that on one occasion in his office, Kiyonaga “pointed out how I had a real knack for picking hot girls for my team” and he had “heard that one person on my staff was bi-sexual and he wanted to know if I knew that and wasn’t it hot.”

Further, my investigation also learned that in 2012, allegations were made by a New York State Division of Budget female employee who claimed she was discriminated and retaliated against on account of her disabilities. This employee claimed she had been mocked by Kiyonaga for her physical disabilities. Further, my investigation revealed that while employed by the New York State Division of Criminal Justice Services in 2012, Kiyonaga received a counseling memorandum stating the following concerns:

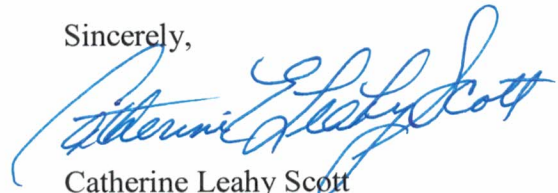
Several male staff members engaging in conversations in the Finance Office, several of which you participated in, using language that could be interpreted as sexual in nature and which, in any event, made female employees feel uncomfortable.

A perception that one of these male employees may be receiving preferential treatment with respect to work rules and an available promotional opportunity.

Kiyonaga agreed that he would not participate in such conversations and would ensure that other staff would not engage in such conversations. Further, Kiyonaga was provided the agency's Sexual Harassment Prevention Policy.

Based upon the foregoing, I recommend you take appropriate action against Kiyonaga. Please advise me of any action taken by your agency in response to this referral and recommendation within 45 days of the date of this letter. If you require further information, please contact Executive Deputy Inspector General Spencer Freedman at 518.474.1010.

Sincerely,

A handwritten signature in blue ink, appearing to read "Catherine Leahy Scott", written in a cursive style.

Catherine Leahy Scott
Inspector General

Cc: Michael Donegan, Esq.
General Counsel
NYS Justice Center

Kerry Delaney, Esq.
Acting Commissioner
NYS OPWDD

Roger Bearden, Esq.
Deputy Commissioner and General Counsel
NYS OPWDD