

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: ROBERT SCHMALHOLZ) OEIG Case # 10-01026

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Commission to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Executive Ethics Commission (“Commission”) received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Robert Schmalholz at his last known address.

These recipients were given fifteen days to offer suggestions for redaction or provide a response to be made public with the report. The Commission, having reviewed all suggestions received, makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. Allegations

The Office of Executive Inspector General (OEIG) received a complaint alleging that Illinois Department of Financial and Professional Regulation (IDFPR) Medical Investigator and Controlled Substance Inspector Robert Schmalholz was not performing his job responsibilities, [unfounded allegations redacted]. The complaint also alleged that Mr. Schmalholz had been arrested and that his firearms had been confiscated. The OEIG concludes that these allegations are **FOUNDED** in part and **UNFOUNDED** in part.

II. Background

A. IDFPR's Division of Professional Regulation

IDFPR's Division of Professional Regulation licenses and regulates individuals in 52 professions, including the medical profession. IDFPR Medical Investigators conduct investigations of possible violations of the Illinois Medical Practice Act. IDFPR Controlled Substance Inspectors conduct inspections of certain facilities and investigate potential violations of the Controlled Substance Act. Both Medical Investigators and Controlled Substance Inspectors are required to conduct interviews, apply and interpret agency policy and procedures, and travel as part of their investigative job duties and responsibilities. Controlled Substance Inspectors are also required to be licensed to carry a firearm, are required to carry a firearm while on duty, and are required to participate in yearly firearm qualification. When participating in yearly firearm qualifications, all IDFPR employees are required to complete a "Firearm Qualification Score Sheet," which in turn requires IDFPR employees to identify the firearm they use to qualify, as well as their Firearm Owner's Identification (FOID) card number and expiration date.

B. Robert Schmalholz's Positions with IDFPR

Mr. Schmalholz has been a Medical Investigator and Controlled Substance Inspector since 1989. Mr. Schmalholz has also served as the Range Master for Controlled Substance Inspectors during the last ten to twelve years. As Range Master, Mr. Schmalholz was responsible for recording firearm scores and qualifications for other IDFPR Controlled Substance Inspectors and personnel.

On May 1, 2001, Mr. Schmalholz was issued a FOID card. All Illinois residents must possess a valid FOID card in order to possess or purchase a firearm. The FOID card expired May 1, 2011.

In 2009 and 2010, Mr. Schmalholz participated in his yearly firearm qualification test and filled out the requisite IDFPR form. In his 2009 Firearm Qualification Score Sheet, Mr. Schmalholz identified the firearm he used to qualify, his FOID card number and his May 1, 2011 FOID card expiration date. In 2010, Mr. Schmalholz qualified with two firearms and completed two Firearm Qualification Score Sheets. In these forms, Mr. Schmalholz again identified the firearm he used to qualify, his FOID card number and his May 1, 2011 FOID card expiration date.

C. IDFPR Policies, Enforcement Guidelines and Related Laws

1. IDFPR Enforcement Guidelines Procedure for Firearms

In light of the fact that IDFPR administers and enforces multiple legislative acts regulating the conduct of numerous professionals, it has issued a series of "Enforcement Guidelines." The Enforcement Guidelines govern and prescribe the manner in which IDFPR

investigators, including Controlled Substance Inspectors, are to perform investigations and associated work.

Enforcement Guideline CSI-1, entitled “Authorized Firearms,” requires Controlled Substance Inspectors to carry a firearm “at all times when on duty, except when such carrying in the judgment of the Inspector and the unit chief would endanger the conduct of a covert operation or investigation.”¹

2. *The Firearm Owners Identification Card Act*

In 1968, the Illinois legislature passed the Firearm Owners Identification Card Act (the Act).² The Act mandated the creation of the FOID as a way to identify those persons eligible to possess and acquire firearms and firearm ammunition as part of a public safety initiative in the State of Illinois. Unless specifically exempted by statute, any Illinois resident who acquires or possesses a firearm or firearm ammunition within the State must have in his/her possession a valid FOID card issued in his or her name.

Under the Act, the possession of a firearm with an expired FOID card (when the person is not otherwise disqualified from renewing his/her FOID card) is a Class A misdemeanor, punishable by up to one year in jail and a fine of \$2,500.³

3. *Interview of [employee 1, identifying information redacted]*

On June 17, 2011, an OEIG investigator interviewed [employee 1, identifying information redacted]. [Employee 1] said that IDFPR Enforcement Guidelines required Mr. Schmalholz to be licensed to carry a firearm while on duty. [Employee 1] also said that the ability to carry a firearm was required of all Controlled Substance Inspectors because of their job duties and safety concerns. [Employee 1] said that if a Controlled Substance Inspector lost his/her ability to carry a firearm, it would jeopardize the Controlled Substance Inspector’s safety and those individuals around him or her.

[Employee 1] also said that Mr. Schmalholz was required to be licensed to carry firearms while serving as the Range Master for Controlled Substance Inspectors. [Employee 1] said that if Mr. Schmalholz could not carry a firearm, he would not be able to properly perform the duties associated with a Controlled Substance Inspector or a Range Master.

4. *IDFPR Policy on Reporting Misconduct and Lawsuits*

The IDFPR Policy and Procedure Manual sets forth numerous personnel policies that all IDFPR employees are required to follow. One such policy is titled the “Reporting Misconduct and Lawsuits” and states that “[a]ny allegation or information indicating an IDFPR employee . . . has violated State or federal law must be promptly reported to your immediate supervisor,

¹ Enforcement Guideline CSI-1, “Authorized Firearms,” pp. 130-31.

² 430 ILCS 65, *et seq.*

³ 430 ILCS 65/14.

Division Director, or the Secretary.”⁴ If the allegation involves a criminal matter, “[p]rompt and direct reporting to the Secretary is required of all employees”⁵

5. *IDFPR Policy on Attendance*

The “Work Hours” section of IDFPR’s Policy and Procedure Manual states, “[a]n employee is expected to arrive at work at the designated start time and to leave the facility at the designated quitting time. An employee is also expected to remain at the work site throughout the shift, except during authorized rest periods or lunch breaks.”⁶

Prior to January 24, 2011, IDFPR had an unofficial practice of allowing investigators, including Medical Investigators and Controlled Substance Inspectors, such as Mr. Schmalholz, to work from home as long as they spent one “duty” day a week in their respective home office.

On January 24, 2011, [redacted], distributed an e-mail terminating IDFPR’s unofficial practice of allowing investigators to work from home. In her e-mail, [redacted] stated that all investigators were required to report and work at their respective headquarters, unless the investigator was out of the office on an approved assignment.

III. Investigation

In order to determine whether there was validity to the allegations that Mr. Schmalholz had been arrested by local law enforcement and had his firearms confiscated, the OEIG interviewed numerous individuals and reviewed various documents. The investigation revealed that Mr. Schmalholz had interaction with the Carol Stream Police Department and thus the OEIG sought information from that department.

A. Interview of Carol Stream Deputy Chief of Police [redacted]

On February 23, 2011, investigators interviewed Carol Stream Deputy Chief of Police [redacted]. [Redacted] confirmed that Mr. Schmalholz had been arrested by police officers from the Carol Stream Police Department, but said that because the arrest was expunged from Mr. Schmalholz’s record, he was unable to discuss it.

B. First Interview of IDFPR Medical Investigator and Controlled Substance Inspector Robert Schmalholz

On January 26, 2011, investigators interviewed Robert Schmalholz. Mr. Schmalholz said that he typically works from home Monday through Thursday and goes into the office on Fridays for his “duty” day. [This sentence contains a description of allegations that the OEIG determined to be unfounded and the Commission has exercised its discretion to redact this sentence.]

⁴ IDFPR Policy and Procedure Manual, “Reporting Misconduct and Lawsuits” (effective July 21, 2009).

⁵ *Id.*

⁶ IDFPR Policy and Procedure Manual, “Work Hours” (effective July 21, 2009).

During his interview, Mr. Schmalholz said he had been arrested by the Carol Stream Police Department in either 2009 or 2010 for [redacted]. During his 2009/2010 arrest, the police confiscated his two IDFPR-registered firearms. Mr. Schmalholz said that he was subsequently charged with a misdemeanor, but the charges were later dismissed and expunged from his record. Mr. Schmalholz said that his firearms were also subsequently returned to him.

Mr. Schmalholz said he did not inform anyone at IDFPR of his 2009/2010 arrest, because he believed IDFPR policy only required notification of an arrest if it resulted in felony charges. Mr. Schmalholz also said he continued to work as a Controlled Substance Inspector, even during the time he was not in possession of any of his firearms. According to Mr. Schmalholz, he was only obligated to carry a firearm at "his discretion." Mr. Schmalholz confirmed that the two firearms seized by the Carol Stream Police Department were his IDFPR-duty firearms.

Even though he was unsure as to the exact year in which he was arrested, Mr. Schmalholz told investigators that he continued to serve as the Range Master during the time period in which he did not have possession of his firearms. Mr. Schmalholz said that IDFPR employees who carry firearms are required to qualify annually and that the qualification dates are typically in June and August of each year. Mr. Schmalholz told investigators that he oversaw the qualifications in June and August and that he personally qualified in August after police returned his firearms. Mr. Schmalholz said that he did not qualify in June because his firearms had not yet been returned.

C. Second Interview of IDFPR Medical Investigator and Controlled Substance Inspector Robert Schmalholz

1. Documents Presented to Mr. Schmalholz

On August 12, 2011, investigators again interviewed Robert Schmalholz. Mr. Schmalholz was shown the following documents:

- The Illinois Department of Central Management Services (CMS) Position Description for his job with IDFPR;
- The IDFPR Policy and Procedure Manual; and,
- The IDFPR Enforcement Guidelines.

Mr. Schmalholz reviewed each of the three documents. Mr. Schmalholz confirmed that the CMS job description was his job description and also said he was familiar with the IDFPR Policy and Procedure Manual as well as the IDFPR Enforcement Guidelines, and indicated that he fully complied with them. In addition, Mr. Schmalholz confirmed that his job required him to interpret and enforce statutory regulations.

2. Mr. Schmalholz's Arrest by the Carol Stream Police Department

Mr. Schmalholz was again asked if he recalled ever being arrested and in response stated that he believed he had been arrested in the summer of 2009. Mr. Schmalholz recalled being arrested, taken into police custody, and released on bond the next day. After his release, he

attended an initial court date where he was informed [redacted]. Sometime thereafter, Mr. Schmalholz said the police came to his house and confiscated his firearms.

Mr. Schmalholz confirmed he did not report his arrest to IDFPR and said that he did not believe he had to report the arrest because it was just an “allegation” and not an arrest. Mr. Schmalholz said that he believed that because the matter had not yet gone to court nor had it been adjudicated, he did not think he had to report the matter. When shown the provision in the IDFPR Policy Manual that requires an IDFPR employee to report any allegation of a violation of State or federal law,⁷ Mr. Schmalholz agreed that the policy was clear and that this policy required him to report his arrest.

Mr. Schmalholz then said he understood why IDFPR had the reporting policy and was asked to explain why this policy was in place. In response, Mr. Schmalholz stated the policy was in place because:

- IDFPR may want to “monitor the situation.”
- IDFPR may want to conduct its “own investigation.”
- IDFPR “would want to know” about the arrest before it became public.
- the arrest would make “the Department look bad.”

Mr. Schmalholz then said that he did not report his arrest because he considered it a private incident between him [redacted] and because the arrest did not impact his IDFPR work.

3. *The Confiscation of Mr. Schmalholz’s Firearms by the Carol Stream Police Department*

Mr. Schmalholz said that, during the time his firearms were confiscated, he decided to work on IDFPR matters where he was not required to carry a firearm. Specifically, Mr. Schmalholz said that he went into the office to work and did not work on any drug-related or criminal matters where he would be “required” to carry his firearm. Mr. Schmalholz said that there was “an unofficial policy” that firearms were not to be brought into the office.

Investigators then showed Mr. Schmalholz Enforcement Guideline CSI-1, titled “Authorized Firearms,” which requires Controlled Substance Inspectors to carry a firearm at all times when on duty, “except when such carrying in the judgment of the Inspector and the unit chief would endanger the conduct of a covert operation or investigation.”⁸ Mr. Schmalholz was asked if he obtained the approval of the unit chief not to carry his firearm. In response, he stated he did “not remember” whether he secured approval from the unit chief to not carry his firearm. When asked whether he remembered informing anyone at IDFPR about the confiscation of his firearms, Mr. Schmalholz said he “did not.” Mr. Schmalholz said that he alone made the decision to not carry his firearm and to work on specific IDFPR cases that required him to stay in the office.

⁷ IDFPR Policy and Procedure Manual, “Reporting Misconduct and Lawsuits” (effective July 21, 2009).

⁸ Enforcement Guideline CSI-1, “Authorized Firearms,” pp. 130-31.

4. *Mr. Schmalholz Carries a Firearm with an Expired FOID Card*

Mr. Schmalholz told investigators that he began carrying his firearms again after the police returned his firearms. Mr. Schmalholz said that the last time he carried his firearm for work was sometime in July 2011. Mr. Schmalholz said that he spent approximately a week out of the office in July 2011 working on cases where he was required to carry a firearm.

Mr. Schmalholz said that he was familiar with the requirement to have a valid FOID card in order to carry a firearm. Investigators then asked Mr. Schmalholz why he carried a firearm in July 2011 even though he had known since 2009 (per his 2009 and 2010 IDFPR Firearm Qualification Score Sheet) that his FOID card would expire on May 1, 2011. In response, Mr. Schmalholz said he had not had a chance to renew his FOID card but that he knew it was against the law for him to carry a firearm with an expired FOID card but nevertheless carried his firearm anyway. Mr. Schmalholz said that he expected to renew his FOID card.⁹

D. Receipt of IDFPR Documents

On January 31, 2011, the OEIG confirmed that Mr. Schmalholz had failed to comply with the “Reporting Misconduct and Lawsuits” section of the IDFPR Policy and Procedure Manual. Specifically, Mr. Schmalholz never informed his IDFPR supervisors about his 2009 arrest or for that matter the confiscation of his firearms.

IV. Analysis

A. Mr. Schmalholz Violated State Law by Possessing a Firearm with an Expired FOID Card

The OEIG concludes that Mr. Schmalholz’s conduct in possessing and carrying a firearm with an expired FOID card violated State law and in particular the Firearm Owners Identification Card Act.¹⁰ By his own admission, Mr. Schmalholz knew that Illinois law required him to have a valid FOID card in order to carry a firearm. Mr. Schmalholz, however, decided to violate the law and carry a firearm illegally, while working at IDFPR and performing State-related job duties. Mr. Schmalholz clearly violated State law after May 1, 2011 when he continued to possess a firearm after his FOID card had expired.

Accordingly, the OEIG finds as **FOUNDED** that Mr. Schmalholz violated the Firearm Owners Identification Card Act, thereby committing a Class A misdemeanor by possessing a firearm with an expired FOID card.

⁹ At the conclusion of his interview, investigators informed Mr. Schmalholz that they were obligated to inform the Illinois State Police (ISP) that he continued to possess a firearm without a valid FOID card and, in fact, the OEIG informed ISP the same day.

¹⁰ 430 ILCS 65, *et seq.*

The OEIG further finds as **FOUNDED** that Mr. Schmalholz violated IDFPR's Policy and Procedure Manual by carrying a firearm without a valid FOID card.¹¹

B. Mr. Schmalholz Violated IDFPR Policy by Failing to Report his Arrest

Mr. Schmalholz admitted that he never told anyone at IDFPR about his 2009 arrest by the Carol Stream Police Department. Mr. Schmalholz's failure to report his arrest to his immediate supervisor and the Secretary violated the "Reporting Misconduct and Lawsuits" section of the IDFPR Policy and Procedure Manual, which requires employees to report even allegations of a criminal matter to the Secretary.¹²

As shown in his August 12, 2011 interview, Mr. Schmalholz understood and agreed that this provision in the IDFPR Policy Manual required him to report his arrest. Mr. Schmalholz's understanding was further demonstrated by his ability to list numerous reasons why IDFPR had the policy in place. It is clear that Mr. Schmalholz failed to report this arrest, not because he did not understand this provision or because he thought it was a private matter, but because he knew that reporting the arrest would have had a detrimental effect on his employment at IDFPR.

Moreover, Mr. Schmalholz's explanation that he thought he did not have to report a mere allegation and that he only had to report his arrest if it resulted in a conviction or if it was a felony, rings hollow. Mr. Schmalholz is a seasoned investigator whose job includes interpreting and enforcing statutory regulations. The IDFPR policy is very clear in stating that even allegations of criminal conduct must be reported, and, in his own words during the August 12, 2011 interview, Mr. Schmalholz himself stated that his arrest qualified as an "allegation." Accordingly, there is little doubt that Mr. Schmalholz knew exactly what he was required to do, but intentionally failed to report his arrest. The IDFPR Policy and Procedure Manual that required him to self-report allegations of misconduct was clear and there is no doubt it required him to report his arrest.

Accordingly, the allegation that Mr. Schmalholz violated IDFPR's Policy and Procedure Manual by failing to report his arrest is **FOUNDED**.

C. Mr. Schmalholz Violated IDFPR Policy by Continuing to Work after his Firearms were Confiscated

Because Mr. Schmalholz's IDFPR-registered firearms were confiscated, he violated IDFPR Policy and Procedure Manual's provision on Work Rules, which prohibit an employee from "[i]ncompetence or inefficiency in the performance of an assigned duty."¹³ With the loss of his firearms, Mr. Schmalholz was unable to properly perform his assigned duties as Range Master and a Controlled Substance Inspector, because he was required to carry a firearm.

¹¹ IDFPR Policy and Procedure Manual, "Work Rules" (effective July 21, 2009) (prohibiting employees from engaging in "[c]onduct unbecoming a Department employee, including conduct that may bring IDFPR into disrepute or reflects discredit upon the employee as a representative of IDFPR . . .").

¹² IDFPR Policy and Procedure Manual, "Reporting Misconduct and Lawsuits" (effective July 21, 2009).

¹³ *Id.* at "Work Rules."

Although the Enforcement Guidelines and Policy and Procedure Manual do not explicitly state that the Range Master carry a firearm, [employee 1] confirmed that a requirement for the position of Range Master is that the candidate lawfully carry firearms. Mr. Schmalholz's arrest and the loss of his firearms disqualified him from holding this position.

In addition, the Enforcement Guidelines explicitly require Controlled Substance Inspectors to carry a firearm or receive permission from the unit chief to not do so.¹⁴ Although Mr. Schmalholz stated that he did not remember whether he received permission from his unit chief not to carry his firearm, the OEIG's investigation confirmed that Mr. Schmalholz failed to inform anyone at IDFPR about the loss of his firearms. With the loss of his firearms, a requirement of his position, Mr. Schmalholz was unable to perform his job as a Controlled Substance Inspector and thereby violated the IDFPR Policy and Procedure Manual's Work Rules provision.

Mr. Schmalholz tried to justify the need not to have to carry a firearm by stating he decided to work in the office during the time his firearms were confiscated. Mr. Schmalholz's argument hinges on the so-called "unofficial" policy prohibiting inspectors from carrying firearms while in the office. However, this unofficial policy has nothing to do with the fact that he had to obtain supervisor permission to not carry his firearm, permission he did not obtain.

Accordingly, the OEIG finds as **FOUNDED** that Mr. Schmalholz violated IDFPR Policy by continuing to work after his firearms were confiscated.

D. Mr. Schmalholz Violated IDFPR Policy by Engaging in Conduct Unbecoming an IFDPR Employee

Mr. Schmalholz's failure to report his arrest to IDFPR management, failure to inform his supervisor that his firearm had been confiscated, and his failure to renew his FOID card even though he had known for at least two years when it was to expire, constitute "conduct unbecoming" an IDFPR employee. The IDFPR Policy and Procedure Manual prohibits employees from engaged in "[c]onduct unbecoming a Department employee, including conduct that may bring IDFPR into disrepute or reflects discredit upon the employee as a representative of IDFPR"¹⁵

As a Medical Investigator and Controlled Substance Inspector, Mr. Schmalholz is in a position of public trust and respect. The State relies upon Mr. Schmalholz's integrity and honesty in making decisions that may result in adverse consequences for hundreds of professionals. Moreover, Mr. Schmalholz's lying by omission, *i.e.*, his failure to report his arrest, seriously calls into question his integrity and veracity. The conduct Mr. Schmalholz engaged in leaves little doubt that the State cannot rely on his integrity and veracity. In short, as

¹⁴ Enforcement Guideline CSI-1, "Authorized Firearms," pp. 130-31 ("The firearm will be carried at all times when on duty, except when such carrying in the judgment of the Inspector and the unit chief would endanger the conduct of a covert operation or investigation.").

¹⁵ IDFPR Policy and Procedure Manual at "Work Rules."

an investigator whose responsibility is to enforce State laws, there is simply no excuse for the numerous acts of misconduct and admitted violation of a Class A misdemeanor Mr. Schmalholz engaged in, some of which most likely continued through the day of his second OEIG interview when the OEIG first learned that he continued to carry a firearm without a valid FOID card.

Accordingly, the OEIG finds as **FOUNDED** that Mr. Schmalholz violated IDFPR's Policy and Procedure Manual by engaging in "conduct unbecoming" an IDFPR employee.

E. [redacted]

[This section contains a description of allegations that the OEIG determined to be unfounded and the Commission has exercised its discretion to redact this section.]

F. [redacted]

[This section contains a description of allegations that the OEIG determined to be unfounded and the Commission has exercised its discretion to redact this section.]

V. Conclusions and Recommendations

Following due investigation, the OEIG issues these findings:

- **FOUNDED** – Robert Schmalholz violated the Firearm Owners Identification Card Act by possessing a firearm with an expired FOID card.
- **FOUNDED** – Robert Schmalholz violated IDFPR's Policy and Procedure Manual by carrying a firearm without a valid FOID card.
- **FOUNDED** – Robert Schmalholz violated IDFPR's Policy and Procedure Manual by failing to report his arrest.
- **FOUNDED** – Robert Schmalholz violated IDFPR Policy by continuing to work after his firearms were confiscated.
- **FOUNDED** – Robert Schmalholz violated IDFPR's Policy and Procedure Manual by engaging in "conduct unbecoming" an IDFPR employee.
- **UNFOUNDED** – [redacted]
- **UNFOUNDED** – [redacted]

The OEIG investigation leaves no doubt that Robert Schmalholz is unsuitable for continued State employment. The OEIG therefore recommends that he be immediately discharged. Any separation agreement reached with Mr. Schmalholz must state that he agrees never to seek, nor to accept, employment with the State of Illinois.

No further investigative action is needed and this case is considered closed.



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

32 WEST RANDOLPH STREET, SUITE 1900
CHICAGO, ILLINOIS 60601
(312) 814-5600

RICARDO MEZA
EXECUTIVE INSPECTOR GENERAL

OEIGG RESPONSE FORM

Case Number:
10-01026

Return By: _____

Please check the box that applies.

- We have implemented all of the OEIGG recommendations.
(Provide details regarding action taken.)

See attached.

- We will implement all of the OEIGG recommendations but will require additional time.
We will report to OEIGG within 30 days from the original return date.
(Provide details regarding action planned / taken.)

(over)

We are implementing one or more of the OEIGG recommendations, however, we plan to depart from other OEIGG recommendations.

(Provide details regarding action planned / taken and any alternate plan(s).)

We do not wish to implement any of the OEIGG recommendations.

(Explain in detail why and provide details of any alternate plan(s).)

Signature

Sharisse Kimbro Jones
Print Name

IDEPR / Ethics Officer / Agency
Print Agency and Job Title Purchasing
Officer

10/5/2011
Date



Illinois Department of Financial and Professional Regulation
Office of the Secretary

PAT QUINN
Governor

BRENT E. ADAMS
Secretary

CONFIDENTIAL

Sherry Bult, Senior Paralegal
Office of Executive Inspector General for the Agencies of the Illinois Governor
32 W. Randolph, Suite 1900
Chicago, Illinois 60601

RE: OEIG Case No. 10-01026

October 5, 2011

Dear Ms. Bult:

The Department has implemented all of the OEIGG recommendations contained in the final report of the above referenced matter.

Pursuant to the collective bargaining agreement, the Department held a pre-disciplinary conference with the subject, where he was presented with the allegations against him and given an opportunity to respond. The Department carefully reviewed both the allegations and the subject's response and after careful and considerate deliberation terminated his employment on Friday, September 30, 2011.

Please advise if you need additional information.

Sincerely,

Snarisse Kimbro Jones
Ethics Officer



Illinois Department of Financial and Professional Regulation
Office of Legal Affairs

PAT QUINN
Governor

Brent E. Adams
Secretary
Kevin J. Connor
General Counsel

February 22, 2012

Cole S. Kain
Chief of Staff and General Counsel
Office of Executive Inspector General
for the Agencies of the Illinois Governor
32 West Randolph
Suite 1900
Chicago, Illinois 60601

IN RE: OEIGG Case No. 10-IG-01026

General Counsel Kain,

Please find enclosed Resolution Prior to Arbitration for grievance # 6263-0260-2011 (0374780) filed by AFSCME Council #31 on behalf of grievant Robert Schmalholz on the issue of Discharge for Cause entered into by Central Management Services (CMS) labor relations on behalf of the Department of Financial and Professional Regulation (DFPR).

As you are aware each case is *sui generis* and DFPR reviews each case and recommendation as such. In the instant matter Mr. Schmalholz was discharged for cause on the recommendation of your office based on the founded underlying complaint. AFSCME Council #31 filed a grievance and while the grievance was pending Mr. Schmalholz starting drawing his retirement pension.

As a means of settlement without the benefit and costs associated with arbitration AFSCME Council #31 suggested a resolution prior to arbitration (settlement) in which AFSCME Council #31 would withdraw the grievance and in exchange DFPR through CMS labor relations would permit Mr. Schmalholz to retire without right of reinstatement in lieu of discharge.

This settlement offer when viewed in its totality served two distinct principles. The first, Mr. Schmalholz would no longer be employed by DFPR, and second the state would be spared from the time, effort and costs associated with arbitration proceedings.

If you have any questions regarding this matter please do not hesitate to contact me.

Sincerely,

Richard DiDomenico
Senior Deputy General Counsel
Illinois Department of Financial and Professional Regulation
100 West Randolph Street
Suite 9-401
Chicago, IL 60601
Telephone (312) 814-3230

RESOLUTION PRIOR TO ARBITRATION

Grievance #: 6263-0260-2011 (0374780)
Grievant Robert Schmallholz
Agency: Illinois Department of Financial and Professional Regulation
Issue: Discharge for Cause
Resolution: Resolution: In full and complete resolution of the above-captioned matter, the parties agree:

1. The grievant, Robert Schmallholz, agrees to resign and hereby does voluntarily resign his position of employment with the Illinois Department of Financial and Professional Regulation by February 10, 2012, and further agrees not to either seek or accept re-employment with the State of Illinois, Department of Financial and Professional Regulation, at any time in the future.
2. Upon receipt of the written resignation by the Employer, personnel records of Robert Schmallholz will be purged of any mention of discharge, but will contain a copy of the resignation. The period October 1, 2011 to February 10, 2012 shall be considered an unpaid leave of absence.
3. Should grievant, Robert Schmallholz, fail to provide a written resignation by February 10, 2012, the parties agree that he will be considered as having been discharged.
4. The Union and the grievant, Robert Schmallholz, agree to refrain from initiating any grievance, administrative or other judicial proceedings arising out of this discharge action or the circumstances that led to the filing of charges of discharge.
5. This resolution is made without precedent or prejudice to either party and may not be utilized in any subsequent proceedings except for the enforcement of its terms.

For the Union

For the Employer

Date

Date

1-30-12

1-30-12