



OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

MEMORANDUM

JAN 21 2016

To: Mary Jo White
Chair

From: Carl W. Hoecker
Inspector General

Re: Transmittal of Report of Investigation: Case No. 15-ALJ-0482-I

Attached is our report of investigation into allegations of bias on the part of the Administrative Law Judges (ALJs) in the Commission's administrative proceedings. The investigation focused on the instructions, directives or orders on how to rule on motions, decide questions of facts or law, or make other dispositions of any particular administrative proceeding given by the Chief ALJ to the other ALJs without regard to the evidence or applicable legal authority.

The OIG did not develop any evidence to support the allegations of improper influence. Also, former and current Office of ALJ staff stated that ALJ decisions were made independently and free from influence of Chief ALJ Brenda Murray.

Please understand that this report is confidential in nature and should be treated in a secure manner. We request that when you are finished with the report you ensure it is destroyed or returned to our office. If we can be of further assistance to you, please do not hesitate to contact me.

Attachment

cc: Andrew J. Donohue, Chief of Staff, Office of the Chair
Michael E. Liftik, Deputy Chief of Staff, Office of the Chair
Michael S. Piwowar, Commissioner
Jaime Klima, Counsel, Office of Commissioner Piwowar
Kara M. Stein, Commissioner
Robert Peak, Advisor to the Commissioner, Office of Commissioner Stein
Anne K. Small, General Counsel

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Office of Inspector General – Investigations
U.S. Securities and Exchange Commission

REPORT OF INVESTIGATION

CASE# 15-ALJ-0482-I



Office of Inspector General

U.S. Securities and Exchange Commission



U.S. Securities and Exchange Commission
Office of Inspector General



Report of Investigation

Subject: Undetermined
Title: Administrative Law Judges
SK-Level/Grade: Undetermined
Office: Administrative Law Judges
Region: Washington, D.C.

Case #: 15-ALJ-0482-I
Origin: Office of the Chair

Security Clearance: Y / N / N/A

Investigation Initiated: June 30, 2015

Investigation Completed: JAN 21 2016

Summary and Conclusion

On June 30, 2015, the U.S. Securities and Exchange Commission (SEC), Office of Inspector General (OIG), Office of Investigations, initiated an investigation based on information provided by Erica Williams, former Deputy Chief of Staff, Office of the Chair, concerning alleged potential issues of fairness and bias in the SEC administrative proceedings, including those introduced in the Timbervest, LLC (Timbervest) matter.

The OIG determined it would investigate the allegations of bias on the part of the Administrative Law Judges (ALJs or ALJ) in the Commission's administrative proceedings. Specifically, the OIG investigated allegations that were attributed to former SEC ALJ Lillian McEwen and included in a May 6, 2015, *The Wall Street Journal* (WSJ) article, which suggested that there was improper influence on ALJs to favor the Commission; SEC Chief ALJ Brenda Murray criticized McEwen and questioned her loyalty to the SEC; and ALJ personnel were pressured to shift the burden of proof to respondents. The allegations of bias or improper influence investigated concentrated upon instructions, directives or orders on how to rule on motions, decide questions of facts or law, or make other dispositions of any particular administrative proceeding given by the Chief ALJ to the other ALJs without regard to the evidence or applicable legal authority.

The OIG did not develop any evidence to support the allegations of improper influence. Former and current staff affiliated with the Office of ALJs, including McEwen, stated that ALJ decisions were made independently and free from influence of SEC Chief ALJ Murray. Conversely, several individuals interviewed during this investigation indicated that Murray emphasized fairness and independence of the Office, and some noted only systemic factors that impacted complete adjudicative independence, such as Commission precedent and the rules of practice.

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With the exception of McEwen's allegations, the OIG investigation found that the criticisms Murray had of ALJs were not related to the substance of their decisions when presiding over cases, but rather to the timeliness in which they issued their decisions and/or the procedural quality of their work. Furthermore, the OIG investigation identified only possible reference to loyalty by Murray, but the reported emphasis was loyalty to the quality of the ALJ process and not loyalty to the SEC Division of Enforcement (ENF).

The OIG investigation did not develop any evidence to support the allegation that ALJ personnel were pressured to shift the burden of proof to respondents.

Relevant Authorities

- Inspector General Act of 1978, §§ 4 and 6
- 5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 5372 and 7521, Administrative Procedure Act
- § 929P of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1862 (2010) (as codified in various sections of the Securities Act of 1933, the Securities Exchange Act of 1934, The Investment Company Act of 1940, and the Investment Advisers Act of 1940)
- 17 CFR § 200.14, Office of Administrative Law Judges
- 17 CFR § 200.30-9, Delegation of authority to hearing officers
- 17 CFR § 200.30-10, Delegation of authority to Chief Administrative Law Judge
- 17 CFR § 201.360, Initial Decision of Hearing Officer
- 5 CFR § 2635.101 (b)(5) and (8) Standards of Ethical Conduct for Employees of the Executive Branch
- 18 U.S.C. § 1505, Obstruction of proceedings before departments, agencies, and committees

Background

The ALJ function was created by the Administrative Procedure Act (APA) passed by United States Congress in 1946. The APA sought to ensure fairness and due process in administrative proceedings before Federal Government agencies. It also provided statutory protection of ALJs' independence and impartiality. The APA, as passed, notes that ALJs can only be removed for good cause established and determined by the Civil Service Commission after an opportunity for hearing upon the record.

Under the APA, SEC ALJs conduct hearings and rule on allegations of securities law violations initiated in most cases by ENF. In an Order Instituting Proceedings (Order), the Commission directs that an ALJ conduct a public administrative proceeding to determine whether the allegations in the Order are true and to issue an Initial Decision in a specified period of time depending on the type of case. An ALJ then conducts public hearings at locations throughout the United States in a manner similar to non-jury trials in the federal district courts.

Among other actions, ALJs have the authority to administer oaths and affirmations, issue subpoenas, conduct prehearing conferences, issue defaults, and rule on motions and the admissibility of evidence. At the conclusion of hearings, the parties may submit briefs as well as proposed findings of fact and conclusions of law. Unless waived by the parties and with the consent of the hearing officer, the ALJ prepares an Initial Decision that includes factual findings and legal conclusions that are matters of public record and if appropriate, orders relief. In addition, depending on the statutory basis for the proceeding, an ALJ may order sanctions, such as the suspension or revocation of registrations, disgorgement, civil penalties, censures, cease-and-desist orders, and can suspend or bar parties. Parties may appeal Initial Decisions to the Commission, which can affirm, reverse, modify, set aside or remand for further proceedings. Appeals from Commission action are made to a United States Court of Appeals. (EXHIBIT 1 and Relevant Authorities)

According to the SEC's position description, the Chief ALJ's duties and responsibilities include, but are not limited to, the following: Maintaining (1) a calendar of cases assigned to the Office of ALJs for hearing proceedings, (2) a control system to monitor status of those cases, and (3) periodic statistical reports on the status of those cases; assigning cases, in rotation to the extent practicable, to individual ALJs assigned to the Office; assuring that hearing proceedings conducted by the Office are in accord with procedural requirements of the APA and specialized Commission rules of practice; monitoring, in consultation with other ALJs in the Office, the status of pending cases and recommending reasonable standards of quality, output, and general performance to assure the timely and expeditious processing of those cases; supervising and evaluating performance of staff as needed to support the ALJs in their conduct of hearing proceedings; initiating investigations into allegations of improper conduct on the part of any employee in the Office, including ALJs, who may be in violation of the law, regulations, and agency operating regulations, and procedures; and serving as liaison between the Office and other agency or Government offices, and professional bar associations. The position also requires the Chief ALJ to continuously review the status of all pending cases and care in observing the need to see that cases are processed expeditiously, while recognizing the individual judge's responsibility to handle their cases independently and in an impartial manner.

ALJs, including the Chief ALJ, are to have complete independence of action with respect to determinations to be made in assigned administrative proceedings, are exempt from performance appraisals, and may be removed only for good cause as determined in hearing on the record before the Merit Systems Protection Board. (EXHIBITS 2 and 3)

SEC Rules of Practice and Rules on Fair Fund and Disgorgement Plans, Rule 360, Initial Decision of Hearing Officer, Section (2) Time Period for Filing Initial Decision, notes that the Commission will specify a time period in which the hearing officer's Initial Decision must be filed with the Secretary. In the Commission's discretion, after consideration of the nature, complexity, and urgency of the subject matter, and with due regard for the public interest and the protection of investors, this time period will be either 120, 210 or 300 days from the date of service of the order. If a presiding ALJ determines that it will not be possible to issue the Initial Decision within the timeframe, the ALJ will consult with the Chief ALJ, who in his or her

discretion may determine to submit a motion to the Commission requesting an extension of the time period for filing the Initial Decision. This motion must be filed no later than 30 days before the expiration of the time specified in the order for issuance of an Initial Decision. (EXHIBIT 4)

Since October 1995, pursuant to the Commission's Rules of Practice, the SEC has published a semi-annual report containing statistical information about the status of pending adjudicatory proceedings, including matters before the ALJs. The Office of ALJs reports its statistical information to the SEC Office of the Secretary (OS), which publishes it, along with statistical information concerning matters before the Commission, in the semi-annual Reports on Administrative Proceedings. (EXHIBIT 5)

The SEC Office of ALJs is currently managed by Murray, who began her employment with the SEC in January 1988 as an ALJ and became the Chief ALJ in March 1994. There are four additional ALJs currently in the Office, including Judge Cameron Elliot, who joined the Office in April 2011; Judge Carol Fox Foelak, who joined the Office in November 1995; Judge James E. Grimes, who joined the Office in June 2014; and Judge Jason S. Patil, who joined the Office in September 2014. (EXHIBIT 6)

According to the description of the Office of ALJs on the SEC's public website, for fiscal year 2015, ALJs issued 207 initial decisions, held 27 hearings, and ordered civil penalties totaling \$20,823,750 and disgorgement totaling \$12,065,036. (EXHIBIT 1)

Basis and Scope

This investigation was initiated on June 30, 2015, based on information provided by Erica Williams, former Deputy Chief of Staff, Office of the Chair, concerning alleged potential issues of fairness and bias in the SEC's administrative proceedings, including those introduced in the Timbervest, LLC matter. (EXHIBITS 7 and 8)

The OIG determined it would investigate the allegations of bias on the part of the ALJs in the Commission's administrative proceedings. Specifically, the OIG investigated allegations that were attributed to McEwen and included in a May 6, 2015, *WSJ* article, which suggested that there was improper influence on ALJs to favor the Commission; Murray criticized McEwen and questioned her loyalty to the SEC; and ALJ personnel were pressured to shift the burden of proof to respondents.¹

¹ As noted previously, the allegations of bias or improper influence investigated were limited to instructions, directives or orders on how to rule on motions, decide questions of facts or law, or make other dispositions of any particular administrative proceeding given by the Chief ALJ to the other ALJs without regard to the evidence or applicable legal authority. Our investigation does not include the exercise of discretion by any ALJ in adjudicating any aspect of an administrative proceeding. Appellate procedures, both administrative and judicial, exist to resolve these questions.

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During the course of the investigation, the OIG interviewed the following individuals:

- Cameron Elliot, ALJ, Office of ALJs
- Carol Fox Foelak, ALJ, Office of ALJs
- (b) (6), (b) (7)(C), Attorney-Adviser, ENF
- James E. Grimes, ALJ, Office of ALJs
- James T. Kelly, Former ALJ
- (b) (6), (b) (7)(C), Attorney-Adviser, Division of Corporation Finance (CF)
- (b) (6), (b) (7)(C), Attorney-Adviser, CF
- Robert G. Mahony, Former ALJ
- Lillian McEwen, Former ALJ
- Brenda P. Murray, Chief ALJ, Office of ALJs
- Jason S. Patil, ALJ, Office of ALJs
- (b) (6), (b) (7)(C), Assistant Secretary, Office of the Secretary (OS)
- Lori Price, Associate General Counsel, Office of the General Counsel
- (b) (6), (b) (7)(C), Management Program Analyst, Office of ALJs
- Erica Williams, former Deputy Chief of Staff, Office of the Chair

[**AGENT'S NOTE:** The audio of all interviews was recorded, except for McEwen and Kelly, who refused to be recorded, and Williams and (b) (6), (b) (7)(C) who only provided background information.]

In addition, the OIG reviewed documents relevant to the investigation, including:

- “SEC Wins With In-House Judges; Agency prevails against around 90% of defendants when it sends cases to its administrative law judges,” *The Wall Street Journal*, dated May 6, 2015; retrieved on July 10, 2015
- “Fairness Concerns About Proliferation of SEC Administrative Prosecutions Documented by Wall Street Journal,” *Securities Diary*, dated May 7, 2015; retrieved on July 2, 2015
- “SEC Bumbles Efforts To Figure Out How Its Own Administrative Law Judges Were Appointed,” *Securities Diary*, dated June 30, 2015; retrieved on July 2, 2015
- “Fairness of SEC Judges Is in Spotlight,” *The Wall Street Journal*, dated November 22, 2015; retrieved on November 23, 2015
- Records held by the OS
- ALJ personnel records
- OS and Office of ALJs Administrative Proceedings Tracking System records
- Records from the SEC Office of ALJ regarding processes
- Office of Human Resources (OHR) position descriptions

- Office of Government Ethics (OGE) Forms 278, *Public Financial Disclosure Reports*
- Personal Trading Compliance System records
- SEC e-mail records dated from 2003 to 2015
- SEC Rules of Practice and Rules on Fair Fund and Disgorgement Plans
- SEC hearing transcript In the Matter of Donald Anthony, Jr. et al (File No. 3-15514)

Investigative Activity

Referral to OIG and review of identified articles

A. Referral to the OIG

The OIG interviewed Williams concerning alleged potential issues of fairness and bias in the SEC's administrative proceedings.

In conjunction with the referral, Williams provided (via e-mail) a *Securities Diary* article, titled "SEC Bumbles Efforts To Figure Out How Its Own Administrative Law Judges Were Appointed." She further referenced a May 6, 2015, *WSJ* article, which addressed the SEC's reported favoring of administrative proceedings over presenting cases in Federal District Court, and the SEC's increased use of the administrative process.

Williams advised that a number of injunctive actions have been filed on behalf of respondents, alleging that administrative proceedings before the SEC's ALJs were unconstitutional. Additionally, claims of bias have been asserted within the administrative proceedings. According to Williams, both claims have been raised in Federal District Court in an effort to enjoin the SEC's administrative proceedings.

Williams stated that McEwen alleged bias, which was reported in the May 6, 2015, *WSJ* article. According to the *WSJ* article, McEwen claimed that Chief ALJ Brenda Murray pressured McEwen to make rulings in certain ways. Williams was not aware of any other forum in which McEwen had made these allegations. According to Williams, McEwen left the SEC in 2007.

Williams stated that in a particular case involving Timbervest, ALJ Elliot's Initial Decision was appealed to the Commission, and the respondent sought to depose Elliot. In support of those efforts, the respondent asserted the aforementioned claims of bias as described in the *WSJ* article.

Subsequently, the Commission issued an order (dated June 4, 2015), inviting ALJ Elliot to file an affidavit addressing the allegations of inappropriate pressure or bias in the administrative proceedings. On June 9, 2015, Elliot notified Brent Fields, SEC Secretary, that he "respectfully declined to submit the affidavit" requested in the order. Williams advised it was unclear why Elliot declined the invitation to provide an affidavit.

According to Williams, Chair Mary Jo White requested an OIG investigation of the alleged bias issue because the identified concerns could impact all ALJs and the SEC administrative proceedings. (EXHIBIT 8)

B. Review of identified articles

The OIG reviewed the *Securities Diary* and *WSJ* articles that Williams identified, which included the following statements attributed to former ALJ McEwen: she thought the system was “slanted” against defendants at times; she came under fire from Chief ALJ Murray for finding too often in favor of defendants; Chief ALJ Murray questioned McEwen’s loyalty to the SEC; McEwen retired as a result of the criticism; and SEC judges were expected to work on the assumption that “the burden was on the people who were accused to show that they didn’t do what the agency said they did.”

In addition, the May 2015 *WSJ* article reported that 1) an analysis of decisions showed that the SEC enjoyed a “home-court advantage” when it sent cases to its own judges; 2) noted that the ALJs have their offices in the SEC Headquarters in Washington, D.C.; and 3) quoted U.S. District Judge Jed Rakoff, who was reported to have said, “The SEC appoints the judges, the SEC pays the judges, they are subject to appeal to the SEC”, which “... can create an appearance issue, even if the judges are excellent, as [he had] every reason to believe they are.” In addition, the article referenced the Timbervest case [in which Elliot issued an Initial Decision on August 20, 2014]. The article alleged that “no defendant has escaped unscathed” before Elliot and that Timbervest, in its appeal to the Commission, cited what it described as Elliot’s “record of utter deference” to the agency that employs him. (EXHIBIT 9)

A subsequent November 2015 *WSJ* article reported on a hearing held by Murray, during which she reportedly, in essence, told the respondents in the case to give up on the idea that she would toss the case against them without first holding a hearing and that the SEC Commissioners do not want its judges second-guessing them. The same article reported that Elliot, in essence, told defendants during settlement discussions on a case that they should be aware he had never ruled against ENF. Additionally, it was reported that Elliot said during an interview [with the *WSJ*] that he believed it was important for defendants to understand how he has decided similar cases so that they can make informed decisions about whether to settle. (EXHIBIT 10)

C. Former SEC ALJ Lillian McEwen’s allegations

An OIG review of McEwen’s official personnel folder revealed that she served as an SEC ALJ beginning in September 1995 and retired in January 2007. Records further indicated that McEwen initially was appointed as an ALJ in May 1994 to the Social Security Administration. (EXHIBIT 11)

[AGENT’S NOTE: Murray was the Chief ALJ during McEwen’s tenure at the SEC.]

During an interview with the OIG, McEwen stated the *WSJ* reporter (Jean Eaglesham) contacted her in relation to the SEC Office of ALJs (estimated to be within the 6 months before the August 2015 OIG interview), and asked her to comment and whether she could be quoted, to which McEwen agreed. Following her review of the May 2015 *WSJ* article with the OIG, McEwen stated she was accurately quoted and that no material information provided by her was omitted from the article. McEwen was asked to provide the OIG additional information regarding the reported allegations. (EXHIBITS 12 and 13)

Allegation #1: Whether there was improper influence on ALJs to favor the Commission

A. Interviews of SEC ALJs

During the interview with the OIG, McEwen stated she thought Murray was biased against broker-dealers [respondents] and indicated there was a “philosophy” in the Office of ALJs of “ruling in favor” of ENF. McEwen alleged Murray criticized her or reassigned her cases for finding or ruling in favor of respondents. However, McEwen was unable to provide any specific information regarding the cases in which she was criticized or her work was reassigned after she ruled in favor of respondents.

McEwen was subsequently asked to review a list of cases that the OIG identified as assigned to her during her tenure at the SEC, and to identify which particular cases were reassigned or those for which she received criticism for her rulings or decisions. McEwen’s initial response to the request was that she knew she could not identify such occurrences by particular cases. After reviewing the document, McEwen said she recognized the list as her cases and said it looked like a list of all cases assigned to her, including those she did “not depose” and/or cases which were reassigned. McEwen again said she did not have specific recollection of particular cases; she said she just knew a number of cases were reassigned because she denied ENF’s motions, but could not specify whether it was “5 or 50” cases.

McEwen stated that Murray could not fire or demote her (McEwen) and indicated that Murray took action against her in other ways, such as reassigning her cases, making her look bad, criticizing her cases, criticizing her for not typing her decisions, refusing to let Office support personnel type her handwritten decisions, making her submit a leave slip if she was 5 minutes late, and not permitting the SEC’s travel agency to exceed the per diem rate for one of McEwen’s hearings in New York, NY.

McEwen stated that bias never influenced her decisions, nor was she ever accused of bias. McEwen stated she was not influenced by Murray or anyone else, and Murray did not influence her decisions or rulings. When asked if other ALJs’ decisions or rulings were influenced by Murray, McEwen stated that she did not speak to the other ALJs about it. McEwen believed there was a lot of pressure on ALJs to do what Murray wanted them to do, but she (McEwen) never discussed it with the other ALJs because she did not have “that kind of relationship” with them. (EXHIBITS 12 and 13)

During an interview with the OIG, Mahony stated he served as an SEC ALJ from May 1997 to January 2012. According to Mahony, the SEC ALJs were “independent triers of fact” and there was no attempt by anyone in the Office of ALJs to influence the outcome of cases.

According to Mahony, aside from Murray handing him a case file [assigning him a case], she had “no involvement [in his cases] whatsoever ever. Ever.” While cases were being litigated or before he issued his decisions, there were never any discussions with Murray regarding his cases; and after Initial Decisions were published, Murray did not have conversations with him about his decision, not even positive comments. Mahony said there was probably an affirmative approach in the Office not to discuss cases.

Mahony indicated the Office process was “absolutely” independent and advised that his personal level of independence was identical to that which he had at the Department of Labor, where he worked for 20 years before joining the SEC. When asked if the issue of bias was ever raised in the Office, Mahony responded, “That’s total BS. There was never any bias. Now how one person may have felt and what – I can’t comment on that. But to say there was an institutional bias in that is just silly.” (EXHIBIT 14)

During an interview with the OIG, Kelly stated he served as an SEC ALJ from about April 1999 to September 2010 after working as an ALJ at the Social Security Administration. Kelly advised that during his tenure, there were no attempts by Murray to influence his decisions and he was independent in the manner in which he decided cases that were assigned to his docket.

Kelly stated that Murray never discussed open matters, either in private meetings with him or staff meetings with other ALJs. According to Kelly, Murray was primarily concerned with the timeliness of matters and never their substance.

Kelly advised that when he started at the SEC, Murray assigned him cases, about half of which were reassignments from other SEC ALJs. The City of Anaheim matter was one of the cases reassigned from McEwen’s docket, which was on appeal by ENF to the Commission over one of McEwen’s rulings in the case. Kelly indicated that McEwen was not happy about the reassignment and that Mahony and Foelak wrote memoranda to Murray opining that the matter should not have been reassigned because the reassignment “challenged ALJ independence.” (EXHIBIT 15)

In conjunction with efforts to interview former SEC ALJs, the OIG determined that Burton S. Kolko, who served as an SEC ALJ during the mid-1990s and according to available public records and a death notice published in *The Washington Post*, died in September 2005. (EXHIBIT 16)

During an interview with the OIG, Foelak stated she had no reason to believe that Murray was biased against broker-dealers (respondents) and indicated that she never experienced any influence or pressure from Murray or others to rule in favor of ENF. Foelak stated she thought

her decisions on cases were independent and that she had not issued a ruling or decision due to inappropriate influence.

Foelak advised that draft orders and decisions were circulated among the Attorney-Advisers in the Office of ALJs, who weighed in with their thoughts, but she did not have any knowledge of draft reports being circulated to Murray. Foelak said that at times, when ruminating over something, she might talk it over with one of her colleagues or an Attorney-Adviser, but almost never discussed anything with Murray. Foelak did not believe that Murray had the ability to overrule or change any of her work and indicated she had not experienced such.

Foelak indicated that Murray monitored the entire docket for the Office and the timeliness of cases. Foelak explained that since she joined the SEC, Murray has had the same requirement, which is still unchanged, that everyone had to fill out a report each month to provide the status of their cases and the work that was performed during the month. (EXHIBIT 17)

During an interview with the OIG, Elliot indicated that he had independently decided his cases and he has not faced pressure from Murray or anyone else to rule in favor of ENF. Elliot denied a bias in favor of ENF and with regard to the agency. Elliot noted he worked for the SEC and that it was his job to follow Commission precedent and the case law of the Commission. Elliot indicated he has not issued a decision or taken an action due to personal bias toward a respondent or affiliated party.

According to Elliot, Murray has made a point of telling him that she was not going to tell him how to decide his cases and that it was up to him. He suspected she has said the same to the other judges as well. Elliot said that aside from the reports in the newspaper about McEwen's allegations, he was not aware of any instances in which other ALJs experienced pressure from Murray regarding cases.

Elliot stated that he has been accused of bias by various people who have appeared before him, who do not like him ruling against them, and has also been criticized by ENF when he has ruled against it. Elliot indicated that the accusation of bias on his part was entirely unfounded.

Concerning his decision not to provide an affidavit after being invited to do so by a Commission order, Elliot confirmed he had received the invitation to provide an affidavit from the OS. He said that he informed Murray of the existence of the invitation; however, he strictly adhered to the instructions in the order which requested that he "... not consult with anyone at the Commission in the preparation of his affidavit concerning the substance thereof." At an office meeting, he informed everyone in the Office of ALJs that he had responded to the order. When asked, Elliot said he did not receive any direction or guidance from anyone, including Chief ALJ Murray, on how he should respond to the invitation. Elliot said he had declined to provide an affidavit, stating he had "multiple reasons why [he] decided not to provide a response" but declined to provide any of those reasons to the OIG. (EXHIBIT 18)

[AGENT'S NOTE: During interviews with the OIG, Foelak stated she was aware that the Timbervest matter was on appeal with the Commission and she did not want to comment on a pending case. Patil stated he knew about the request [Order] from the Commission and he recalled that Elliot received the request for an affidavit, went to his office and thought about it, and then announced at a staff meeting that he decided not to provide a response. Patil indicated that based on everyone's reaction, including Murray's, he thought Elliot's decision was "news to them." Patil stated he got the sense that Elliot, whom he described as strong willed and independent minded, "just felt like he didn't want to do it" and he very much got the sense that Elliot had independently made the decision not to respond. Murray stated she did not provide any direction or guidance to Elliot with respect to the Commission's invitation for him to provide an affidavit, and did not know why he chose not to respond. (EXHIBITS 17, 21 and 22)]

When interviewed by the OIG regarding the additional November 2015 *WSJ* article, Elliot confirmed that he spoke with the *WSJ* reporter "on background" and said he was surprised that the article characterized the conversation as an interview. Elliot said that when he was asked by the reporter if she could quote him, he requested her to send him the quotes she wanted to use so he could review them. With regard to one of the proposed quotes, Elliot said he responded to the reporter that she could quote him as saying, "I have told people in settlement conferences that I cannot know how to decide a case until after I hear it and how I have decided similar cases. It's important for people to know these things when deciding whether or not to settle their own case." According to Elliot, the reporter "butchered" his quote, took out the part in which he said "I've told people I can't know how to decide a case until I hear it," and did not specifically quote him in this section, indicating that she inaccurately paraphrased the quoted statements to which he had agreed.

According to Elliot, he told the *WSJ* reporter that he has never said that he has never ruled against the SEC. Elliot said he knew he had never said that because he would never say such a ridiculous thing because it did not make any sense. With regard to the question if he had ever said he never ruled against ENF, Elliot recalled he said, "I don't know. I can't remember," but did not think he had ever said any of those things.

Elliot said he has told parties in cases, such as at a settlement conference, that "I don't know how this case is going to come out because I haven't heard all the evidence, but based upon what you've told me so far, this is what I think about the case and this is how I've ruled on similar issues in similar cases." Elliot subsequently described this as a "standard explanation of things" and added, "... if you're appearing in court, you want to know what are my chances of winning if I go to hearing and if I lose, what's the likely outcome versus what's being offered in the settlement...." Elliot said he knows he has had a case where he told a respondent they should take a particular deal because it was a "good deal."

When asked if he had ruled against the SEC, Elliot said he has dismissed cases and has ruled against ENF on issues subsidiary to the whole case, such as evidentiary rulings or motions. (EXHIBIT 19)

During an interview with the OIG, Grimes indicated he did not believe there was a bias against broker-dealers or respondents and he has not experienced any influence or pressure to rule in favor of ENF, nor has he issued a decision because he was pressured in one way or another. Grimes advised that he has ruled in favor of ENF sometimes and against it in other cases. Grimes stated his goal was to issue the best decision possible, wherever the facts take him, and he does not feel any pressure to do anything.

Grimes indicated that Murray's role has been to set office or administrative policy, and to protect the independence of the Office of ALJs. Murray has not told the ALJs what to do, nor has she told them how to write or issue decisions. According to Grimes, Murray has wanted them to issue high quality decisions in a timely manner, whatever the outcome, and this has been her stance since he joined the Office.

Grimes advised he has discussed his assigned cases with Attorney-Advisers in the Office and decisions have been reviewed and edited by Attorney-Advisers prior to them being issued, but ultimately they have been his decisions; since his name has gone on them, he had to be comfortable with whatever was said. Grimes stated that Murray does not review his work or the ALJs' decisions and he has never discussed any of his decisions with her. Murray did not have the ability to overrule his actions or decisions on a case, nor has an overruling ever occurred.

Grimes stated that any discussion about cases, such as during office meetings, concerned caseload or the issuance of timely decisions, but those discussions did not concern the merits of any decisions.

Grimes stated he doubted the veracity of the allegations. He indicated that the descriptions in the *WSJ* article were inconsistent with his experience. Grimes said he was "frustrated to read stuff like that because that's just not the way it works." Grimes said he would be "shocked if the allegations were true" because Murray's goal has been to protect the independence of the Office and she has never shown any indication to him that she cares one way or the other how the ALJs rule in cases. (EXHIBIT 20)

During an interview with the OIG, Patil stated the ALJs have had complete decisional independence in the Office of ALJs and no one, including Murray, has told him how to decide a case or pressured him to rule in favor of ENF. Patil stated he prides himself on his decisional independence and he would never allow anyone to inappropriately influence one of his decisions.

Patil did not believe there was a bias against respondents. He did not think that anyone in the Office would be biased against respondents or was always ruling against them. Patil stated that from talking to the other judges in the Office and his knowledge of their work, he did not get the sense that there was a bias against respondents, generally.

Patil stated that Murray assigned cases, disseminated information she deemed relevant to the judges and law clerks, and made certain decisions with regard to procedural issues for the Office. Patil indicated that Murray's interest in particular case matters related to issues of process as

opposed to case substance. Patil did not believe Murray had the ability to overrule decisions and indicated no one, including Murray, has ever asked him to change a result. (EXHIBIT 21)

During an interview with the OIG, Murray said that she believed in the mission of the SEC; she was loyal as a Government employee and she has tried to do her duty, but she has not issued a decision or taken an action due to personal bias or favor toward the agency.

Murray denied influencing matters before the ALJs and explained that she was responsible only for assigning the ALJs' workload. She also stated that she does not review the ALJs' work and sees the decisions only after they are formally issued by the respective ALJ. Murray stated that ALJs independently render decisions on matters which are assigned to them. Finally, Murray stated that there was no merit to the allegations of bias as alleged in the May 2015 *WSJ* article.

Regarding the Timbervest matter, Murray said she did not influence Elliot's decision with respect to the Commission's invitation for him to provide an affidavit. (EXHIBIT 22)

When interviewed by the OIG regarding the subsequent November 2015 *WSJ* article, Murray confirmed that the hearing referenced in the article was held In the Matter of Donald Anthony, Jr., et al (Anthony). She described the Anthony matter as a very complicated and highly litigated case. Murray recalled that there were many motions filed in the case before the hearing, including motions for summary disposition. After reviewing the *WSJ* article and portions of the hearing transcript, Murray said the basis for her comments related to the motions for summary judgment and request for interlocutory review by the Commission was that the Commission's Rules of Practice and prior case law have made it clear that the Commission did not want motions for summary disposition in 300-day cases and did not favor interlocutory appeals. (EXHIBIT 23)

B. Interviews of Office of ALJs support staff

During interviews with the OIG, [REDACTED] Price and [REDACTED] - all of whom worked in the Office of ALJs during the timeframe in which McEwen served as an ALJ - individually stated that ALJs were independent in their decision making. They also did not believe there was bias against respondents. Furthermore, [REDACTED] Price, and [REDACTED] were not aware of any instances where ALJs were pressured to rule or make decisions in favor of ENF. (EXHIBITS 24-28)

During an interview with the OIG, [REDACTED] indicated that if Murray discussed or inquired about another judge's case, it did not relate to the substance, but rather to administrative matters, such as the status of the case and/or whether the judge was going to be able to meet a deadline. (EXHIBIT 24)

During an interview with the OIG, [REDACTED] stated that Murray "wanted it to be really well known that that office is really fair, independent." [REDACTED] thought there was an effort to make sure

the process was as fair as possible. He did not think that Murray became involved in the decision making process for cases that were not assigned to her, and described her involvement as being about efficiency, quality control, timeliness, budget issues, and making sure procedures were being properly followed. (EXHIBIT 25)

During an interview with the OIG, [REDACTED] stated he did not think there was bias on the part of judges, but indicated their “hand is kind of forced” by Commission precedent or rules imposed on the proceedings. [REDACTED] did not recall Murray making any inquiries about substantive activities in another judge’s case. (EXHIBIT 26)

During an interview with the OIG, Price recalled that Murray’s inquiries about other judge’s cases concerned how many cases the judge had or how long it had been since the hearing was held and the decision was issued. Price did not remember any inquiries by Murray regarding the intentions of another presiding judge in a case. (EXHIBIT 27)

During an interview with the OIG, [REDACTED] stated the Office of ALJs has tried to avoid even the appearance of impropriety in that regard, and noted that with any ALJs in an agency, there was the possibility of appearance issues, which is why the SEC Office of ALJs has tried to dispel any appearance of impropriety.

[REDACTED] also said Murray did not have a role in the review process for cases not assigned to her and did not receive copies of decisions until after they are finalized. [REDACTED] said that Murray’s inquiries about cases not assigned to her were related only to deadlines. [REDACTED] explained that if a case was not going to make its deadline, Murray needed to file a motion with the Commission seeking to extend the deadline. Murray has never made inquiries about the intentions of another judge in a particular case. She added that “the Office prides itself on being independent from the agency, and [she thought] all of the judges take that seriously.” (EXHIBIT 28)

C. Other investigative efforts

1. E-mail review

During an OIG review, e-mail for the ALJs dated from 2003 to 2015 revealed several e-mails in which it appeared that Murray made an effort to maintain and to protect the Office of ALJ’s independence. However, the OIG discovered one e-mail concerning an ALJ’s alleged bias. The OIG identified the ALJ as Elliot and interviewed both Murray and Elliot about this issue. In a personal e-mail from Murray to a friend, dated October 26, 2014, Murray wrote:

“...a securities lawyer said that one of the judge’s [sic] in the office is biased against private companies and said he would never rule against the government. It was confirmed by another attorney at the reception.”

"I tried to check out the transcripts of the cases in which the judge presided to see if I could find something but it was too big a task. He happened to drop by the office today so I told him that someone had made this comment. He went berserk..... Called the person a liar."

"I told him I did not believe he said it..... I had to bring it to his attention and I have."
(EXHIBIT 29)

During an OIG interview, Murray said that the person who made the allegation was a former ENF attorney now in private practice. The attorney who had represented a respondent before the ALJ told Murray that the ALJ said ALJs do not rule against the Government and he [the ALJ] was not going to start. Murray would not identify the attorney or the ALJ, and said it would not be good for her office or the parties involved if she did so. Murray stated she knew the ALJ was not biased and indicated that she addressed the issue with the ALJ to her satisfaction.
(EXHIBITS 22 and 30)

During an OIG interview, Elliot said Murray confronted him about comments made to her alleging his bias. Elliot said he had no idea what she was talking about; however, Murray had said he was sometimes too talkative. Elliot said he comments during hearings about strength of evidence, witnesses' credibility, relevance of evidence, or whether a witness was needed. He thought Murray misunderstood the person's comments. Elliot said he has ruled against the Government and in favor of respondents. Elliot denied ever making the statement [that he would not rule against the Government]. Again, he stated he was not biased. (EXHIBITS 18 and 31)

2. Office of ALJs processes

The OIG reviewed the Office of ALJ's processes which were documented internally and in reports completed by a consulting firm in 2013. The results of the review indicated that Murray, in her role as Chief ALJ, did not have an identified role in the review process of other ALJs' decisions and orders. (EXHIBIT 32)

3. Anthony hearing transcript review

The OIG obtained the transcript for the hearing Murray held in New York, in conjunction with the Anthony case, Administrative Proceeding File number 3-15514. The results of the review indicated that the WSJ's quote of Murray in the November 2015 article was contained within the hearing transcript. Portions of the transcript were identified and reviewed with Murray during an interview with the OIG. (EXHIBITS 23 and 33)

Allegation #2: Whether Murray criticized McEwen and questioned her loyalty to the SEC

A. Murray criticized McEwen

McEwen indicated that Murray criticized her (McEwen) for finding or ruling in favor of respondents, and the criticism was one-sided. Specifically, McEwen stated that Murray was upset when she (McEwen) denied ENF actions, refused to admit ENF evidence, or did not grant an ENF motion for summary judgment [disposition] and instead scheduled a case for hearing. According to McEwen, Murray constantly and openly criticized her rulings and decisions, including during Office of ALJs meetings.

McEwen said she did not have direct conversations with Murray about her cases and she did not think that Murray ever read her decisions. McEwen “extrapolated” that ENF would complain to Murray about something she (McEwen) had done in a hearing, and in turn, Murray would ask her (McEwen) to explain her actions during hearings. However, McEwen could not provide any examples related to this and had no direct knowledge of any communication between Murray and ENF. (EXHIBITS 12 and 13)

During his interview with the OIG, Kelly said that Murray would occasionally complain about McEwen’s decisions. Murray’s complaints primarily involved quality standards and McEwen’s failure to follow the precedent set by the Commission in prior rulings. He recalled that Murray was critical of one of his cases over a procedural issue and not the substance of his decision in the matter. (EXHIBIT 15)

The OIG reviewed an e-mail that Kelly sent to Murray on June 8, 2015, which was after the May 2015 *WSJ* article in which he indicated Murray voiced her unhappiness about one of his decisions. This was the same case he referred to during his OIG interview, when he indicated that Murray was critical of a procedural issue and not the substance of his decision in the matter. (EXHIBITS 15 and 29)

During her interview with the OIG, Foelak said Murray was critical of the Office of ALJs’ timeliness. During his interview with the OIG, Patil also said Murray was critical of the Office’s timeliness and the quality of their work. During his interview with the OIG, [REDACTED] said that Murray’s criticism surrounded the quality of the work inasmuch as it needed to be error-free. With the exception of McEwen, no one identified any criticism that Murray made about the substance of their work; Murray’s criticisms focused on procedural issues. (EXHIBITS 17, 21 and 26)

During her interview with the OIG, when asked if she ever expressed criticism regarding the decisions or findings of the ALJs, Murray said she was upset by the allegations in the *WSJ* and considered writing a letter in response to say that it was “absolutely ridiculous.” However, Murray stated that while she was considering a response, she contacted Mahony and Kelly. Murray said that Mahony told her not to worry and agreed that the allegations were “ridiculous.” Murray said that when she spoke with Kelly, he told her that she had criticized McEwen in front

of him and had once told him that she was not happy with a decision of his. Murray stated that she had criticized McEwen in private conversations with Kelly and Mahony, but she never had said anything directly to McEwen about her performance. Murray said she thought she might have told Kelly she was surprised about one of his decisions, but did not believe she said she was unhappy with it. When reviewing documentation that she provided to the OIG at the conclusion of her interview, Murray clarified that she had spoken with McEwen about the age or status of her cases, her low productivity, the use of her time, her clearing outside speaking engagements with the Ethics Office, and that she needed to type her draft decisions before providing them to the law clerks.

Murray said she had reviewed copies of McEwen's issued decisions and orders, on which she had noted legally unsubstantiated or erroneous information, but she said she had never discussed them with McEwen. With regard to Office of ALJs staff meetings, Murray stated she had addressed such issues as her concerns about overdue cases, the status of cases pending initial decisions, criticisms of the Office related to judges' untimeliness and performance, the requirement to complete monthly [case status] reports, and other matters of office policy. (EXHIBIT 22)

B. Loyalty to the SEC

When asked about Murray allegedly questioning McEwen's loyalty to the SEC, McEwen responded that "loyal" was a "big word;" she said Murray frequently used it and that Murray would say that the ALJs were not being loyal to the SEC. McEwen believed that Murray had an expectation for the Office of ALJs and the way it was to be perceived. McEwen said Murray believed the Office was supposed to be loyal to the SEC and the business of the Office was to make sure that "bad guys" get punished; when [ALJs] were not doing that (by ruling in favor of a respondent or against ENF), they were not "loyal." McEwen indicated that Murray questioned her loyalty in the presence of other ALJs and the other ALJs' loyalty also was questioned by Murray during Office meetings. (EXHIBITS 12 and 13)

During interviews with former and current ALJ staff, only Patil and ██████████ indicated that Murray may have used the term "loyalty," but only in reference to being loyal to the ALJ process that protects investors. (EXHIBITS 21 and 25)

During her interview with the OIG, Murray cited the reported allegations that she had questioned the loyalty of McEwen and that McEwen had retired as a result of the criticism. Murray stated the allegations were "categorically untrue" and "completely false." Murray stated she did not care if the ALJs were loyal to her, but she cared that the ALJs tried to bring distinction to the Office of ALJs. Murray said she wanted them to write good decisions, hold fair hearings, and to do their job well. (EXHIBIT 22)

C. Communication with ENF

During an interview with the OIG, Mahony said “absolutely not,” when asked about communication (outside of official proceedings) between him or Murray and ENF, and stated he was confident that it was this way with the other judges in the Office of ALJs and that everything they did with ENF was “on the record.” (EXHIBIT 14)

Grimes indicated during his interview with the OIG that he was not aware of any meetings or communications between Murray and ENF and stated he thought Murray would be very upset if any of them had engaged in dialogue with anyone from ENF outside of the courtroom. Grimes advised that he would not talk with anyone (ENF or respondent) without the other side being present. (EXHIBIT 20)

During an interview with the OIG, Patil indicated he was not aware of any communications or contact between Murray and ENF and said he would be surprised to learn if there were any communications or contact outside of the normal judicial process. According to Patil, within the Office of ALJs, Murray always espoused a view, with which he agreed, that they should not be talking to ENF unless it took place through the normal judicial process. Patil stated that based on her comments, he thought Murray’s view was that the Office should not be perceived as “chummy” or having a relationship with ENF. Murray has encouraged the Office to be “somewhat of a closed entity” [within the SEC]. (EXHIBIT 21)

During interviews with the OIG [REDACTED] Price and [REDACTED] were not aware of Murray having communications with ENF about cases that were before the Office of ALJs. (EXHIBITS 24-28)

During her interview with the OIG, when commenting about the Timbervest matter, Murray stated that the ALJs have to do everything on the record if it has anything to do with the substance of the case. (EXHIBIT 22)

Allegation #3: Whether ALJ personnel were pressured to shift the burden of proof to the respondents

During an interview with the OIG, McEwen indicated she thought the system was slanted against defendants [respondents] and said that Murray stated that the broker-dealers were all “thieves,” “dishonest,” “bad guys,” and to make sure that they get punished. McEwen said Murray communicated this during Office of ALJs meetings and Murray was “outraged” when ENF cases were dismissed by the ALJs. She said Murray communicated that if ENF said the [respondent] was a bad guy, then he/she was a bad guy, and they [ALJs] should be loyal to ENF.

Regarding the allegation that SEC ALJs were expected to work on the assumption that the burden was on the respondents to show they did not do what the agency [ENF] said they did, McEwen stated that the “prevalent philosophy” was that respondents were “bad guys” and shared her belief that Murray was biased against broker-dealers. McEwen said she believed the

philosophy of “ruling in favor” of the SEC [ENF] was the philosophy of the Office of ALJs prior to Murray becoming the Chief ALJ. McEwen said she did not think the philosophy was unique to Murray or that Murray came up with it on her own; rather, McEwen suspected it was the philosophy of the ALJs already in the Office when Murray came onboard with the SEC and Murray adopted it. (EXHIBITS 12 and 13)

During OIG interviews, when asked if they thought the system was slanted against defendants, Grimes, (b) (6), (b) (7)(C)(b) (6), (b) (7)(C) Price, and (b) (6), (b) (7)(C) responded in the negative. Foelak, Patil, and (b) (6), (b) (7)(C) identified possible systemic causes, including *de novo* review of decisions by the Commission, constraints due to “condition precedent” or legal rulings of the Commission, the rules of practice (which the SEC has recently proposed to amend), limited access by respondents to discovery and the investigative case file, and truncated timelines (b) (6), (b) (7)(D) indicated he believed the system within the Office of ALJs was “procedurally slanted more toward defendants to making sure that it was as fair as possible.” With the exception of McEwen, none of those interviewed in conjunction with the OIG investigation indicated the system was “slanted” against defendants due to bias on the part of the ALJs or influence by Murray. (EXHIBITS 17, 20, 21 and 24-28)

During interviews with the OIG, several individuals were specifically asked if there were pressure or an expectation in the Office of ALJs to work on the assumption that the burden was on the accused [respondents] to show that they did not do what the agency said they did. Foelak, Elliot, Grimes, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) responded no and/or indicated that the burden of proof was on ENF. Patil (b) (6), (b) (7)(C) and Price also indicated the burden was normally on ENF or the Government, but noted potential exceptions of affirmative defenses or collateral estoppel, such as in follow-on administrative proceedings. (EXHIBITS 17, 18, 20, 21, 24, 25, 27 and 28)

In conjunction with the OIG interviews, four individuals were specifically asked if they had witnessed Murray referring to respondents in general, using derogatory terms, such as “bad guys,” as was alleged. Mahony could not recall if she had, but acknowledged that in his experience as a prosecutor for 10 years that kind of language was sometimes used. Kelly stated he never heard Murray refer to respondents as “bad guys” during staff meetings. Foelak said she never witnessed Murray referring to respondents as a group using derogatory terms, but she might have commented about a particular individual related to a case she had worked on. Patil said he had not heard Murray make blanket derogatory statements about respondents. He indicated that there would be comments to that effect, with regard to particular circumstances, such as when talking about a particular decision that she made where she found liability. Patil added that it would be a huge problem for an ALJ to have a blanket negative opinion about respondents, and said he has never heard anything from Murray to suggest that she did have such a negative opinion. (EXHIBITS 14, 15, 17 and 21)

During her interview with the OIG, Murray said the allegation that “the burden was on the people who were accused to show they didn’t do what the agency said they did” was “absolutely, positively false.” Murray stated that there is a case [citation] that served as a “boilerplate” in almost every initial decision, which specified that the standard [of proof] was the preponderance

of the evidence; and the burden of proof was on the person making the allegations, which in most of their cases was ENF.

Murray stated she has not personally experienced pressure to rule in favor of ENF and when asked if she felt the burden was on respondents to prove their innocence, Murray responded, "No. Absolutely, positively, no." Murray also responded "no" when asked if it was ever communicated to her that she was expected to work with that assumption. (EXHIBIT 22)

Murray denied having preconceived notions about respondents or cases, and advised that her opinions were formed only after presiding over a case, listening to the people [involved with the case], and getting the evidence. Murray acknowledged that she has used derogatory terms or descriptions in reference to particular individuals, and explained that she had done so in cases where the actions of the individual(s) were "absolutely beyond the pale," brazen, blatant, outrageous, etc. She said her usage of such derogatory terms or descriptions was "limited" and done totally within the ALJ Office, primarily with the law clerks who worked on the related cases. Murray said she would not generally refer to or describe respondents in a derogatory manner because not all respondents were [bad actors]. (EXHIBIT 34)

Other Investigative Activity

The OIG reviewed and compared OGE Forms 278, *Public Financial Disclosure Reports* and SEC Personal Trading Compliance System records to the list of cases assigned to Murray, Elliot, Patil, Foelak, and Grimes. The OIG did not note any conflicts of interest. The OIG also reviewed and compared OGE Forms 278, *Public Financial Disclosure Reports* to the list of cases assigned to Mahony and Kelly and did not note any conflicts of interest. McEwen's OGE records were not available. (EXHIBITS 35-44)

Findings

The OIG did not develop any evidence to support the allegations of improper influence. Former and current staff affiliated with the Office of ALJs, including McEwen, stated that ALJ decisions were made independently and free from influence of SEC Chief ALJ Murray. Conversely, several individuals interviewed during this investigation indicated that Murray emphasized fairness and independence of the Office, and some noted only systemic factors that impacted complete adjudicative independence, such as Commission precedent and the rules of practice.

With the exception of McEwen's allegations, the OIG investigation found that the criticisms Murray had of ALJs were not related to the substance of their decisions when presiding over cases, but rather to the timeliness in which they issued their decisions and/or the procedural quality of their work. Furthermore, the OIG investigation identified only possible reference to loyalty by Murray, but the reported emphasis was loyalty to the quality of the ALJ process and not loyalty to the ENF.

The OIG investigation did not develop any evidence to support the allegation that ALJ personnel were pressured to shift the burden of proof to respondents.

Distribution

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Signatures

Case Agent:

(b) (6), (b) (7)(C)

01/21/2016

Date

(b) (6), (b) (7)(C) Senior Special Agent

(b) (6), (b) (7)(C)

1/21/16

Date

(b) (6), (b) (7)(C) Special Agent in Charge

Approved:



1/21/2016

Date

P. Brian Crane, Assistant Inspector General
for Investigations

Exhibits

1. Memorandum of Activity, Review of ALJ records, dated November 20, 2015.
2. Memorandum of Activity, Receipt and Review of Position Description records, dated September 29, 2015.
3. Memorandum of Activity, Receipt and Review of Position Description records, dated October 2, 2015.
4. Memorandum of Activity, Review of SEC Rules of Practice, dated November 19, 2015.
5. Memorandum of Activity, Receipt of ALJ statistical information, dated December 18, 2015.
6. Memorandum of Activity, Review of ALJ SEC arrival records, dated November 19, 2015.
7. Predicating document, Referral e-mail from Williams, dated June 30, 2015.
8. Memorandum of Activity, Interview of Williams, dated July 1, 2015.
9. Memorandum of Activity, Review of news articles and publications, dated July 10, 2015.
10. Memorandum of Activity, Review of news article, dated November 29, 2015.
11. Memorandum of Activity, Review of McEwen's Official Personnel Folder, dated August 12, 2015.
12. Memorandum of Activity, Interview of McEwen, dated August 6, 2015.
13. Memorandum of Activity, Review of documentation provided by McEwen, dated September 15, 2015.
14. Memorandum of Activity, Interview of Mahony, dated September 8, 2015.
15. Memorandum of Activity, Interview of Kelly, dated September 4, 2015.

16. Memorandum of Activity, Review of records concerning Kolko, dated November 10, 2015.
17. Memorandum of Activity, Interview of Foelak, dated September 14, 2015.
18. Memorandum of Activity, Interview of Elliot, dated July 22, 2015.
19. Memorandum of Activity, Interview of Elliot, dated December 2, 2015.
20. Memorandum of Activity, Interview of Grimes, dated September 17, 2015.
21. Memorandum of Activity, Interview of Patil, dated October 6, 2015.
22. Memorandum of Activity, Interview of Murray, dated July 28, 2015.
23. Memorandum of Activity, Interview of Murray, dated December 4, 2015.
24. Memorandum of Activity, Interview of [REDACTED] dated September 29, 2015.
25. Memorandum of Activity, Interview of [REDACTED] dated September 28, 2015.
26. Memorandum of Activity, Interview of [REDACTED] dated October 8, 2015.
27. Memorandum of Activity, Interview of Price, dated October 5, 2015.
28. Memorandum of Activity, Interview of [REDACTED] dated September 25, 2015.
29. Memorandum of Activity, Review of SEC e-mail records, dated October 9, 2015.
30. Memorandum of Activity, Interview of Murray, dated October 19, 2015.
31. Memorandum of Activity, Interview of Elliot, dated October 21, 2015.
32. Memorandum of Activity, Receipt and Review of Office of ALJs records, dated October 6, 2015.
33. Memorandum of Activity, Receipt of hearing transcript, dated December 18, 2015.
34. Memorandum of Activity, Interview of Murray, dated January 11, 2016.

- 35. Memorandum of Activity, Receipt and Review of Forms 278 and PTCS records for Elliot, dated October 1, 2015.**
- 36. Memorandum of Activity, Receipt and Review of Forms 278 and PTCS records for Foelak, dated October 5, 2015.**
- 37. Memorandum of Activity, Receipt and Review of Forms 278 for Foelak, dated October 13, 2015.**
- 38. Memorandum of Activity, Receipt and Review of Forms 278 and PTCS records for Grimes, dated October 2, 2015.**
- 39. Memorandum of Activity, Receipt and Review of Forms 278 and PTCS records for Kelly, dated October 2, 2015.**
- 40. Memorandum of Activity, Receipt and Review of Forms 278 and PTCS records for Mahony, dated October 2, 2015.**
- 41. Memorandum of Activity, Receipt and Review of Forms 278 and PTCS records for Murray, dated October 2, 2015.**
- 42. Memorandum of Activity, Receipt and Review of Ethics records concerning Murray dated October 2, 2015.**
- 43. Memorandum of Activity, Receipt and Review of Forms 278 and PTCS records for Patil, dated October 5, 2015.**
- 44. Memorandum of Activity, Records Request related to McEwen, dated December 23, 2015.**