



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

SUBPOENA DUCES TECUM
THE PEOPLE OF THE STATE OF NEW YORK
GREETINGS


TO: Alphonso David
c/o Si Aydiner
Aydiner, PC
950 Third Avenue, Suite 1100
New York, NY 10022

YOU ARE HEREBY COMMANDED, under Executive Law § 63(8) and N.Y. Civil Practice Law and Rules § 2302(a), and/or other statutes, to deliver and turn over to the Special Deputies to the First Deputy Attorney General, on **the 5th day of April, 2021, at 9:30 a.m.**, or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein.

TAKE NOTICE that the Attorney General deems the documents and information commanded by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

TAKE FURTHER NOTICE that Your disobedience of this Subpoena, by failing to deliver the documents and information requested in the attached Schedule on the date, time and place stated above or on any agreed upon adjourned date or time, **may subject You to penalties and other lawful punishment** under § 2308 of the New York Civil Practice Law and Rules and other statutes.

WITNESS, The Honorable Letitia James, Attorney General of the State of New York, this 26th day of March, 2021.

By: 

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SCHEDULE

A. General Definitions and Rules of Construction

1. “All” means each and every.
2. “Any” means any and all.
3. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.
4. “Communication” means any conversation, discussion, letter, email, call, text message, instant message, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing.
5. “Concerning” means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.
6. “Custodian” means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.
7. “Document” is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (“email”), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, code (*e.g.*, C/C++/C#, SQL, JavaScript), algorithms, code repositories (*e.g.*, GitHub), commit messages, audit logs, data or databases (*e.g.*, Oracle, postgres or other SQL or non-SQL systems), plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, commit messages, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy

thereof.

8. “Entity” means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.
9. “Identify” or “Identity,” as applied to any Document means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document’s production through subpoena or otherwise, including but not limited to: (a) Document type (letter, memo, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document’s Custodian, and identification of each Person You believe to have received a copy of the Document.
10. “Identify” or “Identity,” as applied to any Entity, means the provision in writing of such Entity’s legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.
11. “Identify” or “Identity,” as applied to any natural person, means and includes the provision in writing of the natural person’s name, title(s), position(s), any aliases, place(s) of employment, telephone number(s), email address(es), mailing addresses and physical address(es).
12. “Person” means any natural person, or any Entity.
13. “Sent” or “received” as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.
14. “Subpoena” means this subpoena and any schedules or attachments thereto.
15. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.

B. Particular Definitions

1. “Complainant” means Jessica Bakeman, Charlotte Bennett, Lindsey Boylan, Karen Hinton, Ana Liss, Alyssa McGrath, Anna Ruch, and any other individual who has made any Complaints known to You, any other member of the Executive Chamber, or the public. For the avoidance of doubt, to the extent additional allegations come to light following the issuance of this Subpoena, individuals who make such allegations should be included in the definition of “Complainant.”

2. “Complaint” means any and all complaints, allegations, comments, accusations, or other statements of workplace misconduct, sexual harassment, sex- or gender-based misconduct, or other behavior or comments of a sexual, abusive or otherwise inappropriate or uncomfortable nature, whether made formally or informally.
3. “Executive Chamber” means the Executive Chamber of the State of New York, including but not limited to Governor Andrew M. Cuomo, and all other officers, directors, supervisors, personnel, employees, secretaries, interns, fellows, agents, contractors, consultants, representatives, and attorneys of the Executive Chamber, or any other Persons associated with or acting on behalf of the foregoing, or acting on behalf of any predecessors, successors, or affiliates of the foregoing at any point during the relevant time.
4. “Executive Office” means any office within the New York State government in which employees and officers work directly with, work under the control of, answer to, or maintain direct contact with the Governor. This includes offices in Albany, Manhattan, and anywhere else in New York State.
5. “Governor” means the New York State Governor Andrew M. Cuomo.
6. “New York Attorney General” or “Attorney General” means the New York State Office of the Attorney General, including Letitia James.
7. “Respondent,” “You,” or “Your” means Alphonso David, in either an official or individual capacity.
8. “State” or “New York” means the State of New York.

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of Your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this Subpoena, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish Your aforementioned preservation obligations. Nor shall You act, in reliance upon any such agreement or otherwise, in any manner inconsistent with Your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary Your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall You act in reliance upon any such agreement, unless a Special Deputy to the First Deputy Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

2. Possession, Custody, and Control. The Subpoena calls for all responsive Documents or information in Your possession, custody or control. This includes, without limitation, Documents or information possessed or held by You or any of Your officers, directors, employees, agents, representatives, consultants, divisions, affiliates, subsidiaries or Persons from whom You could request Documents or information. If Documents or information responsive to a request in this Subpoena are in Your control, but not in Your possession or custody, You shall promptly Identify the Person with possession or custody and notify that Person of the Person's obligation to preserve such Documents and provide them to You for production.
3. Documents No Longer in Your Possession. If any Document requested herein was formerly in Your possession, custody or control but is no longer available, or no longer exists, You shall submit a statement in writing under oath that: (a) describes in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.
4. No Documents Responsive to Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, You shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.
5. Format of Production. You shall produce Documents and information responsive to this Subpoena in the format requested by the Office of the New York State Attorney General, as set out in Attachments 1 and 2 or as otherwise agreed upon.
6. Databases. To the extent that any data responsive to the requests herein is maintained in an electronic repository of records, such as a detailed transcription report, such information should be produced by querying the database for responsive information and generating a report or a reasonably usable and exportable electronic file (for example, *.csv and/or *.xls formats) for review. If it is not possible to export data in this format, You must make the database available to the undersigned for meaningful inspection and review of the information.
7. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was

maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Likewise, all Documents that are physically attached to each other in Your files shall remain so attached in any production; or if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.

8. Manner of Compliance – Custodians/Search Terms/Technology-Assisted Review. Prior consultation with the Special Deputies to the First Deputy Attorney General is required concerning selection of custodians for document searches (whether electronic or otherwise) or for use of search term filters, predictive coding or other forms of technology-assisted review. The Office of the Attorney General reserves the right to approve, disapprove, modify or supplement any proposed list of custodians, search terms, and/or review methodology. The selection or use of custodians, search term filters, and/or technology-assisted review in no way relieves You of Your obligation to fully respond to these requests for Documents or information.
9. Document Numbering. All Documents responsive to this Subpoena, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.
10. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, You shall insert one or more placeholder page(s) in the production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.
11. Privilege. If You withhold or redact any Document responsive to this Subpoena on ground of any privilege or other legal doctrine, You shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-client privilege, You shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.

12. Your Production Instructions to Be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by You concerning the steps taken to respond to this Subpoena. For any unrecorded instructions given, You shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.
13. Cover Letter, Index, and Identifying Information. Accompanying any production(s) made pursuant to this Subpoena, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the Subpoena request(s) to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document. As further set forth in Attachment 2, information must also be included in the metadata and load files of each production concerning the identity of each Document's custodian, as well as information identifying the particular Document requests and/or information to which each document is responsive.
14. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and You shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.
15. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, You shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able to competently testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.
16. Continuing Obligation to Produce. This Subpoena imposes a continuing obligation to produce the Documents and information requested. Documents located or created, and information learned, acquired or created, at any time after Your response is due shall be promptly produced at the place specified in this Subpoena.
17. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena shall be valid or binding, and You shall not act in reliance upon any such agreement, unless a Special Deputy to the First Deputy Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.

18. Time Period. Unless otherwise specified, the time period covered by this Subpoena shall be from January 1, 2013 forward.

D. Documents to Be Produced

1. Any and all Documents related to any Complaints concerning the Governor, including investigations thereof.
2. Any and all Documents concerning Communications with or about a Complainant.
3. Any and all Documents reflecting Communications between the Governor and any Complainant.
4. Any and all Documents concerning a Complainant's attendance at an event, appointment, or meeting at which the Governor was or would be present, including any at the Executive Offices or the Governor's Mansion.
5. Any and all Documents concerning any change in the position, title, employment, or office of any Complainant.
6. Any and all Documents concerning Communications with the media and public statements about the Complainants or Complaints concerning the Governor.
7. Any and all Documents relating to how to respond to Complaints concerning the Governor, including the nature of any investigations to be conducted about such Complaints.
8. Any and all Documents concerning Communications about Complaints related to the Governor.
9. Any and all Documents concerning retention or deletion of records within the Executive Chamber, including but not limited to Communications between members, statements, or policies regarding the deletion of emails, use of Blackberry instant messaging, and other means of communication.
10. Documents sufficient to identify Your employment history, beginning with Your employment by the Executive Chamber and up to the present day, including

but not limited to the time period of Your employment, Your title(s), Your position(s), Your responsibilities, and Your direct supervisor(s) for each position.

11. A list of all Your electronic devices used for any Communication related to the Executive Chamber or the Governor, whether personally owned or supplied to you by the Executive Chamber, the State or otherwise.

12. A list of all Your email addresses or phone numbers used for any Communication related to the Executive Chamber or the Governor.

ATTACHMENT 1
Electronic Document Production Specifications

Unless otherwise specified and agreed to by the Office of Attorney General, all responsive documents must be produced in LexisNexis® Concordance® format in accordance with the following instructions. Any questions regarding electronic document production should be directed to the Special Deputy to the First Deputy Attorney General whose telephone number appears on the subpoena.

1. **Concordance Production Components.** A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.
 - A. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.
 - B. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition (“OCR”) text where extracted text is not available.
 - C. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format (“TIF”), with page-level Bates number endorsements.
 - D. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.
 - E. ***Native Files.*** Native format versions of non-printable or non-print friendly produced documents.
2. **Production Folder Structure.** The production must be organized according to the following standard folder structure:
 - data\ (contains production load files)
 - images\ (contains single-page TIF files, with subfolder organization)
 \0001, \0002, \0003...
 - native_files\ (contains native files, with subfolder organization)
 \0001, \0002, \0003...
 - text\ (contains text files, with subfolder organization)
 \0001, \0002, \0003...
3. **De-Duplication.** You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.
4. **Paper or Scanned Documents.** Documents that exist only in paper format must be scanned to single-page TIF files and OCR’d. The resulting electronic files should

be pursued in Concordance format pursuant to these instructions. You must contact the Special Deputy to the First Deputy Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.

5. Structured Data. Before producing structured data, including but not limited to relational databases, transactional data, and xml pages, you must first speak to the Special Deputy to the First Deputy Attorney General whose telephone number appears on the subpoena. Structured data is data that has a defined length and format and includes, but is not limited to, relational databases, graphical databases, JSON files, or xml/html pages.

A. Relational Databases

1. Database tables should be provided in CSV or other delimited machine-readable, non-proprietary format, with each table in a separate data file. The preferred delimiter is a vertical bar “|”. If after speaking with the Special Deputy to the First Deputy Attorney General and it is determined that the data cannot be exported from a proprietary database, then the data can be produced in the proprietary format so long as the Office of the Attorney General is given sufficient access to that data.
2. Each database must have an accompanying Data Dictionary.
3. Dates and numbers must be clearly and consistently formatted and, where relevant, units of measure should be explained in the Data Dictionary.
4. Records must contain clear, unique identifiers, and the Data Dictionary must include explanations of how the files and records relate to one another.
5. Each data file must also have an accompanying summary file that provides total row counts for the entire dataset and total row counts.

B. Compression

1. If Documents are provided in a compressed archive, only standard lossless compression methods (e.g., gzip, bzip2, and ZIP) shall be used. Media files should be provided in their original file format, with metadata preserved and no additional lossy encoding applied.

6. Media and Encryption. All documents must be produced on CD, DVD, or hard-drive media. After consultation with the Special Deputy to the First Deputy Attorney General, Documents may also be produced over a secure file transfer protocol (FTP) or a pre-approved cloud-based platform (e.g., Amazon Web Services S3 bucket). All production media must be protected with a strong, randomly generated password containing at least 16 alphanumeric characters and encrypted using Advanced Encryption Standard with 256-bit key length (AES-256). Passwords for electronic documents, files, compressed archives and encrypted media must be provided separately from the media.

7. Production File Requirements.
 - A. ***Metadata Load File***
 - Required file format:
 - ASCII or UTF-8
 - Windows formatted CR + LF end of line characters, including full CR + LF on last record in file.
 - .dat file extension
 - Field delimiter: (ASCII decimal character 20)
 - Text Qualifier: þ (ASCII decimal character 254). Date and pure numeric value fields do not require qualifiers.
 - Multiple value field delimiter: ; (ASCII decimal character 59)
 - The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
 - Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
 - ***Note:*** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document. For document families, including but not limited to emails and attachments, compound documents, and uncompressed file containers, the metadata load file must also list the Bates range of the entire document family (ATTACHRANGE), beginning with the first Bates number (BEGDOC) of the “parent” document and ending with the last Bates number (ENDDOC) assigned to the last “child” in the document family.
 - Date and Time metadata must be provided in separate columns.
 - Accepted date formats:
 - mm/dd/yyyy
 - yyyy/mm/dd
 - yyyymmdd
 - Accepted time formats:
 - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)

- hh:mm:ss:mmm

B. ***Extracted or OCR Text Files***

- You must produce individual document-level text files containing the full extracted text for each produced document.
- When extracted text is not available (for instance, for image-only documents) you must provide individual document-level text files containing the document's full OCR text.
- The filename for each text file must match the document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 500 to 1000 files.

C. ***Single-Page Image Files (Petrified Page Images)***

- Where possible, all produced documents must be converted into single-page tagged image format ("TIF") files. See Section 7.E below for instructions on producing native versions of documents you are unable to convert.
- Image documents that exist only in non-TIF formats must be converted into TIF files. The original image format must be produced as a native file as described in Section 7.E below.
- For documents produced only in native format, you must provide a TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or document-level Bates number for documents produced only in native format).
- Required image file format:
 - CCITT Group 4 compression
 - 2-Bit black and white
 - 300 dpi
 - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 500 to 1000 files. Where possible documents should not span multiple subfolders.

D. ***Opticon Load File***

- Required file format:
 - ASCII
 - Windows formatted CR + LF end of line characters
 - Field delimiter: , (ASCII decimal character 44)
 - No Text Qualifier
 - .opt file extension

- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
 - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
 - VOLUME – this value is optional and may be left blank.
 - RELATIVE PATH – the filepath to each single-page image file on the production media.
 - DOCUMENT BREAK – defines the first page of a document. The only possible values for this field are “Y” or blank.
 - FOLDER BREAK – defines the first page of a folder. The only possible values for this field are “Y” or blank.
 - BOX BREAK – defines the first page of a box. The only possible values for this field are “Y” or blank.
 - PAGE COUNT – this value is optional and may be left blank.
- **Example:**
 ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
 ABC00002,,IMAGES\0001\ABC00002.tif,,,,
 ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
 ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

E. ***Native Files***

- Non-printable or non-print friendly documents (including but not limited to spreadsheets, audio files, video files and documents for which color has significance to document fidelity) must be produced in their native format.
- The filename of each native file must match the document’s beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For documents produced only in native format, you must assign a single document-level Bates number and provide an image file placeholder that states “Document produced only in native format.”
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form. In cases where this cannot be achieved the document’s password must be listed in the metadata load file. The password should be placed in the COMMENTS field with the format Password: <PASSWORD>.
- You may be required to supply a software license for proprietary documents produced only in native format.

ATTACHMENT 2
Required Fields for Metadata Load File

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE¹
DOCID	Unique document reference (can be used for de-duplication).	ABC0001 or ###.#####.###
BEGDOC	Bates number assigned to the first page of the document.	ABC0001
ENDDOC	Bates number assigned to the last page of the document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent document in a document family (<i>i.e.</i> , should be the same as BEGDOC of the parent document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child document in a family (<i>i.e.</i> , should be the same as ENDDOC of the last child document).	ABC0008
ATTACHRANGE	Bates range of entire document family.	ABC0001 - ABC0008
PARENTDOC	BEGDOC of parent document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004...
DOCREQ	List of particular Requests for Documents to be Produced in the subpoena	1; 2; 3 . . .
INTERROG	List of particular Requests for Information or interrogatories in the subpoena	1; 2; 3 . . .
COMMENTS	Additional document comments, such as passwords for encrypted files.	

¹ Examples represent possible values and not required format unless the field format is specified in Attachment 1.

NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.ext
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number...
CUSTODIAN	Owner of the document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname < FLastname @domain >
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
SUBJECT	Subject line of the email.	
DATERCVD	Date that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMERCVD	Time that an email was received.	hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd

TIMESENT	Time that an email was sent.	hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
CALBEGTIME	Time that a meeting begins.	hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
CALENDTIME	Time that a meeting ends.	hh:mm:ss AM/PM or hh:mm:ss
CALENDAR DUR	Duration of a meeting in hours.	0.75, 1.5...
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.doc x; AttachmentFileName.pdf; ...
NUMATTACH	Number of attachments.	1, 2, 3, 4...
RECORDTYPE	General type of record.	IMAGE; LOOSE E- MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E- MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced document.	Drive:\Folder\...\...\
FILENAME	Original filename of the produced document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf
DOCTYPE	Name of the program that created the produced document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect...
TITLE	Document title (if entered).	
AUTHOR	Name of the document author.	Firstname Lastname; Lastname, First Name; FLastname
REVISION	Number of revisions to a document.	18

DATECREATED	Date that a document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMECREATED	Time that a document was created.	hh:mm:ss AM/PM or hh:mm:ss
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TIMEMOD	Time that a document was last modified.	hh:mm:ss AM/PM or hh:mm:ss
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MSGINDEX	Email message ID	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

State of _____ }
County of _____ }

I, _____, being duly sworn, state as follows:

1. I am employed by Respondent in the position of _____
_____;
2. Respondent's productions and responses to the Subpoena of the Attorney General of the State of New York, dated _____, 20_____ (the "Subpoena") were prepared and assembled under my personal supervision;
3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;
4. Respondent's productions and responses to the Subpoena are complete and correct to the best of my knowledge and belief;
5. No Documents or information responsive to the Subpoena have been withheld from Respondent's production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;
6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the Subpoena;
7. The Documents contained in Respondent's productions and responses to the Subpoena are authentic, genuine and what they purport to be;
8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

Signature of Affiant

Date

Printed Name of Affiant

* * *

Subscribed and sworn to before me this _____ day of _____, 20__.

_____, Notary Public

My commission expires: _____



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
SUBPOENA AD TESTIFICANDUM
THE PEOPLE OF THE STATE OF NEW YORK
GREETINGS

TO: Alphonso David
c/o Si Aydiner
Aydiner, PC
950 Third Avenue, Suite 1100
New York, NY 10022

YOU ARE HEREBY COMMANDED, pursuant to Executive Law § 63(8) and § 2302(a) of the New York Civil Practice Law and Rules, to appear and attend before the Special Deputies to the First Deputy Attorney General, on April 16, 2021 at 10:00 AM, or any agreed upon adjourned date or time, at One Liberty Plaza, 38th Floor, New York, New York 10006 to testify in connection with an investigation into allegations of and circumstances surrounding sexual harassment claims made against Governor Cuomo, or any matter which the Attorney General deems pertinent thereto.

TAKE NOTICE that the Attorney General deems the testimony commanded by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

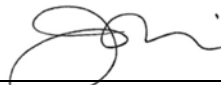
TAKE NOTICE that the examination may be recorded by stenographic, videographic and/or audio means.

TAKE FURTHER NOTICE that Your disobedience of this Subpoena, by failing to appear and attend and testify on the date, time and place stated above or on any agreed upon adjourned date or time, **may subject You to penalties and other lawful punishment** under § 2308 of the New York Civil Practice Law and Rules and/or other statutes.

EXHIBIT

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WITNESS, The Honorable Letitia James, Attorney General of the State of New York,
this 31st day of March, 2021.

By: 

Joon H. Kim
Jennifer Kennedy Park
Abena Mainoo
Special Deputies to the
First Deputy Attorney General
[REDACTED]@ag.ny.gov
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By: /s/ Anne L. Clark

Anne L. Clark
Yannick Grant
Special Deputies to the
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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

-----X
IN RE NEW YORK STATE ATTORNEY GENERAL
SUBPOENA DUCES TECUM,

(Complaints Concerning Governor Andrew M. Cuomo).
-----X

Alphonso David (David), by and thru his attorney Aydiner, PC, hereby respond to the subpoena duces tecum propounded by the NYS Attorney General (AG) as follows:

PREAMBLE

1. David expressly reserves any and all objections to scope and privilege. To the extent that the AG's subpoena is otherwise overbroad and imposes obligations on David beyond that contemplated under the CPLR, David has attempted full compliance subject to his objections being expressly reserved. *See Anheuser-Busch, Inc. v. Abrams*, 71 N.Y.2d 327, 331-32, 525 N.Y.S.2d 816, 818 (1988); *Airbnb, Inc. v. Schneiderman*, 44 Misc. 3d 351, 355, 989 N.Y.S.2d 786, 789 (N.Y. Sup. Ct. May 13, 2014).
2. To the extent that any privilege can apply, it belongs to the Executive Chamber or its analogue or other institutional entity and is being done so pursuant to Rule 1.6 of the Rules of Professional Conduct or CPLR § 4503(a) or both. *Upjohn Co. v. United States*, 449 U.S. 383 (1981). Please take notice, however, that the Executive Chamber thru counsel Paul Fishman, following a review for privilege, has expressly asserted that it will not assert privilege on ADSUB000001-132 (or the entire production) by e-mail to the undersigned on 14 April 2021.
3. David's entire, hard-copy, production is identified as ADSUB000001-132. Native files have been preserved pursuant to our prior agreement. David notes that multiple groupings of information overlap and any failure by David to identify a range of documents in one group, but not the other, is inadvertent.

RESPONSES

1. Subject to and without waiving any objection or privilege: see generally ADSUB000001-132.
2. *Id.*
3. Subject to and without waiving any objection or privilege: not in possession, custody, or control of responsive documents.
4. *Id.*

5. Subject to and without waiving any objection or privilege: see generally ADSUB000001-54.
6. David objects to this demand to the extent the term “public” is undefined and subject to and without waiving any objection or privilege: ADSUB000083-85, and -122.
7. Subject to and without waiving any objection or privilege: see generally ADSUB000001-132.
8. *Id.*
9. Subject to and without waiving any objection or privilege: not in possession, custody, or control of responsive documents.
10. Subject to and without waiving any objection or privilege:

(a) The Human Rights Campaign. Duration: 2019 to present; Title: President; Reports to: Board of Directors; General Responsibilities: Lead the largest gay, lesbian, bisexual, transgender and queer (LGBTQ) civil rights organization in the United States and around the world, where I have expanded and refined the scope of work to focus on those who are multiply marginalized, ultimately increasing impact for community and creating sustainable change. Generated largest grant in the organization’s history to support its work, and expanded membership of the organization. Oversee all political and policy determinations for the organization including but not limited to endorsing candidates for office, advancing legislation, developing pro-equality regulatory policy, and challenging anti-equality legislation and regulation nationwide. Oversee affirmative impact litigation program, which I developed and launched, to advance and protect the civil rights of LGBTQ people. Oversee the implementation of 11 programs to support and provide resources to communities. Oversee messaging and outreach to effectively communicate mission and objectives of organization.

(b) Office of Governor Andrew M. Cuomo. Duration: April 2015 to July 2019; Title: Chief Counsel to the Governor; Reported to: Governor Andrew M. Cuomo; General Responsibilities: Oversaw all significant legal and policy deliberations affecting New York State and ensure that state laws, orders and regulations and being faithfully executed. Supervised a legal staff of 14 assistant counsels and 3 executive assistants in the Executive Chamber and manage 97 general counsels in state agencies and authorities with more than 130,000 employees. Oversaw the drafting, evaluation and implementation of both budget and program legislation and advise the Governor regarding the constitutionality, consistency and legal effect of bills presented to the Governor for his approval. Oversaw the drafting, evaluation and implementation of all executive orders, emergency declarations and state regulations. Managed all high-priority litigation and formulate the state’s posture in both affirmative and defensive litigation for state agencies and authorities. Oversaw the judicial selection process for the court of claims, appellate division and court of appeals and advise the Governor on recommendations for approval. Advised the

Governor on all matters involving the exercise of executive clemency. Managed and responded to legal issues relating to public records requests, press inquiries and personnel related matters. Provided legal advice to executive staff and agency personnel, as appropriate, on ethics related matters. Evaluated and advanced a full range of administrative reforms relating to policy and operational issues. Oversaw significant statewide executive initiatives including, but not limited to, the state's minority and women business program, re-entry initiatives, immigration policy, and criminal justice reforms and policies. Interfaced with executive leadership across sectors including legislators, business associations, labor organizations, advocacy organizations, and community leaders.

(c) NYS Division of Human Rights. Duration: January 2011-April 2015; Title: Deputy Secretary and Counsel for Civil Rights for NYS; Reported to: Howard Glaser; General Responsibilities: Principal advisor and policy maker to the Governor on all civil rights and workforce issues. Developed, negotiated and implemented legislative, regulatory and executive initiatives including landmark achievements such as the Marriage Equality Act, Unemployment Insurance Reform, Workers Compensation Reform, the New York State Minority and Women Business Program, and a state-wide Equal Opportunity enterprise program affecting more than 151,000 employees. Tracked performance and oversaw policy, litigation and operations for eight state agencies with more than 8,000 employees and annual budgets exceeding \$5 billion including the Departments of Labor, Civil Service, Employee Relations, Human Rights, Workers' Compensation, and Elections. Managed executive and agency project teams to evaluate capacity, improve service and productivity, implement cost controls and enforce auditing and compliance.

11. Subject to and without waiving any objection or privilege: (a) Blackberry (provided by NYS/Executive Chamber) that was returned at the conclusion of David's employment; (b) iPhone/iPad (personal).
12. [REDACTED]@exec.ny.gov (work) and [REDACTED]@hotmail.com (personal); Blackberry: [REDACTED]; Personal [REDACTED] (complete number provided under separate, private, cover).

Dated: 14 April 2021
Mineola, New York

Aydiner, PC

S.A.

Si Aydiner
344 Willis Avenue
Mineola, N.Y. 11501
[REDACTED]@esquireethics.com



State of New York

Executive Chamber

No. 187

EXECUTIVE ORDER

ENSURING DIVERSITY AND INCLUSION AND COMBATING HARASSMENT AND DISCRIMINATION IN THE WORKPLACE

WHEREAS, it is a cornerstone of democratic governance of the State of New York that every New York State employee is treated equally before the law and has the right to full enjoyment of the protections, rights and obligations provided by law;

WHEREAS, New York State is committed to a culture of respect that values and promotes diversity, inclusion and equal opportunity, free of unlawful discrimination on the basis of protected class status, including, age, race, creed, color, sex, sexual orientation, gender identity, national origin, military or veteran status, disability, predisposing genetic characteristics, marital or family status, domestic violence victim status, arrest record or criminal conviction history, or any other impermissible basis, in all functions performed, and services offered, by New York State employees;

WHEREAS, it is the policy of New York State to protect and promote diversity, inclusion and equal opportunity in the State's workforce in accordance with the requirements of the New York State Human Rights Law, Title VII of the Federal Civil Rights Act, the Americans with Disabilities Act, and all applicable requirements of New York state and federal law;

WHEREAS, it is imperative that New York State continue its efforts to facilitate effective, coordinated strategies for diversity and inclusion, and for preventing and remedying discrimination and harassment at all levels of state government, that employ best practices and make effective use of resources across New York State agencies;

WHEREAS, New York State is committed to effectuating the comprehensive recommendations of the Governor's Advisory Council on Diversity and Inclusion to increase diversity and inclusion in state government;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

I. Governor's Executive Committee for Diversity, Inclusion, and Equal Opportunity

- a. The Governor's Executive Committee for Diversity, Inclusion, and Equal Opportunity is hereby established and its membership shall consist of the following: the Chief Diversity Officer, who shall serve as the chairperson, the Commissioner of Civil Service who shall serve as vice-chairperson, the Director of Budget, the Commissioner of the Division of Human Rights, the Commissioner of Labor, the Secretary of State, the Director of Employee Relations, the Director of Veterans' Affairs, and the Commissioner of the Office for People With Developmental Disabilities. Membership of the committee may be amended by the chairperson and vice-chairperson, with the agreement of the current members of the committee. The vice-chairperson shall perform the duties of the chairperson in the chairperson's absence and at such times as the chairperson may direct.

EXHIBIT

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- b. The Committee shall advise the Governor, the Chief Diversity Officer and the Commissioner of Civil Service in the formulation and coordination of plans, policies, and programs relating to diversity and inclusion in all Affected State Entities, as defined in Article II of this Order, and in assuring effective implementation of such policies, plans, and programs by such entities.

II. Comprehensive State Diversity and Inclusion Planning

- a. Definitions: As used herein, the following terms shall have the following meanings:
 - i. "Affected State Entities" shall mean (i) all agencies and departments over which the Governor has Executive Authority; and (ii) all public benefit corporations, public authorities and commissions, for which the Governor appoints the Chair, Chief Executive, or the majority of Board Members, except for the Port Authority of New York and New Jersey.
 - ii. "State officer or employee" shall have the meaning set forth in Section 73 of the New York Public Officers Law.
- b. Responsibilities of the Commissioner of Civil Service and Chief Diversity Officer
 - i. No later than December 31, 2018, the Chief Diversity Officer and the Commissioner of Civil Service shall prepare comprehensive statewide objectives for the employment of minorities, women, lesbian, gay, bisexual, and transgender (LGBT) individuals, disabled persons, and veterans, and guidelines for agencies to prepare agency diversity and inclusion plans, including policies, objectives and implementation strategies. Such objectives and guidelines shall be developed with the advice of the Executive Committee for Diversity, Inclusion, and Equal Opportunity established pursuant to Article I of this Order and shall be updated as necessary.
 - ii. The Chief Diversity Officer and the Commissioner of Civil Service shall be responsible for monitoring the implementation of the written diversity and inclusion plans of State agencies on a continuing basis, including the need for revising or amending such plans and shall provide regular reports on progress to the Governor, incorporating recommendations for improving and strengthening such efforts.
 - iii. Upon a finding by the Chief Diversity Officer and Commissioner of Civil Service of substantial noncompliance by a State agency or department with the requirements or terms of this Order, the Chief Diversity Officer shall notify the agency or department of such finding and propose a remedial plan of action. The agency or department shall have 30 days from the receipt of such notice to accept the remedial plan or submit an alternative remedial plan acceptable to the Chief Diversity Officer and Commissioner. The Chief Diversity Officer and Commissioner may work directly with the agency or department to develop and implement the remedial plan until they are satisfied that the agency or department will implement the plan in compliance with the provisions of this Order.
 - iv. The Commissioner of Civil Service shall prepare annually a report of the composition of the work force of each State agency and department by sex and ethnic identity for all job categories, salary grades, and civil service classifications. The Chief Diversity Officer working in collaboration with the Commissioner of Civil Service shall also conduct studies to identify and resolve problems in eliminating under-representation and under-utilization of minorities, women, LGBT individuals, disabled persons, and veterans, and shall make recommendations to the Governor concerning the adoption or amendment of other laws, rules and regulations for the same purpose.
 - v. There is hereby established the Office of Diversity Management within the Department of Civil Service. The Office of Diversity Management shall be responsible for assisting the Commissioner of Civil Service and the Chief Diversity Officer in the effective development and implementation of statewide diversity and inclusion plans, policies, and programs. State agencies, officers and employees shall cooperate with the Office of Diversity Management and necessary staff may be transferred to the Office of Diversity Management pursuant to Civil Service Law 70.2.

- c. Development and Implementation of Diversity and Inclusion Programs by State Agencies
 - i. Each Affected State Entity shall develop a written diversity and inclusion plan consistent with the guidelines developed by the Chief Diversity Officer and Commissioner of Civil Service under Article II (b)(i) of this Order.
 - ii. The head of each Affected State Entity shall designate an employee as the agency's diversity and inclusion officer and report such designation to the Chief Diversity Officer and the Commissioner of Civil Service. The diversity and inclusion officer shall report to the agency head and shall have such support staff as may be appropriate to accomplish his or her duties.
 - iii. By December 31 of each year, beginning in 2019, each Affected State Entity shall submit a report on diversity and inclusion to the Chief Diversity Officer and the Commissioner of Civil Service. Such reports shall be submitted periodically, but not less frequently than annually, in a format and pursuant to standards issued by the Chief Diversity Officer and the Commissioner of Civil Service, and shall include a report on the agency's employment actions with respect to minorities, women, disabled persons, LGBT individuals, and veterans, and shall identify the agency's achievements, deficiencies, proposed solutions to problems, the need for external assistance, and such other matters as may be appropriate or requested.
 - iv. Each Affected State Entity shall cooperate with the Chief Diversity Officer and the Commissioner of Civil Service to provide any other information, data, and reports as may be deemed necessary.
- d. The State Workforce Diversity and Inclusion Council
 - i. There is hereby established the State Workforce Diversity and Inclusion Council (the "Workforce Council"). It shall consist of the diversity and inclusion officers of each agency designated pursuant to Article II(c)(ii) of this Order. The business of the Advisory Council shall be conducted pursuant to by-laws adopted by the members and subject to the approval of the Chief Diversity Officer and the Commissioner of Civil Service.
 - ii. The Advisory Council shall advise the Chief Diversity Officer, the Commissioner of Civil Service, and the Executive Committee for Diversity, Inclusion, and Equal Opportunity established pursuant to Article I of this Order, on all existing and proposed policies, procedures, practices and programs relating to or affecting affirmative action, and consistent with any request by the Chief Diversity Officer and the Commissioner of Civil Service shall submit reports of its activities.

III. Combating Harassment and Discrimination in State Agencies

- a. Definitions
 - i. "Affected State Agency" shall mean all agencies and departments over which the Governor has executive authority.
 - ii. "Protected class discrimination" shall mean employment-related discrimination that is unlawful pursuant to federal laws, rules or regulations and/or state laws, rules or regulations, including but not limited to, Title VII of the Federal Civil Rights Act, the Americans with Disabilities Act, and the New York State Human Rights Law.
- b. In order to promote the effective, complete and timely investigation of complaints of employment-related protected class discrimination, as of December 1, 2018, the Governor's Office of Employee Relations (GOER) shall be responsible for conducting all investigations into employment-related discrimination complaints filed by employees, contractors, interns or other persons engaged in employment at Affected State Agencies as defined in Article III(a)(i) of this Order.

- c. Such Affected State Agencies shall transfer the investigation function pursuant to Civil Service Law 70.2 to GOER and continue to permit such employees as are assigned by GOER to investigate complaints of protected class discrimination within their entity and shall cooperate fully with any and all investigations.

IV. Revocation of Previous Executive Order

This Executive Order revokes and supersedes Executive Order Number 6, dated February 18, 1983.



G I V E N under my hand and the Privy Seal of the
State in the City of Albany this twenty
third day of August in the year two
thousand eighteen.

BY THE GOVERNOR


Secretary to the Governor



**STATE OF NEW YORK
EXECUTIVE DEPARTMENT**



**EQUAL EMPLOYMENT OPPORTUNITY
In New York State**

RIGHTS AND RESPONSIBILITIES

A Handbook for Employees of New York State Agencies

**Andrew M. Cuomo
Governor**

May 2020

EXHIBIT

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EMPLOYEE RIGHTS AND RESPONSIBILITIES

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INTRODUCTION

New York State has long been committed to the principle that all individuals in the State should have an equal opportunity to enjoy a full and productive life, including in their occupational pursuits. Under New York State's Human Rights Law, the first of its kind in the nation, employees are protected from acts of discrimination. Such acts have no place in the workplace.

All State employees have the right to be free from unlawful discrimination in the workplace, together with a responsibility to ensure their actions do not contribute to an atmosphere in which the State's policy of promoting a bias-free work environment is frustrated. In this Handbook, the term "employee" includes interns and non-employees, such as contractors and consultants working in the State workplace and their employees. This Handbook is intended to provide employees of the State of New York with information on their rights and responsibilities under State and federal law with respect to equal employment opportunity. Emphasis will be placed on New York State's Human Rights Law because the protections it provides are generally greater than those granted under federal law. In addition, this Handbook will cover related State laws and Executive Orders.

This Handbook comprises the statewide anti-discrimination policy applicable to State workplaces. Conduct that may not amount to a violation of State or federal law or an Executive Order may nonetheless constitute a violation of the State's anti-discrimination policy, as set forth in this Handbook.

As part of the process of implementing the provisions of this Handbook, Governor Andrew M. Cuomo issued Executive Order 187, to promote more effective, complete and timely investigations of complaints of employment-related protected class discrimination in agencies and departments over which the Governor has executive authority. Effective December 1, 2018, Executive Order 187 transferred the responsibility for conducting investigations of all employment-related discrimination complaints to the Governor's Office of Employee Relations ("GOER"). These investigations include complaints filed by employees, contractors, interns and other persons engaged in employment at these agencies and departments concerning discrimination, retaliation and harassment under federal and New York State law, Executive Orders and policies of the State of New York. All such complaints of protected class employment-related discrimination will be investigated by GOER. A copy of the New York State Employee Discrimination Complaint Form is located on the GOER website (<https://goer.ny.gov/>) at <https://antidiscrimination.goer.ny.gov/>.

PROTECTED AREAS

The Human Rights Law applies to all State agencies and employees and provides very broad anti-discrimination coverage. The Human Rights Law provides, in section 296.1(a), that it is an unlawful discriminatory practice “[f]or an employer or licensing agency, because of the age, race, creed, color, national origin, sexual orientation, , gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or status as a victim of domestic violence [of any individual], to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.” Persons with disabilities, and persons with pregnancy-related conditions, are entitled to reasonable accommodation as provided in section 296.3. Accommodation of sabbath observance or other religious practices is required by section 296.10. The Human Rights Law further provides, in sections 296.15 and 296.16, protections from employment discrimination for persons with prior conviction records, or prior arrests, youthful offender adjudications or sealed records.

Each of these protected areas are discussed below, as well as other protections provided by Governor’s Executive Orders and other state laws and policies.

AGE

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person’s age, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

While most cases of age discrimination concern allegations that an employee was perceived to be “too old” by an employer, under the Human Rights Law it is also discriminatory to base an employment decision on a perception that a person is “too young,” as long as the person is at least 18. However, basing a decision on lack of experience or ability is not discriminatory.

Decisions about hiring, job assignments or training must never be based on age-related assumptions about an employee’s abilities or willingness to learn or undertake new tasks and responsibilities.

All employees must refrain from conduct or language that directly or indirectly expresses a preference for employees of a certain age group. Ageist remarks must be avoided in the workplace.

Statutory protection.

Age discrimination is made unlawful by Human Rights Law § 296.1, § 296.3-a, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and by the

EMPLOYEE RIGHTS AND RESPONSIBILITIES

federal Age Discrimination in Employment Act (“ADEA”).¹ Under New York law, age discrimination in employment is prohibited against all persons eighteen years of age or older. Under the ADEA, age discrimination is prohibited only against persons forty years of age or older.

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 96,² which prohibits Age Discrimination in the workplace. The Executive Order notes that every State employee is entitled to work in an age-neutral environment with equal opportunity for hiring, promotion and retraining opportunities.

Retirement.

Mandatory retirement of employees at any specific age is generally prohibited, except as noted below.³ However, retirement plans may contain an age component for eligibility. Thus, retirement plans may require that persons attain a certain age or have some combination of age and years of service, before being eligible for retirement benefits.⁴

Incentive programs intended to induce employees to retire by granting them greater retirement benefits than those to which they would normally be entitled in order to reduce the size of the work force have generally been found to be lawful. Being eligible for “early retirement” is not coercion based on age. Similarly, that an employee may not be eligible for a retirement benefit or incentive because he or she has not attained a certain age (i.e., “too young”) is also not considered discriminatory.

Exceptions.

The Civil Service Law⁵ mandates minimum and maximum hiring ages for police officers. Correction Officers must be at least 21 years of age in order to be appointed.⁶ These are lawful exceptions to the provisions of the Human Rights Law.

¹ 29 U.S.C. § 621 et seq.

² Issued by Gov. Mario M. Cuomo on April 27, 1987.

³ Human Rights Law § 296.3-a(d) but see exceptions below.

⁴ Human Rights Law § 296.3-a(g).

⁵ N.Y. Civil Service Law § 58; see also N.Y. Executive Law § 215.3.

⁶ N.Y. Correction Law § 7(4).

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There are certain limited exceptions to the prohibition on mandatory retirement.⁷ For example, officers of the New York State Police are required to retire at age 60,⁸ and State park police officers are required to retire at age 62.⁹

In the area of employee benefits, the Human Rights Law does not “preclude the varying of insurance coverage according to an employee's age.”¹⁰

RACE AND COLOR

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's race or color, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

Discrimination because of a person's membership in or association with an identifiable class of people based on ancestry or ethnic characteristics can be considered racial discrimination.

There is no objective standard for determining an individual's racial identity. Therefore, as an employer, the State defers to an employee's self-identification as a member of a particular race.

The Human Rights Law explicitly provides that the definition of race includes traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.¹¹ Protective hairstyles include such hairstyles as braids, locks and twists.

“Color” can be an independent protected class, based on the color of an individual's skin, irrespective of their race.

Statutory protection.

Race and color discrimination are unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.¹²

⁷ Human Rights Law § 296.3-a(g).

⁸ N.Y. Retirement and Social Security Law § 381-b(e).

⁹ N.Y. Park, Recreation and Historic Preservation Law § 13.17(4).

¹⁰ Human Rights Law § 296.3-a(g).

¹¹ Human Rights Law § 292.37 and § 292.38.

¹² 42 U.S.C. § 2000e et seq.

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CREED

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's creed, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Creed" encompasses belief in a supreme being or membership in an organized religion or congregation. Atheism and agnosticism are considered creeds as well. A person is also protected from discrimination because of having no religion or creed. An individual's self-identification with a particular creed or religious tradition is determinative.

Statutory protection.

Discrimination based on creed is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.¹³

Sabbath or holy day observance.

An employee is entitled to time off for religious observance of a sabbath or holy day or days, in accordance with the requirements of their religion, provided it does not impose an undue hardship to their employer, as explained below.¹⁴ Time off shall also be granted to provide a reasonable amount of time for travel before and after the observance.

The Human Rights Law provides that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at a mutually convenient time, or shall be charged against any available personal, vacation or other paid leave, or shall be taken as leave without pay.¹⁵ Agencies are not required to permit such absence to be made up at another time, but may agree that the employee may do so.

Leave that would ordinarily be granted for other non-medical personal reasons shall not be denied because the leave will be used for religious observance.¹⁶ Under no circumstances may time off for religious observance be charged as sick leave.¹⁷

The employee is not entitled to premium wages or benefits for work performed during hours to which such premium wages or benefits would ordinarily be applicable, if the

¹³ 42 U.S.C. § 2000e et seq.

¹⁴ Human Rights Law § 296.10(a).

¹⁵ Human Rights Law § 296.10(b).

¹⁶ Human Rights Law § 296.10(c).

¹⁷ Human Rights Law § 296.10(b).

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employee is working during such hours only to make up time taken for religious observance.¹⁸

Civil Service Law § 50(9) provides that candidates who are unable to attend a civil service examination because of religious observance can request an alternate test date from the Department of Civil Service without additional fee or penalty.

Religious observance or practices.

An employee who, in accordance with their religious beliefs, observes a particular manner of dress, hairstyle, beard, or other religious practice, should not be unreasonably required to compromise their practice in the workplace. The employer is required by law to make a bona fide effort to accommodate an employee's or prospective employee's religious observance or practice. Employers are required to reasonably accommodate the wearing of attire, clothing, or facial hair in accordance with the requirements of an employee's religion, provided it does not impose an undue hardship on the employer.¹⁹

Request for accommodation.

All New York State agencies have adopted a procedure for requesting a religious accommodation.²⁰ An applicant or employee requesting time off or other accommodation of religious observance or practice should clearly state the religious nature of the request and should be willing to work with the employer to reach a reasonable accommodation of the need. Supervisors should consult with their human resources and/or legal departments, as necessary, with respect to requests for accommodation of religious observance or practices.

Conflicts with seniority rights.

In making the effort to accommodate sabbath observance or religious practices, the employer is not obliged to initiate adversarial proceedings against a union when the seniority provisions of a collective bargaining agreement limit its ability to accommodate any employee's religious observance or practice, but may satisfy its duty under this

¹⁸ Human Rights Law § 296.10(a). "Premium wages" include "overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty." § 296.10(d)(2). "Premium benefit" means "an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due to the employee for an equivalent period of work performed during the regular work schedule of the employee." § 296.10(d)(3).

¹⁹ Human Rights Law § 296.10(a).

²⁰ With respect to policy and procedures relative to religious accommodation generally, employees should consult the publication "Procedures for Implementing Reasonable Accommodation of Religious Observance or Practices for Applicants and Employees," and the accompanying "Application to Request Reasonable Accommodation of Religious Observance or Practice."

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section by seeking volunteers willing to waive their seniority rights in order to accommodate their colleague's religious observance or practice. This waiver must be sought from the union that represents the employees covered by such agreement.

Undue hardship.

Before the employer can deny a religious accommodation, the employer must be able to show that accommodating the employee's religious observance or practice would result in undue hardship to the employer. The undue hardship standard applies generally to all accommodation requests, not only those for time off for religious observance. "Undue hardship" means an accommodation requiring significant expense or difficulty, including one that would cause significant interference with the safe or efficient operation of the workplace. Factors that are specifically to be considered are the identifiable costs (such as loss of productivity, or the cost to transfer or hire additional personnel), and the number of individuals who will need time off for a particular sabbath or holy day in relation to available personnel.²¹

Furthermore, in positions that require coverage around the clock or during particular hours, being available even on sabbath or holy days **may** be an essential function of the job. Also, certain uniform appearance standards **may** be essential to some jobs. A requested accommodation will be considered an undue hardship, and therefore not reasonable, if it will result in the inability of an employee to perform an essential function of the job.²²

Exceptions.

None with regard to employment decisions. Accommodation is limited by reasonableness, conflicting seniority rights and undue hardship, as set forth above.

NATIONAL ORIGIN

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's national origin, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

National origin is defined as including ancestry, so an individual born in the United States is nonetheless protected against discrimination based on their ancestors' nationality.²³ An individual's self-identification with a particular national or ethnic group is determinative.

²¹ Human Rights Law § 296.10(d)(1).

²² Human Rights Law § 296.10(d)(1).

²³ Human Rights Law § 292.8.

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Statutory protection.

National origin discrimination is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.²⁴

Language issues.

Fluency in English may be a job requirement. However, requiring that a person speaks English as their primary language, or be a “native speaker,” may be considered national origin discrimination. In some circumstances, where a particular level of fluency in English is not necessary for job performance, requiring such fluency might also constitute national origin discrimination. The only lawful requirement is for a level of English fluency necessary for the job.

Requiring employees to speak only English at all times in the workplace may be national origin discrimination. Any specific workplace rule about language use must be reasonable and necessary to the efficient conduct of State business. Any such reasonable rule that prohibits or limits the use of a language other than English in the workplace must be clearly communicated to employees before it can be enforced.²⁵

Requiring fluency in a language other than English, such as for employment in bilingual positions, is not discriminatory. However, a job qualification of language fluency must be based on an individual’s ability, not on national origin. A requirement that an individual be a “native speaker” of a language other than English is discriminatory.

Proof of identity and employment eligibility.

All New York State employees hired after November 6, 1986 must be able to complete a verified federal Form I-9, which establishes the employee’s identity and eligibility for employment in the United States. Rescinding an offer of employment or terminating employment based upon lack of current employment authorization is required by federal law and is not unlawful discrimination.²⁶

Citizenship requirements.

Employees serving in positions designated as “public offices,” as well as peace and police officer positions defined in the New York State Criminal Procedure Law, must be United States citizens.²⁷

²⁴ 42 U.S.C. § 2000e et seq.

²⁵ See the federal Equal Employment Opportunity Commission’s regulation at 29 CFR § 1606.7.

²⁶ US Immigration and Nationality Act § 274A, as modified by the Immigration Reform and Control Act of 1986, Immigration Act of 1990 and Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

²⁷ Public Officers Law § 3(1); Criminal Procedure Law § 1.20(34) (police officers); Criminal Procedure Law § 2.10 (peace officers).

MILITARY STATUS

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's military status, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Military status" is defined in the Human Rights Law as a person's participation in the military service of the United States or the military service of the State, including, but not limited to, the armed forces of the United States, the Army National Guard, the Air National Guard, the New York Naval Militia, or the New York Guard.²⁸

Statutory protection.

Discrimination on the basis of military status is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). The federal Uniformed Services Employment and Reemployment Rights Act (USERRA)²⁹ provides additional protections.

Military leave provisions for State workers (and all public employees) are contained in N.Y. Military Law § 242 and § 243. Under the 2008 amendments to the federal Family and Medical Leave Act (FMLA), employees with a family member who is on active duty or on call to active duty status may be eligible for qualifying exigency leave or military caregiver leave of up to 26 weeks in a 12-month period, based upon the family member's military service.

Military leave and job retention rights.

N.Y. Military Law entitles State employees to a leave of absence for "ordered military duty"³⁰ or "military duty."³¹ Both provisions entitle State employees to return to their jobs with the same pay, benefits, and status they would have attained had they remained in their position continuously during the period of military duty. State employees on leave for military duty continue to accrue years of service, increment, and any other rights or privileges. Under both Military Law and the Human Rights Law, those called to military duty, or who may be so called, may not be prejudiced in any way with reference to promotion, transfer, or other term, condition or privilege of employment. Military Law § 243(5) provides: "State employees on leave for military duty shall suffer no loss of time, service, increment, or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or

²⁸ Human Rights Law § 292.28.

²⁹ 38 U.S.C. §§ 4301-35.

³⁰ N.Y. Military Law § 242; pertains to members of the militia, the reserve forces, or reserve components of any branch of the military.

³¹ N.Y. Military Law § 243; pertains to active duty in the armed forces or reservists called to active duty.

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continuance in office. Employees are entitled to contribute to the retirement system in order to have leave time count toward determining length of service.”

Similarly, under USERRA, service members who leave their civilian jobs for military service are entitled to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on duty. USERRA also prohibits employers from discriminating against these individuals in employment because of their military service, or for exercising their rights under USERRA.

SEX

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person’s sex, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

Sex/gender discrimination also includes discrimination on the basis of gender identity, pregnancy, childbirth or prenatal leave, sexual orientation and sexual harassment. Each of these is discussed in more depth below.

Statutory protection.

Sex discrimination is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.³²

Sex stereotyping.

Stereotyping based upon sex or gender occurs when conduct, personality traits, or other attributes are considered inappropriate simply because they may not conform to general societal norms or other perceptions about how individuals of either sex should act or look. Making employment decisions based on sex-stereotyped evaluations of conduct, looks or dress can be considered discrimination on the basis of sex or gender.

Discrimination because a person does not conform to gender stereotypes is discrimination based upon sex or gender and may constitute sexual harassment. Derogatory comments directed at a person who has undergone gender dysphoria-related medical treatment could constitute sexual harassment, just as comments about secondary sex characteristics of any person could be sexual harassment.

Sex discrimination can also arise in the context of gender transition issues such as an employer’s refusal to recognize an employee’s sex after transition. For more information on transgender issues, see below: Gender Identity and Disability.

³² 42 U.S.C. § 2000e et seq.

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Sexual harassment.

Sexual harassment constitutes sex discrimination. (See below: Sexual Harassment).

Pregnancy and childbirth discrimination.

Discrimination on the basis of pregnancy or childbirth constitutes sex discrimination. (See below: Pregnancy, Childbirth and Parental Leave).

Exceptions.

Both State and federal law permit consideration of sex in employment decisions when it is a bona fide occupational qualification (BFOQ). This is, however, an **extremely narrow** exception to the anti-discrimination provisions of the Human Rights Law. Neither customer preference nor stereotyped and generalized views of ability based on sex can form the basis for a BFOQ. However, proof that employing members of a particular sex would impinge on the legitimate personal privacy expectations of an agency's clients, particularly in a custodial environment, may make out a case for a BFOQ.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination and is unlawful. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Statutory protection.

Sexual harassment is prohibited as a form of sex discrimination under the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace), and the federal Civil Rights Act of 1964, Title VII.³³

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2 reissuing Executive Order No. 19,³⁴ which established State policy on sexual harassment in the workplace.

Sexual harassment defined.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

³³ 42 U.S.C. § 2000e et seq.

³⁴ Issued by Gov. Mario M. Cuomo on May 31, 1983.

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- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

Actions that may constitute sexual harassment based upon a hostile work environment may include, but are not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Sexual harassment need not be severe or pervasive to be unlawful, and can be any sexually harassing conduct that consists of more than petty slights or trivial inconveniences.

It is not a requirement that an individual tell the person who is sexually harassing them that the conduct is unwelcome. In fact, the Human Rights Law now provides that even if a recipient of sexual harassment did not make a complaint about the harassment to the employer, the failure of the employee to complain shall not be determinative of whether the employer is liable.³⁵

Sexual harassment can also occur when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is called "quid pro quo" harassment. Only supervisors are deemed to engage in this kind of harassment, because co-workers do not have the authority to grant or withhold benefits.

Every employer in New York State must have a policy on sexual harassment prevention, which includes a procedure for the receipt and investigation of complaints of sexual harassment. This policy and procedure should be distributed to new employees and made available to all staff as needed. Also, each agency must provide appropriate sexual harassment training to its staff.

³⁵ Human Rights Law § 296.1(h).

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Reporting sexual harassment.

As with all forms of discrimination and harassment, if an employee, including an intern or contractor working in a State workplace, experiences sexual harassment, or observes it in the workplace, the employee should complain promptly to GOER via the New York State Employee Discrimination Complaint form located at www.goer.ny.gov, or by contacting an equal employment officer. If the employing agency is not subject to Executive Order 187, the employee should file a complaint in accordance with their employer's discrimination complaint procedure. The employee may also report such conduct to a supervisor, managerial employee, or personnel administrator. The complaint can be verbal or in writing. If the complaint is verbal, a written complaint will be requested from the employee in order to assist in the investigation. If the employee refuses to reduce the complaint to writing, the supervisor or other individual who received an oral complaint should file it in writing on the NYS Employee Discrimination Complaint Form. Any complaint, whether verbal or written, must be investigated by GOER, or pursuant to the employing agency's policy. Furthermore, any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature must report such conduct so that it can be investigated.

If an employee is harassed by a co-worker or a supervisor, it is very important that a complaint be made to a higher authority promptly. An agency cannot stop sexual harassment unless it has knowledge of the harassment. Once informed, the conduct must be reported to GOER or the employing agency, which is required to initiate an investigation and recommend prompt and effective remedial action where appropriate.

See below: Harassment.

Sexual harassment by a non-employee.

The employing agency has the duty to prevent harassment of its employees in the workplace including harassment by individuals who its employees come in contact with, including, but not limited to, vendors, consultants, clients, customers, visitors or interns.

Sexual harassment of non-employees.

Individuals in the workplace, who are performing work under contract, are explicitly protected from sexual harassment (and all other types of workplace discrimination) by Human Rights Law § 296-d.

In accord with statewide policy, employees and interns are subject to discipline for harassment of *anyone* in the workplace, including contractors, clients, vendors, or any members of the public.

SEXUAL ORIENTATION

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's sexual orientation, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

The term "sexual orientation" means heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.³⁶

Statutory protection.

Discrimination on the basis of sexual orientation is unlawful pursuant to the Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). Sexual orientation is not a separate protected class under federal law. However, sexual orientation discrimination may also be considered sex discrimination under federal law.

Same-sex spouses or partners.

The New York State Marriage Equality Act, signed by Governor Cuomo on June 24, 2011, and effective on July 24, 2011, authorizes marriages between same-sex couples in the State of New York. New York State also recognizes marriages between same-sex couples performed in any jurisdiction where such marriages are valid. Spousal benefits will be provided to same-sex spouses in the same manner as to opposite-sex spouses of State employees. Failure to offer equal benefits, or to discriminate against an employee in a marriage with a same-sex spouse, is considered discrimination on the basis of sexual orientation.

Domestic partners.

Same-sex partners who are not married may also qualify for benefits. The employee and their partner can fill out the "Application for Domestic Partner Benefits" and "Affidavit of Domestic Partnership and Financial Interdependence," which is available online from the Department of Civil Service. Opposite-sex domestic partners can also qualify for benefits on the same basis as same-sex partners.

³⁶ Human Rights Law § 292.27.

GENDER IDENTITY OR EXPRESSION

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's gender identity or expression, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Gender identity or expression" means an individual's actual or perceived gender-related identity, appearance, behavior, expressions other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.

A transgender person is an individual who has a gender identity different from the sex assigned to that individual at birth.

Gender dysphoria is a recognized medical condition related to an individual having a gender identity different from the sex assigned at birth.

Statutory protection.

Effective February 24, 2019, the Human Rights Law § 296.1 was amended to explicitly state that discrimination on the basis of gender identity or expression is unlawful. Gender identity or expression may also form the basis of Human Rights Law sex and disability discrimination claims. These protections are explained in regulations promulgated by the Division of Human Rights.³⁷ Gender identity or expression discrimination may also be considered sex discrimination under federal law. Individuals who are not employees, but work in the State workplace (e.g. interns and contractors) are protected from discrimination on the basis of gender identity or expression by § 296-d.

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 33,³⁸ which prohibits discrimination in employment by executive branch agencies on the basis of gender identity.

What protection against discrimination is provided by the Human Rights Law?

As of February 24, 2019, it is unlawful for an employer to discriminate on the basis of "gender identity or expression."

The term "sex" when used in the Human Rights Law includes gender identity or expression and the status of being transgender, and discrimination on either basis is

³⁷ 9 N.Y.C.R.R. § 466.13

³⁸ Issued by Gov. David A Paterson on December 16, 2009.

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sex discrimination. Harassment on either basis qualifies as sexual harassment. (See above: Sex Stereotyping.)

The term “disability” when used in the Human Rights Law includes gender dysphoria or other condition meeting the definition of disability in the Human Rights Law and discrimination on that basis is disability discrimination. Refusal to provide reasonable accommodation for persons with gender dysphoria, where requested and necessary, is also disability discrimination. (See above: Disability.)

While discrimination on the basis of gender identity or expression can take many forms, it includes, but is not limited to, unwelcome verbal or physical conduct, such as derogatory comments, jokes, graffiti, drawings or photographs, touching, gestures, or creating or failing to remedy a hostile work environment. Retaliation is also prohibited. (See below: Harassment and Retaliation.)

Rights with regard to name, title and pronoun.

An employee is entitled to be addressed by the name, title and pronoun that the employee prefers. Managers, supervisors and other employees should comply with such requests, regardless of the employee’s appearance, anatomy, medical history, sex assigned at birth, or legal name, and without requiring identification or other forms of “proof” of gender identity. It is lawful to use an employee’s legal name in employment related documents, such as for payroll and tax records, and insurance and retirement benefits. Once the employee obtains a court order legally changing their name and gender marker, they are entitled to have all records changed to the employee’s legal name upon presentation of the court order to the Director of Human Resources or their designee.

Failure to use the name, title or pronoun preferred by the employee may constitute discrimination on the basis of gender identity or expression.

Access to gender-segregated facilities and programs.

An employee is entitled to use gender-segregated facilities (e.g. changing rooms, locker rooms, showers, restrooms), and participate in gender-separated programs, consistent with that employee’s gender identity, regardless of appearance, anatomy, medical history, sex assigned at birth, or gender indicated on identification, and without requiring any “proof” of gender identity. An employee is entitled to be free from any discrimination or harassment because of the employee’s use of a particular gender-separated facility. State agencies are not required to change existing facilities to all-gender facilities, or to construct new facilities.

Where single-occupancy facilities exist, any individual may use such facilities, regardless of the gender-designation of such facility. However, an employee may not be required to use a single-occupancy facility because of the employee’s gender identity or expression, including, but not limited to, transgender, gender non-conforming, non-binary, or because of another individual’s concerns.

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Dress codes, uniforms, grooming, and appearance standards.

State agencies may not require dress, uniforms, grooming, or appearance that differ based on gender, sex, or sex stereotypes. Any dress code must be applied consistently, regardless of gender or gender identity.

Equal access to employee benefits, leave, and reasonable accommodations.

An employee is entitled to equal access to benefits, leave, and reasonable accommodations regardless of gender identity. The State offers its employees access to health benefit plans that cover gender dysphoria-related medical treatment, and agencies provide reasonable accommodations to people undergoing gender transition. Requests for leave or reasonable accommodations related to gender should be treated in the same manner as all requests for other health or medical conditions.

DISABILITY

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's disability, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

All employees must be able to perform the essential functions of their jobs in a reasonable manner, with or without a reasonable accommodation. Consideration of requests for accommodation of applicants or employees with disabilities is required and should be granted where reasonable.

Statutory protection.

Disability discrimination is unlawful pursuant to Human Rights Law § 296.1, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). Reasonable accommodation is required of employers pursuant to Human Rights Law § 296.3(a). New York State law has a very broad definition of disability, and generally protects persons with any disabling condition, including temporary disabilities. Disability discrimination is also unlawful under federal law. However, the scope of disability under the provisions of the Americans with Disability Act (ADA) is not as broad.³⁹ The Federal Rehabilitation Act of 1973 § 503 and § 504⁴⁰ also apply to many State workers. Federal law also requires reasonable accommodation.

³⁹ 42 U.S.C. § 12111 et seq.

⁴⁰ 29 U.S.C. § 793 and § 794.

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Guide dog, hearing dog, and service dog provisions are found in Human Rights Law § 296.14. An employee who uses a guide, hearing or service dog is also protected by Civil Rights Law § 47-a and § 47-b.

What is a “disability” under the Human Rights Law?

A “disability” is:

- a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; or
- a record of such an impairment; or
- a condition regarded by others as such an impairment.⁴¹

Because this definition includes any impairment that is demonstrable by clinical or laboratory diagnostic techniques, it includes most disabling conditions.

Reasonable performance.

An employee with a disability must be able to achieve “reasonable performance” in order to be protected by the Human Rights Law. Reasonable performance is not perfect performance or performance unaffected by the disability, but job performance reasonably meeting the employing agency’s needs to achieve its governmental functions. An employee with a disability is entitled to reasonable accommodation if it will permit the employee to achieve reasonable job performance.

Essential functions.

A function is essential if not performing it would fundamentally change the job for which the position exists. If a function is not essential to the job, then it can be reassigned to another employee, and the employee with a disability may not be required to perform that function.

Employers may ask applicants with disabilities about their ability to perform specific job functions and tasks, as long as all applicants are asked in the same way about their abilities. Employers may require applicants/employees to demonstrate capacity to perform the physical demands of a particular job, in the same way as applicants are asked to demonstrate competence and qualifications in other areas. Such tests of capacity, agility, endurance, etc. are non-discriminatory as long as they can be demonstrated to be related to the specific duties of the position applied for and are uniformly given to all applicants for a particular job category.

⁴¹ Human Rights Law § 292.21.

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Reasonable accommodation.⁴²

A reasonable accommodation is an adjustment or modification made to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. Some examples of reasonable accommodation include:

- A modified work schedule;
- Reassignment of the non-essential functions of the job;
- Acquisition or modification of equipment; and
- Provision of an accessible worksite.

All otherwise qualified applicants and employees are entitled to reasonable accommodation of disability. Accommodation is required if it is reasonable and will assist in overcoming an obstacle caused by the disability that prevents the person from applying for the position, from performing the essential functions of the position, or from receiving equal terms, conditions or privileges of the position.

Unless the disability is obvious (e.g. employee's use of a wheelchair) the applicant or employee must inform the employing agency of the need for accommodation. The employee also must provide reasonable medical documentation as requested by the agency and engage in an interactive process with the agency in order to reach an effective and reasonable accommodation.

Once an accommodation has been requested, the agency has an obligation to verify the need for the accommodation. If the need for accommodation exists, then the employing agency has an obligation to seek an effective solution through an interactive process between the agency and the employee.

While the employee can request a particular accommodation, the obligation to provide a reasonable accommodation is satisfied where the accommodation is effective in addressing the individual's limitations such that they can perform their essential job duties in a reasonable manner. The agency has the right to decide which reasonable accommodation will be granted, so long as it is effective in enabling the employee to perform the job duties in a reasonable manner.

An agency may require a doctor's note to substantiate the request, or a medical examination where appropriate, but must maintain the confidentiality of an employee's medical information. The Human Rights Law requires that the employee cooperate in

⁴² With respect to policy and procedures relative to reasonable accommodation generally, employees should consult the publication Procedures for Implementing Reasonable Accommodation for Applicants and Employees with Disabilities and Pregnancy-related Conditions in New York State Agencies.

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providing medical or other information needed to verify the disability, or any additional information that is otherwise necessary for consideration of the accommodation.⁴³

Information provided for purposes of reasonable accommodation cannot be used by the agency for another purpose, such as a basis for referring an employee for a medical examination to determine fitness for duty pursuant to Civil Service Law section 72(1), placing the employee on an involuntary leave of absence pursuant to Civil Service Law section 72(5), or other personnel actions.

Many common questions about reasonable accommodation are explained in the reasonable accommodation regulations⁴⁴ of the New York State Division of Human Rights, which are available on the Division's website. These regulations may be used by applicants, employees, and agency personnel in order to better understand the reasonable accommodation process.

Exceptions.

The Human Rights Law does not require accommodation of behaviors that do not meet the employer's workplace behavior standards that are consistently applied to all similarly situated employees, even if these behaviors are caused by a disability.⁴⁵

Reasonable accommodation is not required where the disability or the accommodation itself poses a direct threat, which means a significant risk of substantial harm to the health or safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation.⁴⁶

Family Medical Leave Act (29 USC sections 2601 to 2654).

The State as an employer cannot take adverse action against employees who exercise their rights to medical leave for the birth, adoption, or foster care placement of a child, for their own serious health condition, or to care for a family member with a serious health condition which qualifies under the Act. The Act entitles eligible employees to take up to a total of 12 weeks of unpaid leave during a 12-month period. (Military caregivers may be entitled to up to 26 weeks of leave. See above: Military Status.)

Civil Service Law §§ 71 and 73.

The Civil Service Law allows an agency to terminate an employee after one cumulative year of absence for a disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law.⁴⁷ This is extended to two years for an individual injured in an assault that causes such injury or disease. The Civil Service

⁴³ Human Rights Law § 296.3.

⁴⁴ 9 N.Y.C.R.R. § 466.11.

⁴⁵ 9 N.Y.C.R.R. § 466.11(g)(1).

⁴⁶ 9 N.Y.C.R.R. § 466.11(g)(2).

⁴⁷ Civil Service Law § 71.

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Law also allows an agency to terminate an employee who has been continuously absent for one year for a personal injury or illness.⁴⁸

Drug and Alcohol-Free Workplace Policy.

New York State employees are subject to criminal, civil, and disciplinary penalties if they distribute, sell, attempt to sell, possess, or purchase controlled substances while at the workplace or while acting in a work-related capacity. Such illegal acts, even if engaged in while off duty, may result in disciplinary action. In those locations where it is permitted, an employee may possess and use a controlled substance that is properly prescribed for the employee by a physician. Employees are also prohibited from on-the-job use of, or impairment from, alcohol. If a supervisor has a reasonable suspicion that an employee is unable to perform job duties due to the use of controlled substances or alcohol, that employee may be required to undergo medical testing.⁴⁹ If the employee has a disability that is drug- or alcohol-related, the employee may be referred to voluntary and confidential participation in the statewide Employee Assistance Program. Other available options include pursuing disability leave procedures or disciplinary measures. On-line supervisory training regarding a drug- and alcohol-free workplace is available through the GOER's Online Learning Center at <https://nyslearn.ny.gov/>.

The Federal Drug-Free Workplace Act of 1988, amended in 1994, requires that all agencies that have contracts with the United States Government that exceed \$100,000, and all agencies that receive federal grants, maintain a drug-free workplace. If an employee is involved in work on a contract or grant covered by this law, they are required to notify their employer of any criminal drug statute conviction, for a violation occurring in the workplace, not less than five days after the conviction. Agencies covered by this law must notify the federal government of the conviction and must take personnel action against an employee convicted of a drug abuse violation.

Drug addiction and alcoholism under the Human Rights Law and Regulations.⁵⁰

An individual who is currently using drugs illegally is not protected under the disability provisions of the Human Rights Law. The law protects individuals who are recovered or recovering drug addicts or alcoholics and may protect alcoholics if the alcoholism does not interfere with job performance.

⁴⁸ Civil Service Law § 73.

⁴⁹ For agencies that do not have their own drug/alcohol testing procedures, this test must be done pursuant to Civil Service Law § 72.

⁵⁰ See *generally* 9 N.Y.C.R.R. § 466.11(h).

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Intoxication or use of alcohol on the job is not protected. A test to determine the illegal use of drugs is not considered a medical test that is governed by the Human Rights Law. Agencies have differing requirements and policies with regard to drug testing.

If an individual is protected by the Human Rights Law, adjustment to work schedules, where needed to allow for ongoing treatment, is allowed as an accommodation where reasonable, if the individual is still able to reasonably perform the essential functions of the job, including predictable and regular attendance.

See above: Drug and Alcohol-Free Workplace Policy.

Guide dogs, hearing dogs, and service dogs.

Users of guide dogs, hearing dogs, or service dogs that are trained as provided in the Human Rights Law are given protection by the Human Rights Law.⁵¹

The use of such a dog is not considered a “reasonable accommodation,” but a right protected separately under the Human Rights Law, and the dog owner need not specifically request permission to bring the dog into the workplace. This specific provision has no parallel in the federal ADA, under which the matter would instead be analyzed to determine whether a reasonable accommodation is appropriate.

This right to be accompanied by such dogs in the workplace applies only to dogs that meet the definitions found in the Human Rights Law.

A “guide dog” or “hearing dog” is a dog that is trained to aid a person who is blind, deaf or hard of hearing, is actually used to provide such aid, and was trained by a guide or hearing dog training center or professional guide or hearing dog trainer.⁵²

A “service dog” may perform a variety of assistive services for its owner. However, to meet the definition, the dog must be trained by a service dog training center or professional service dog trainer.⁵³

Dogs that are considered therapy, companion or other types of assistance dogs, but who have not been professionally trained as stated in the definitions above, are not covered by this provision.⁵⁴

⁵¹ Human Rights Law § 296.14.

⁵² Human Rights Law § 296.14.

⁵³ Human Rights Law § 296.14.

⁵⁴ A dog may be licensed as a “service” dog, and nevertheless not meet the definition of service dog for purposes of the Human Rights Law. N.Y. Agriculture & Markets Law § 110, which requires the licensing of dogs, permits municipalities to exempt from licensing fees various categories of dogs, including “service” and “therapy” dogs, but the section provides no definitions of those categories.

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The provision also does not apply to animals other than dogs, regardless of training.

Dogs not meeting one of the definitions, or animals other than dogs, may provide assistance or companionship to a person with a disability. However, they are generally **not** permitted into the workplace as a reasonable accommodation, because the workplace and other employees can be adversely impacted by animals that are not professionally trained by guide, hearing or service dog trainers, as provided above. The New York State Civil Service Law provides qualified employees with special leave benefits for the purposes of obtaining service animals or guide dogs and acquiring necessary training.⁵⁵

PREDISPOSING GENETIC CHARACTERISTICS

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of the applicant or employee having a predisposing genetic characteristic, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

Testing for such genetic characteristics is prohibited in most circumstances.

Statutory protection.

Discrimination on the basis of a genetic characteristic is unlawful pursuant to Human Rights Law § 296.1, § 296.19, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). It is also covered by the federal Genetic Information Nondiscrimination Act (GINA).⁵⁶

What is a predisposing genetic characteristic?

A predisposing genetic characteristic is defined as “any inherited gene or chromosome, or alteration thereof, . . . determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability.”⁵⁷

⁵⁵ Civil Service Law § 6(1).

⁵⁶ As with Title VII, the ADA and the ADEA, the Genetic Information Nondiscrimination Act is enforced by the federal Equal Employment Opportunity Commission. When codified, GINA was distributed throughout various sections of Titles 29 and 42 of the United States Code. For more details on GINA, see <http://www.eeoc.gov/laws/types/genetic.cfm>.

⁵⁷ Human Rights Law § 292.21-a.

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How is the employee or applicant protected?

It is an unlawful discriminatory practice for any employer to directly or indirectly solicit, require, or administer a genetic test to a person, or solicit or require information from which a predisposing genetic characteristic can be inferred as a condition of employment or pre-employment application.⁵⁸ It is also unlawful for an employer to buy or otherwise acquire the results or interpretation of an individual's genetic test results or information from which a predisposing genetic characteristic can be inferred or to make an agreement with an individual to take a genetic test or provide genetic test results or such information.⁵⁹

An employee may give written consent to have a genetic test performed, for purposes of a worker's compensation claim, pursuant to civil litigation, or to determine the employee's susceptibility to potentially carcinogenic, toxic, or otherwise hazardous chemicals or substances found in the workplace environment. The employer may not take any adverse action against an employee on the basis of such voluntary test.⁶⁰

Exceptions.

An employer may require a specified genetic test as a condition of employment where such a test is shown to be directly related to the occupational environment, such that the employee or applicant with a particular genetic anomaly might be at an increased risk of disease as a result of working in that environment.⁶¹ However, the employer may not take adverse action against the employee as a result of such testing.

FAMILIAL STATUS

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's familial status, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Familial status" includes being pregnant, having a child under the age of 18, having legal custody of any person under the age of 18, or having a person under the age of 18 residing in the home of the designee of the parent, or being in the process of securing custody, adoption or foster care placement of any person under 18.

⁵⁸ Human Rights Law § 296.19(a)(1).

⁵⁹ Human Rights Law § 296.19(a)(2).

⁶⁰ Human Rights Law § 296.19(c) and (d).

⁶¹ Human Rights Law § 296.19(b).

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Statutory protection.

Discrimination on the basis of familial status is unlawful pursuant to Human Rights Law § 296.1 and § 296-d (for non-employees working in the workplace). Familial status is not a protected class under federal law.

Familial status does not include the identity of the children.

Parents or guardians of children are protected from discrimination on the basis of the **status** of being a parent or guardian, not with regard to who their children are. Therefore, actions taken against an employee because of who their child is, or what that child has done, do not implicate familial status discrimination.

Nepotism.

Nepotism means hiring, granting employment benefits, or giving other favoritism based on the identity of a person's family member. Anti-nepotism rules do not implicate familial status discrimination, because anti-nepotism rules involve the **identity** of the employees as relatives, not their **status** as parent, child, or spouse. The Public Officers Law provides that a State employee may not control or influence decisions to hire, fire, supervise or discipline a family member.⁶² Moreover, other acts of nepotism not specifically governed by this provision may violate more general conflict of interest provisions in the New York ethics statutes.

What is familial status discrimination?

Familial status discrimination would include, but not be limited to, making employment decisions about an employee or applicant because:

- they are pregnant;
- they have children at home, or have "too many" children;
- of a belief that someone with children will not be a reliable employee;
- they are a single parent;
- they are a parent, regardless of living arrangements;
- they are living with and caring for a grandchild;
- they are a foster parent, or are seeking to become a foster parent, or to adopt a child;
- a father has obtained custody of one or more of his children and will be the primary caretaker;
- of a belief that mothers should stay home with their children; or
- of any other stereotyped belief or opinion about parents or guardians of children under the age of 18.

⁶² Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.

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No requirement of reasonable accommodation.

The Human Rights Law explicitly states that the familial status provisions do not create any right to reasonable accommodation on that basis.⁶³ Therefore, the employer is not required to accommodate the needs of the child or children and is not required to grant time off for the parent to attend school meetings, concerts, sporting events, etc., as an accommodation. However, the employer must grant such time off to the same extent that time off is granted to employees for other personal reasons.

The familial status protections do not expand or decrease any rights that a parent or guardian has under the federal Family Medical Leave Act or the New York State Paid Family Leave Act (where these are applicable) to time off to care for family members. (See above: Family Medical Leave Act and Paid Family Leave.)

Pregnancy and childbirth discrimination.

Discrimination on the basis of pregnancy constitutes familial status discrimination. (See below: Pregnancy, Childbirth and Parental Leave.)

MARITAL STATUS

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's marital status, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis.

"Marital status" is the condition of being single, married, separated, divorced, or widowed.

Statutory protection.

Discrimination on the basis of marital status is unlawful pursuant to Human Rights Law § 296.1 and § 296-c. Marital status is not covered by federal law.

Marital status does not include the identity of the spouse.

Discrimination based on the identity of the individual to whom a person is married is not marital status discrimination, as it is only the status of being married, single, divorced, or widowed that is protected. Thus, terminating employment because of the actions of a spouse would not be considered marital status discrimination, because the action was taken not based on the fact that the employee was married but that the employee was married to a particular person.

⁶³ Human Rights Law §296.3

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Nepotism.

Nepotism means hiring, granting employment benefits, or other favoritism based on the identity of a person's spouse or other relative. The Public Officers Law provides that a State employee may not control or influence decisions to hire, fire, supervise or discipline a spouse or other relative.⁶⁴ Moreover, other acts of nepotism not specifically governed by this provision may violate more general conflict of interest provisions in the New York ethics statutes. Such anti-nepotism rules do not implicate marital status discrimination.

What is marital status discrimination?

Some examples of marital status discrimination are:

- expecting an employee to work a disproportionate number of extra shifts or at inconvenient times because he or she is not married, and therefore won't mind.
- selecting a married person for a job based on a belief that married people are more responsible or more stable.
- giving overtime or a promotion to a married person rather than a single person based on a belief that the single person does not have to support anyone else.

STATUS AS A VICTIM OF DOMESTIC VIOLENCE

No decision affecting hiring, promotion, firing or a term, condition or privilege of employment shall discriminate on the basis of a person's status as a victim of domestic violence, nor shall employees be harassed or otherwise discriminated against on such basis, or perceived basis. A victim of domestic violence is "any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, strangulation, identity theft, grand larceny or coercion; and (i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and (ii) such act or acts are or are alleged to have been committed by a family or household member."⁶⁵

⁶⁴ Anti-nepotism rules for all State government workplaces are found in N.Y. Public Officers Law § 73.14.

⁶⁵ N.Y. Social Service Law §459-a.

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Statutory protection.

Discrimination based on status as a victim of domestic violence is unlawful pursuant to Human Rights Law § 296.1, § 296.22, § 296-c (for interns) and § 296-d (for non-employees working in the workplace). There is no similar federal protection.

Executive Order concerning State workers.

On January 1, 2011, Governor Andrew M. Cuomo issued Executive Order No. 2, reissuing Executive Order No. 19,⁶⁶ which requires adoption of domestic violence and the workplace policies by all executive branch State agencies.

Purpose of domestic violence and the workplace policies.

Domestic violence permeates the lives and compromises the safety of New York State residents with tragic, destructive, and sometimes fatal results. Domestic violence occurs within a wide spectrum of relationships, including married and formerly married couples, couples with children in common, couples who live together or have lived together, gay, lesbian, bisexual and transgender couples, and couples who are dating or who have dated in the past.

Domestic violence often spills over into the workplace, compromising the safety of both victims and co-workers and resulting in lost productivity, increased health care costs, increased absenteeism, and increased employee turnover. The purpose of the policy is to address the impacts of domestic violence already being felt in the workplace.

The workplace can sometimes be the one place where the victim is not cut off from outside support. The victim's job, financial independence, and the support of the workplace can be part of an effective way out of the abusive situation. Therefore, the domestic violence and the workplace policy aims to support the victim in being able to retain employment, find the resources necessary to resolve the problem, and continue to serve the public as a State employee.

Meeting the needs of domestic violence victims.

A victim of domestic violence can ask the employer for accommodations relating to their status, which can include the following:

- Employee's need for time off to go to court, to move, etc., should be granted at least to the extent granted for other personal reasons.
- If an abuser of an employee comes to the workplace and is threatening, the incident should be treated in same manner as any other threat situation. It is not to be treated as just the victim's problem which the victim must handle on her or his own. The victim of domestic violence must not be treated as the "cause" of the problem and supervisory employees must take care that no negative action is

⁶⁶ Issued by Gov. Eliot L. Spitzer on October 22, 2007.

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taken against the victim because, for example, the abuser comes to the workplace, the victim asks the employer to notify security about the potential for an abuser to come to the workplace, or the victim provides an employer with information about an order of protection against the abuser.

- If a victim needs time off for disability caused by the domestic violence, it should be treated the same as any temporary disability. This includes time off for counseling for psychological conditions caused by the domestic violence. (See above: Disability. Note: temporary disabilities are covered under the Human Rights Law.)
- The State's Domestic Violence and the Workplace Policy requires this and more. Employees should consult their agency's policy to understand the support it affords to victims of domestic violence, which may include the following:
- Assistance to the employee in determining the best use of his/her attendance and leave benefits when an employee needs to be absent as a result of domestic violence.
- Assistance with enforcement of all known court orders of protection, particularly orders in which the abuser has been ordered to stay away from the work site.
- Refraining from any unnecessary inquiries about domestic violence.
- Maintenance of confidentiality of information about the domestic violence victim to the extent possible.
- Establishment of a violence prevention procedure, such as a policy to call "911" if an abuser comes to the workplace.
- Working with the domestic violence victim to develop a workplace safety plan.

In addition, the policy also sets out standards for the agency to hold employees accountable who utilize State resources or use their position to commit an act of domestic violence.

Human Rights Law reasonable accommodation requirements for leave time.

State employees have the protections described above, which are more extensive than the protections explicitly afforded employees generally in the State (public and private) by the Human Rights Law. The Law provides for leave time as a reasonable accommodation for the following needs related to the domestic violence:

- Medical attention for the victim, or a child who is the victim;
- Obtaining services from a domestic violence shelter, program or rape crisis center;
- Obtaining psychological counseling, including for a child who is a victim;
- For safety planning, or taking action to increase safety, including temporary or permanent relocation;
- Obtaining legal services, assisting with prosecution, or appearing in court.

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Time off for legal proceedings.

In addition to the requirement of the domestic violence and the workplace policy that victims be granted reasonable time off to deal with domestic violence, time off for legal proceedings is addressed by the Penal Law. It is illegal for an employer to take any adverse action against an employee who is a victim of a crime for taking time off to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection.⁶⁷

Unemployment insurance benefits.

If a victim must leave a job because of domestic violence, he or she is not necessarily barred from receiving unemployment insurance benefits. Circumstances related to domestic violence may be “good cause” for voluntarily quitting a job. Also, job performance problems related to domestic violence (such as absenteeism or tardiness) will not necessarily bar benefits.⁶⁸

Further information and support.

Dealing with domestic violence requires professional assistance. Domestic violence can be a dangerous or life-threatening situation for the victim and others who may try to become involved. Both victims and employers may contact the NYS Office for the Prevention of Domestic Violence for further information.

PREGNANCY, CHILDBIRTH AND FAMILY LEAVE

Discrimination on the basis of pregnancy constitutes discrimination on the basis of sex and familial status. Furthermore, medical conditions related to pregnancy or childbirth must be reasonably accommodated in the same manner as any temporary disability. Parental leave is available to employees on a gender-neutral basis.

Statutory protection.

Discrimination based on sex and familial status is unlawful pursuant to Human Rights Law § 296.1, § 296-c (for interns based on sex) and § 296-d (for non-employees working in the workplace). Sex, but not familial status, is a protected class under federal law. Reasonable accommodation of pregnancy-related conditions is required by the Human Rights Law.⁶⁹ There is no similar requirement under federal law, unless the pregnancy-related condition meets the *definition of “disability”* under federal law. Also, the federal Family Medical Leave Act and the New York State Paid Family Leave Act

⁶⁷ N.Y. Penal Law § 215.14.

⁶⁸ N.Y. Labor Law § 593.

⁶⁹ Human Rights Law § 296.3(a).

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(where these are applicable) may entitle an employee leave. (See: Family Medical Leave Act and Paid Family Leave.)

Pregnancy discrimination.

No decision regarding hiring, firing or the terms, condition and privileges of employment may be based on the fact that an applicant or employee is pregnant or has recently given birth. A pregnant individual may not be compelled to take a leave of absence unless pregnancy prevents that individual from performing the duties of the job in a reasonable manner.⁷⁰ Disability discrimination may also be implicated where discrimination is based on limitations or perceived limitations due to pregnancy.

Reasonable accommodation of pregnancy-related conditions.

Any medical condition related to pregnancy or childbirth that does prevent the performance of job duties entitles the individual to reasonable accommodation, including time off consistent with the medical leave policies applicable to any disability. The mere fact of being pregnant does not trigger the requirement of accommodation. But, any condition that “inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques”⁷¹ must be accommodated, when necessary, to allow the employee to perform the essential functions of the job.

An agency may require a doctor’s note to substantiate the request but must maintain the confidentiality of an employee’s medical information. The Human Rights Law requires that the employee cooperate in providing medical or other information needed to verify the pregnancy-related condition, or that is otherwise necessary for consideration of the accommodation.⁷² (See above: Disability.)

While pregnancy-related conditions are treated as temporary disabilities for purposes of applying existing regulations under the Human Rights Law, pregnancy-related conditions need not meet any definition of disability to trigger an employer’s obligation to accommodate under the law. Any medically-advised restrictions or needs related to pregnancy will trigger the need to accommodate, including such things as the need for extra bathroom breaks, or increased water intake. The Human Rights Law specifically provides that a pregnancy-related condition includes lactation.

Right to express breast milk in the workplace.

Lactating mothers have the right to express breast milk in the workplace, as follows:

An employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express

⁷⁰ Human Rights Law § 296.1(g) and § 296-c(2)(e).

⁷¹ Human Rights Law § 292.21-f.

⁷² Human Rights Law § 296.3.

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breast milk for her nursing child for up to three years following child birth. The employer shall make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place. (See N.Y. Labor Law § 206-c)

The right to express breast milk in the workplace is NOT an accommodation. However, the employing agency may require lactating mothers to use a procedure to notify the employer that the employee will be expressing breast milk to ensure appropriate scheduling of breaks and use of any lactation facility.

Parental leave.

Any parent of a newborn child, a newly adopted child, or a sick child is entitled to available child care leave without regard to the sex of the parent. Only the woman who gives birth, however, is entitled to any medical leave associated with pregnancy, childbirth and recovery.

In general, the State as an employer cannot take adverse action against employees who take qualifying medical leave for the birth or adoption of a child, for their own serious health condition, or to care for a family member with a serious health condition which qualifies under the federal Family and Medical Leave Act.⁷³ The Act entitles eligible employees to take up to a total of 12 weeks of unpaid leave during a calendar year.

Paid Family Leave.

The New York State Paid Family Leave Law⁷⁴ provides for paid leave to bond with a newly born, adopted or fostered child; care for a close relative with a serious health condition; or assist loved ones when a family member is deployed abroad on active military service. The amount of paid leave available increases to a total of 12 weeks by 2021. State employees not represented by a union in bargaining units 06, 18, 46 and 66 are covered by the law. State employees represented by a union may be covered if Paid Family Leave is collectively bargained for.

More information is available on the New York State website at <https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-information-employees>. This includes information on who is eligible, and how to apply.

⁷³ 29 U.S.C. § 2601 et seq.

⁷⁴ Workers Compensation Law, art. 9, §§ 200, et seq.

PRIOR ARREST RECORDS, YOUTHFUL OFFENDER ADJUDICATIONS AND SEALED CONVICTION RECORDS

It is an unlawful discriminatory practice for an employer to make any inquiry about any arrest or criminal accusation of an individual, not then pending against that individual, which has been resolved in favor of the accused or adjourned in contemplation of dismissal or resolved by a youthful offender adjudication or resulted in a sealed conviction. It is unlawful to require any individual to divulge information pertaining to any such arrest, criminal accusation or sealed conviction, or to take any adverse action based on such an arrest, criminal accusation or sealed conviction.

Statutory protection.

This protection is provided by Human Rights Law § 296.16.

What is unlawful?

It is generally unlawful to ask an applicant or employee whether he or she has ever been arrested or had a criminal accusation filed against him or her. It is also generally unlawful to inquire about youthful offender adjudications or sealed records. It is **not** unlawful to ask if a person has any currently pending arrests or pending criminal charges. It is also not unlawful to inquire about convictions. (See below: Previous Conviction.)

It is generally unlawful to require an individual to divulge information about the circumstances of an arrest or accusation no longer pending. In other words, the employer cannot demand information from the individual accused in order to “investigate” the circumstances behind an arrest. It is **not** unlawful to require an employee to provide information about the outcome of the arrest, i.e. to demonstrate that it has been terminated in favor of the accused. The agency may be able to take action against an employee for the conduct that led to the arrest but Human Rights Law §296.16 provides that no person “shall be required to divulge information” pertaining to the arrests resolved as set out below.

Pending arrest or charges.

As long as an arrest or criminal accusation remains pending, the individual is not protected. The agency may refuse to hire or may terminate or discipline the employee in accordance with applicable law or collective bargaining agreement provisions. The agency may also question the employee about the pending arrest or accusation, the underlying circumstances, and the progress of the matter through the criminal justice system.

However, if the employee is arrested while employed, is not terminated by the employer, and the arrest is subsequently terminated in favor of the employee, the

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employee cannot then initiate an adverse action against the employee based on the arrest and cannot question the employee about the matter. The employer can require that the employee provide proof of the favorable disposition in a timely manner.

What specific circumstances are protected?

The arrest or criminal accusation must have been:

- dismissed, pursuant to Criminal Procedure Law § 160.50;
- adjourned in contemplation of dismissal (unless such dismissal has been revoked) pursuant to Criminal Procedure Law §§ 170.55, 170.56, 210.46, 210.47, or 215.10;
- disposed of as a youthful offender adjudication, pursuant to Criminal Procedure Law § 720.35 (which are automatically sealed);
- resulted in a conviction for a violation, which was sealed pursuant to Criminal Procedure Law § 160.55 (pertaining to certain violations);
- resulted in a conviction, which was sealed pursuant to Criminal Procedure Law § 160.58 (pertaining to controlled substances); or
- resulted in a conviction, which was sealed pursuant to Criminal Procedure Law § 160.59 (pertaining to certain convictions which may be sealed ten or more years after the end of incarceration).

Sealed records.

Whether or not a record is sealed is a factual question. Many records that could be sealed are not in fact sealed. Sealing a record requires that the court specifically order that the record be sealed. The applicant or employee is responsible to know the status of a sealable conviction. If it is not in fact sealed, then it is a conviction record that can be required to be disclosed. (See below: Previous Conviction.)

Exceptions.

The Human Rights Law explicitly states that arrest inquiries, requests for information, or adverse actions may be lawful where such actions are “specifically required or permitted by statute.”⁷⁵

These provisions do not apply to an application for employment as a police officer or peace officer.⁷⁶

The provisions do not fully apply to an *application for employment* or membership in any law enforcement agency. For those positions, arrests or criminal accusations that are dismissed pursuant to Criminal Procedure Law § 160.50 may not be subject to inquiry, demands for information, or be the basis of adverse action. However, the other types of

⁷⁵ Human Rights Law § 296.16; see e.g. Civil Service Law § 50(4).

⁷⁶ Police and peace officer as defined in Criminal Procedure Law §§ 1.20 and 2.10, respectively.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

terminations (youthful offender adjudication or sealed convictions) may be inquired into and taken into consideration for jobs with law enforcement agencies.

PREVIOUS CONVICTION RECORDS

It is unlawful to deny any license or employment, to refuse to hire, or terminate, or take an adverse employment action against an applicant or employee, by reason of their having been convicted of one or more criminal offenses, if such refusal is in violation of the provisions of Article 23-A of the Correction Law. The Correction Law provides the standards to be applied and factors to be considered before an employment decision may be based on a previous conviction, including the factor that it is the public policy of the State of New York to encourage the licensure and employment of those with previous criminal convictions

Statutory protection.

This protection is provided by Human Rights Law § 296.15, in conjunction with Article 23-A of the N.Y. Correction Law.

Factors from the Correction Law.

The Correction Law provides that an employer may not refuse to hire, or terminate an employee, or take an adverse employment action against an individual, because that individual has been previously convicted of one or more criminal offenses, or because of a belief that a conviction record indicates a lack of "good moral character," **unless** either there is a direct relationship between one or more of the previous criminal offenses and the specific employment sought or held, or employment of the individual would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.⁷⁷

In order to determine whether there is either a direct relationship or unreasonable risk (as mentioned above), the employer must apply the factors set forth in the Correction Law, as follows:

- (a) The public policy of this State, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

⁷⁷ N.Y. Correction Law § 752.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.⁷⁸

Also, in making the determination, the employer must give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the individual, which creates a presumption of rehabilitation in regard to any offense specified in the certificate.⁷⁹

The factors must be applied on a case-by-case basis and each of the factors must be considered. The employing agency must take into account the individual's situation by analyzing factors (d) through (g) and must also analyze the specific duties and responsibilities of the job pursuant to factors (b), (c) and (h). If any additional documentation is needed, it must be requested of the applicant or employee before any adverse determination is made. A justification memorandum that merely tracks the statute but without rational application of the factors to the facts of the case may lead to a finding that an adverse determination was arbitrary and capricious.

Conviction must be “previous.”

Individuals are protected for *previous* convictions. A conviction that occurs during employment does not entitle the individual to these protections.

Inquiries and misrepresentation.

Unlike many other areas covered by the Human Rights Law, an employer is not prevented from asking an individual to disclose prior convictions as part of the employment application process or at any time during employment.

If the employer learns at any time that that an applicant or employee has made a misrepresentation with regard to any previous conviction, it may be grounds for denial or termination of employment.⁸⁰

⁷⁸ N.Y. Correction Law § 753.1.

⁷⁹ N.Y. Correction Law § 753.2.

⁸⁰ N.Y. Correction Law § 751; see also Civil Service Law section 50(4).

Interaction with the arrest provisions.

The arrest provisions⁸¹ of the Human Rights Law interact with the conviction provisions. Although it is **lawful to ask** about previous convictions, it is **unlawful to ask** about previous arrests resolved in an individual's favor, or adjourned in contemplation of dismissal, or about youthful offender adjudications, or about convictions that have been sealed pursuant to Criminal Procedure Law § 160.55 or § 160.58. If any individual with a youthful offender record or a sealed conviction states that he or she has no previous convictions, this is not a misrepresentation. The employer is not entitled to any information about youthful offender records or sealed convictions. (See above: Prior Arrest.)

Enforcement only by court action.

A State employee or an applicant for State employment cannot file a complaint with the Division of Human Rights regarding denial of employment due to a previous conviction. An individual can pursue enforcement under the Human Rights Law only by filing an Article 78 proceeding in State Supreme Court.⁸² However, State employees may file complaints with respect to the Prior Arrest provisions of the Human Rights Law with the Division of Human Rights. (See above: Prior Arrest.)

Exceptions.

It is not unlawful to deny employment if, upon weighing the factors set out above, the previous criminal offense bears a direct relationship to the job duties, or if employment of the individual would involve an unreasonable risk to safety or welfare, as explained in more detail above.

An individual may be required to disclose previous convictions, unless they are sealed, as explained in more detail above.

These protections do not apply to "membership in any law enforcement agency."⁸³

HARASSMENT PROHIBITED

Harassment in the workplace based upon an individual's protected class status is prohibited. Harassment that creates a hostile work environment, based on the protected categories discussed in this Handbook, is unlawful pursuant to the Human Rights Law. (See above: Sexual Harassment.) State employees, interns, contractors, and individuals doing business with State employees are entitled to a work environment

⁸¹ Human Rights Law § 296.16.

⁸² N.Y. Correction Law § 755.1.

⁸³ N.Y. Correction Law § 750.5.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

which promotes respect for all, and actions that demonstrate bias, harassment, or prejudice will not be tolerated.

Harassment consists of words, signs, jokes, pranks, intimidation or physical violence that is directed at an employee or intern because of their membership in any protected class, or perceived class. It also includes workplace behavior that is offensive and based on stereotypes about a particular protected group, or which is intended to cause discomfort or humiliation on the basis of protected class membership.

Harassment is unlawful in all workplaces in New York State, when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful, and can be any harassing conduct that consists of more than petty slights or trivial inconveniences.⁸⁴ In fact, the Human Rights Law now provides that even if a recipient of harassment did not make a complaint about the harassment to the employer, the failure of the employee to complain shall not be determinative of whether the employer is liable.⁸⁵

Appropriate supervision is not harassment.

Normal workplace supervision, such as enforcing productivity requirements, requiring competent job performance, or issuing disciplinary warnings or notices, is *not* harassment. If these actions are imposed on the basis of protected class membership, then this may be discrimination in the terms, condition or privileges of employment.

Harassment by a non-employee.

The employing agency has the duty to prevent harassment in the workplace including harassment by non-employees, such as vendors, consultants, clients, customers, visitors or interns.

Harassment of non-employees.

Non-employees in the workplace, who are performing work under contract, are explicitly protected from sexual harassment (and all other types of workplace discrimination) by Human Rights Law § 296-d.

In accord with statewide policy, employees and interns are subject to discipline for harassment of *anyone* in the workplace, including contractors, clients, vendors, or any members of the public.

⁸⁴ Human Rights Law § 296.1(h).

⁸⁵ Human Rights Law § 296.1(h).

RETALIATION

Retaliation is prohibited. Retaliation occurs when an adverse action or actions are taken against the employee as a result of filing a discrimination complaint or participating in the filing of, or investigation of, a discrimination complaint, or requesting an accommodation. The adverse action does not need to be job related or occur in the workplace. Retaliation can be any action, more than trivial, that would have the effect of dissuading a reasonable person from making or supporting an allegation of discrimination. Such action may be taken by an individual employee.

Actionable retaliation by an employer can occur after the individual is no longer employed by that employer. This can include giving an unwarranted negative reference for a former employee.

An adverse action is not retaliatory merely because it occurs after the employee engaged in protected activity. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity. In order to make a claim of retaliation, the individual must be able to substantiate the claim that the adverse action was retaliatory.

The prohibition against retaliation protects any individual who has filed a complaint, testified or assisted in any discrimination complaint investigation, or opposed any discriminatory practices forbidden by the Human Rights Law, federal anti-discrimination laws or pursuant to the anti-discrimination provisions of this Handbook. Even if a discrimination complaint is not substantiated as a violation of state or federal law or the policies set forth in this Handbook, the individual is protected if they filed a discrimination complaint, participated in a discrimination-related investigation, or opposed discrimination with good faith belief that the practices were discriminatory on the basis of a protected class status.

Administrative or court proceedings.

A complainant or witness is absolutely protected against retaliation for any oral or written statements made to the Division of Human Rights, the Equal Employment Opportunity Commission, or a court in the course of proceedings, regardless of the merits or disposition of the underlying complaint.

Opposing discriminatory practices.

Opposing discriminatory practices includes:

- Filing an internal complaint of discrimination with GOER, with the employing agency or reporting discriminatory actions to a supervisor or other appropriate person, either verbally or in writing;
- Participating in an investigation of discrimination complaints;

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- Complaining that another person's rights under the Human Rights Law, federal anti-discrimination statutes or this Handbook were violated; or
- Encouraging a fellow employee to report discriminatory practices.

However, behaving inappropriately towards a person whom an employee deems to be engaged in discriminatory or harassing conduct is not protected opposition to alleged discriminatory practices. Employees should instead file a complaint with GOER, or may complain to a supervisor, manager, or human resources officer, who are then required to report the complaint to GOER, or in accordance with any applicable complaint procedure.

Retaliation by an employer is also unlawful pursuant to the Human Rights Law and the Civil Service Law.⁸⁶ The federal statutes mentioned in this Handbook also prohibit retaliation.

There is no protection for a person who opposes practices the person finds merely distasteful or wrong, while having no reasonable basis to believe those practices were in violation of the applicable State or federal law, or State policy, as set forth in this Handbook. Furthermore, the prohibition against retaliation does not protect individuals from making false charges of discrimination. An example of this would include filing a complaint with GOER, the Division of Human Rights, the EEOC, or any court, simply because another employee filed a complaint against you or another employee.

REPORTING DISCRIMINATION IN THE WORKPLACE

As noted throughout this Handbook, any State employee who has been subject to any discrimination, bias, prejudice, harassment or retaliation based on any of the protected classes covered by the Handbook, may file a discrimination complaint with GOER. The New York State Employee Discrimination Complaint Form ("Complaint Form") is located at <https://goer.ny.gov> under the "Anti Discrimination Investigations" heading.

The Complaint Form is a web-based, fillable form, and after inserting the required information, employees can send the complaint directly to GOER. When GOER receives a Complaint Form, the individual submitting the complaint will receive an acknowledgment. The Complaint Form may also be filled out and sent to GOER via email or regular mail at:

⁸⁶ Human Rights Law § 296.7; see also Civil Service Law § 75-B, which gives protection to "whistleblowers."

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Antidiscrimination@goer.ny.gov

or

Governor's Office of Employee Relations
Anti Discrimination Investigations Division
2 Empire State Plaza
Albany, NY 12223

Employees are not required to (but may) report their allegations of discrimination to their supervisor, upper level management, or their Human Resources Department. Individuals with supervisory duties are required to report the allegations to GOER and should request that the employee file the complaint directly with GOER. The link to this Handbook and the complaint procedure, including the Complaint Form, should also be available on every agency's intranet site and/or employee handbook. If you cannot locate the Complaint Form or the Handbook, please contact your supervisor or manager or the agency's Human Resources Department and they will assist you in obtaining this information.

Confidentiality and cooperation.

All discrimination complaints and investigations will be kept confidential to the extent possible. Documentation and reports will not be disclosed, except to the extent required to implement the policies in this Handbook. Any individual involved in an investigation is advised to keep all information regarding the investigation confidential. Breaches of confidentiality may constitute retaliation, which is a separate and distinct category of discrimination. Any individual who reports discrimination, or who is experiencing discrimination, must cooperate so that a full and fair investigation can be conducted, and any necessary remedial action can be promptly undertaken.

Employees filing a Complaint Form should describe the connection between their protected class and the conduct and/or statement that is the subject of the complaint. Investigations will evaluate whether the conduct found to have occurred violates the policies as set forth in this Handbook, not whether the conduct violates the law. If, after investigation, it is determined that a violation of this Handbook has occurred, appropriate administrative action, up to and including termination, will be recommended.

The procedures for reporting discrimination complaints are designed to ensure the State's anti-discrimination policies are followed, including the State's policies forbidding retaliation. The complaint investigation procedures provide for a prompt and complete investigation as to the complaint of discrimination, and for prompt and effective remedial action where appropriate.

An employee with supervisory responsibility has a duty to report any discrimination that they observe or otherwise know about. A supervisor who has received a report of

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workplace discrimination has a duty to report it to GOER, or in accordance with the employing agency's policy, even if the individual who complained requests that it not be reported. Any discrimination or potential discrimination that is observed must be reported, even if no complaint has been made. Failure to comply with the duty to report may result in disciplinary and/or administrative action.

Discrimination must be investigated and appropriate corrective action taken.

The employer has the duty to ensure that complaints of workplace discrimination are investigated promptly. If, after investigation, it is determined that discriminatory behavior is occurring, the employing agency has a duty to take prompt and effective corrective action to stop the discriminatory conduct and take such other steps as are appropriate.

Employers cannot take steps to prevent or correct discriminatory or harassing behavior unless the employer knows of the conduct.

PURSUING DISCRIMINATION COMPLAINTS EXTERNALLY

The employing agency's internal complaint procedures are intended to address all complaints of discrimination. Any State employing agency which does not participate in the GOER complaint investigation process is required to have a well-documented and widely disseminated procedure for employees to file, and to ensure investigation of discrimination complaints.

These internal complaint procedures are not intended to satisfy, replace or circumvent options available to employees through negotiated union contracts; federal, state or other civil rights enforcement agencies; and/or the judicial system. Thus, the use of these internal complaint procedures will not suspend any time limitations for filing complaints set by law or rule and will not fulfill any other requirements set by law or rule.

Employees are not required to pursue their employing agency's internal complaint procedure before filing a complaint with any external agency or with a court, based on federal or state or local law.

Listed throughout the Handbook are citations to the various laws that pertain to discrimination. Employees may be able to file complaints pursuant to these laws with administrative agencies and/or in court. There may also be additional remedies available to employees, and employees may wish to seek an attorney's advice prior to determining appropriate steps to take.

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The following agencies can provide information to employees and receive and investigate complaints of employment discrimination pursuant to the New York State Human Rights Law (State Division of Human Rights) or Title VII, ADEA, ADA or GINA (U.S. Equal Employment Opportunity Commission).

- New York State Division of Human Rights (“SDHR”)
Website: www.dhr.ny.gov
Telephone: (888)392-3644
TTY number: (718)741-8300
- United State Equal Employment Opportunity Commission (“EEOC”)
Website: www.eeoc.gov
Telephone: (800)669-4000
TTY number: (800)669-6820

GENERAL PROHIBITIONS AND PROVISIONS

Unlawful inquiries.

It is an unlawful discriminatory practice for an employer to print, circulate, or use any form of application, or to make any inquiry which expresses directly or indirectly, any limitation, specification or discrimination as to any protected class, unless based upon a bona fide occupational qualification.⁸⁷

Even if an inquiry is not asked with the apparent intent to express a limitation, it can become evidence of discriminatory intent in a subsequent action, by creating an appearance of discriminatory motivation. Those interviewing candidates for State positions or promotions should exercise extreme caution so as not to ask any unnecessary question or make any comment that could be interpreted as expressing a discriminatory motivation. This is simply a good employment practice.

Information gathered in furtherance of an affirmative action plan may be lawful, so long as the affirmative action is pursued in a lawful manner (which is beyond the scope of this booklet). Information on protected class membership which is collected for statistical purposes should be retained separately from a candidate’s other information.

Interns.

Paid interns are employees, and all provisions relating to employees explained in this document apply to paid interns. Unpaid interns are explicitly protected by Human

⁸⁷ Human Rights Law § 296.1(d) and § 296-c(2)(c).

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Rights Law § 296-c, and are entitled to the same protections as employees, in most areas, wherever § 296-c is referenced in the sections above.

Unpaid interns are protected from discrimination in hiring, discharge, or the terms, conditions or privileges of employment as an intern because of the intern's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status. Unpaid interns are also explicitly protected from harassment.

Non-employees working in the workplace.

Non-employees working in any workplace in New York State are entitled to the same protections from discrimination and harassment as employees, pursuant to Human Rights Law § 296-d. Protected non-employees include independent contractors, those receiving their paycheck from a temp agency, vendors, consultants, contracted service providers such as electricians, janitorial workers, and so on.

Political activities.

The Civil Service Law provides that no appointment or selection or removal from employment shall relate to the political opinions or affiliations of any person. No person in the civil service of the State is under any obligation to contribute to any political fund or render any political service and no person shall be removed or otherwise prejudiced for refusing to do so. No person in the civil service shall discharge or promote or reduce or in any manner change the rank or compensation of another for failing to contribute money or any other valuable thing for any political purpose. No person in the civil service shall use their official authority or influence to coerce the political action of any person or body or to interfere with any election.⁸⁸ This law is enforced by the New York State Joint Commission on Public Ethics. Complaints regarding this provision should not be filed with the Division of Human Rights or GOER.

Diversity.

New York State is committed to a nondiscriminatory employment program designed to meet all the legal and ethical obligations of equal opportunity employment. Each department develops affirmative action policies and plans to ensure compliance with equal opportunity laws. To assist in building cooperative work environments, which welcome an increasingly diverse workforce, the Department of Civil Service Staffing Services Division, and courses on diversity in the workplace, are available to agencies through GOER. Contact your personnel office for more information about specific agency affirmative action policies and plans. Diversity training information is available under Training & Development on the GOER website at www.goer.ny.gov.

⁸⁸ Civil Service Law § 107.

EMPLOYEE RIGHTS AND RESPONSIBILITIES

NOTE

This Handbook has been prepared for the general information of State employees as a summary of the various federal and state laws, executive orders, and policies that provide protection from discrimination for State employees and comprises the anti-discrimination policy of the State of New York. Employees should also refer to specific laws and executive orders, together with any employee manual and policies of their employing agency for any additional policies and protections that may apply to them.

This Handbook does not grant any legal rights to any employee, nor is it intended to bind the State in any way. Where there is a conflict between any law, regulation, order, policy or collective bargaining agreement and the text of this Handbook, such law, regulation, order, policy or agreement shall be controlling.

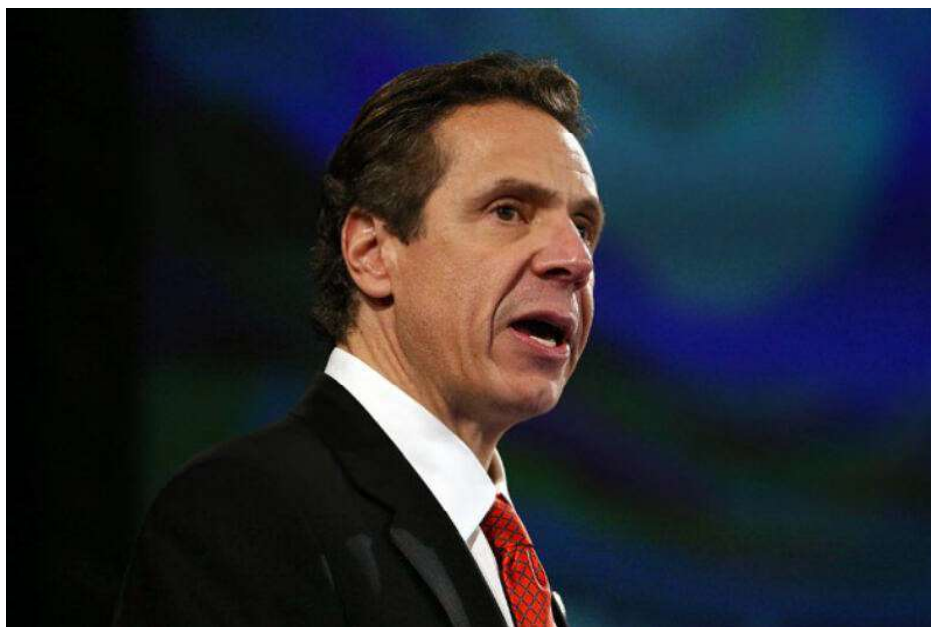
The State reserves the right to revise, add to, or delete any portion of this Handbook at any time, in its sole discretion, without prior notice to employees. Moreover, this Handbook is not intended to, and does not create any right, contractual or otherwise, for any employee, not otherwise contained in the particular law or executive order the Handbook summarizes.

This Handbook has been written so as to not conflict with any collective bargaining agreement that the State has entered into with any union representing its unionized employees. If there is any conflict between this Handbook and any collective bargaining agreement, the provisions of the collective bargaining agreement will control. This Handbook shall not constitute a change in any existing term and condition of employment.

Cuomo's Office Denies Using Private Email Accounts. But it Does.

Aides to the governor have used private accounts, which can help hide communications on public business, despite state rules barring the practice.

by Justin Elliott, Aug. 4, 2014, 4:26 p.m. EDT



In a previously unreported response to a public records request, the office of Gov. Andrew Cuomo claims staff do not use private email accounts for official business. Yet as we've reported, aides to the governor have done just that.

The Cuomo administration's assertion came after the New York Times requested emails related to official business from the personal email accounts of several top Cuomo aides.

In its response this past March, Cuomo's office issued a blanket denial: Staffers "do not use their personal email accounts for government business."

EXHIBIT

6



We obtained the Times' request, and the response of the governor's office, through our own public records request.

Using personal email accounts can help officials hide communications that are supposed to be available to the public. It also violates New York state's technology policy unless it is explicitly authorized.

As we detailed in May, I was the recipient of an email regarding state business from the personal account of Cuomo aide Howard Glaser. Several people who communicate with the governor's office on media or policy matters told me at the time they, too, had gotten emails from personal accounts of Cuomo aides. Others told me the same thing after the publication of our story. None wanted to be named.

A spokesman for the governor's office declined to comment on the administration's insistence that staffers don't use personal emails to conduct public business – or on the evidence to the contrary.

The Times was seeking emails from personal accounts of Cuomo aides including Glaser and secretary to the governor Larry Schwartz.

Underscoring the Cuomo camp's penchant for secrecy, another aide reportedly encouraged other government officials to use personal email accounts for politically sensitive communications.

That episode, reported by the Albany Times Union, came last week after revelations of Cuomo aides meddling with the Moreland Commission's investigation of public corruption.

According to the Times Union, longtime Cuomo aide Joseph Percoco recruited members of the commission to issue statements saying they had been independent of the governor's office. Percoco reportedly encouraged some of those he contacted “to communicate with him through private email messages rather than through their government email accounts.”

Spokesmen for the governor's office and Cuomo's campaign committee declined to comment on the Times Union's story.

If you have gotten emails from the private account of an official in the governor's office or other state or city agencies, email me



Justin Elliott

Justin Elliott is a ProPublica reporter covering politics and government accountability. To securely send Justin documents or other files online, visit our [SecureDrop page](#).

✉ justin@propublica.org  Justin Elliott  [@justinelliott](https://twitter.com/justinelliott)

📞 917-512-0223  Signal: 774-826-6240





EXHIBIT
8

Tab 60:

<https://www.nytimes.com/2021/03/19/podcasts/the-daily/andrew-cuomo-sexual-harassment-nursing-homes.html>

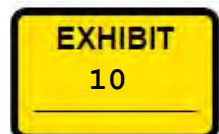
(audio clip 17:20–18:03)

From: Alphonso David
Sent: Friday, December 11, 2020 11:23 AM
To: Richard Azzopardi
Subject: Documents

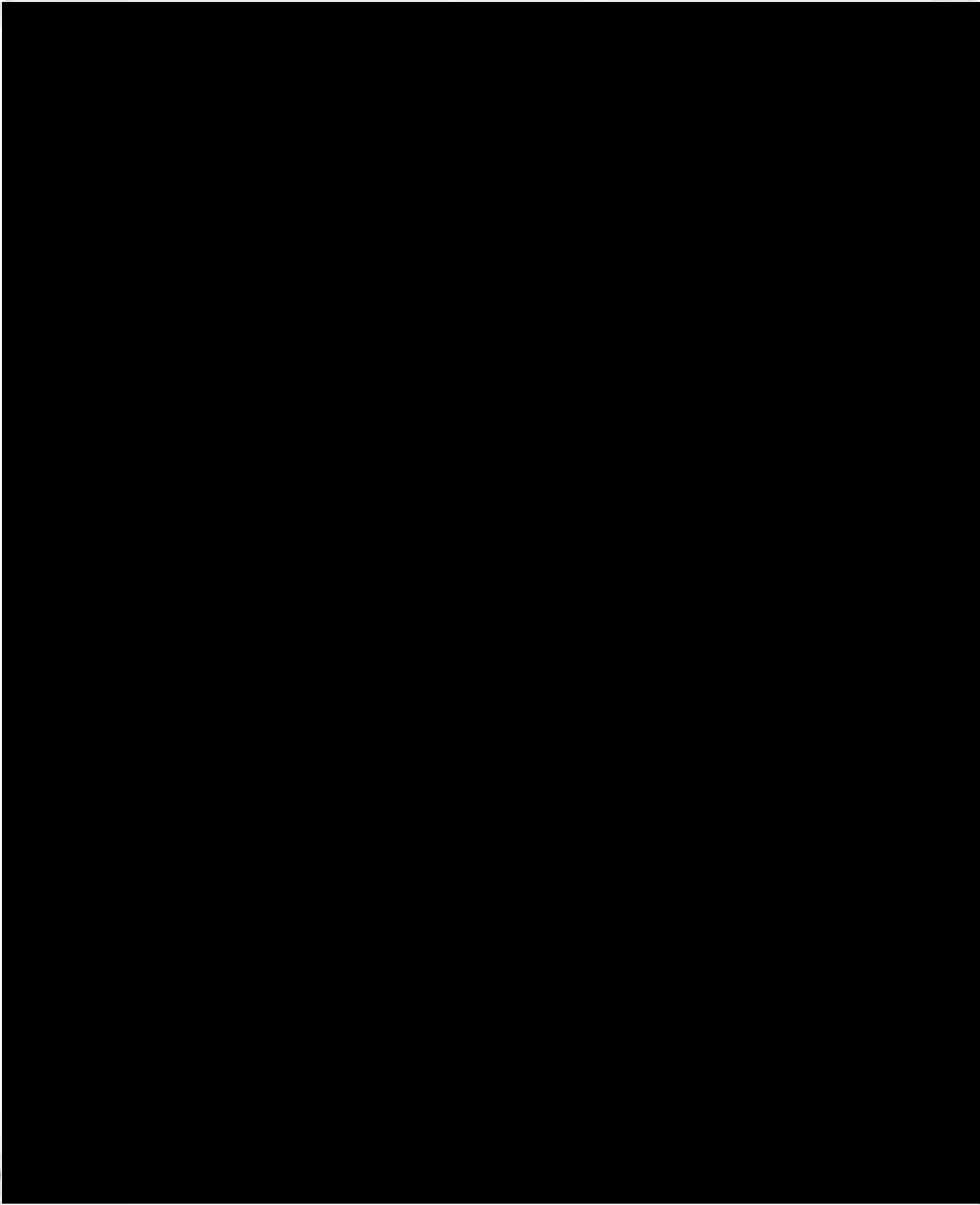
Privileged and confidential
Attorney client communication

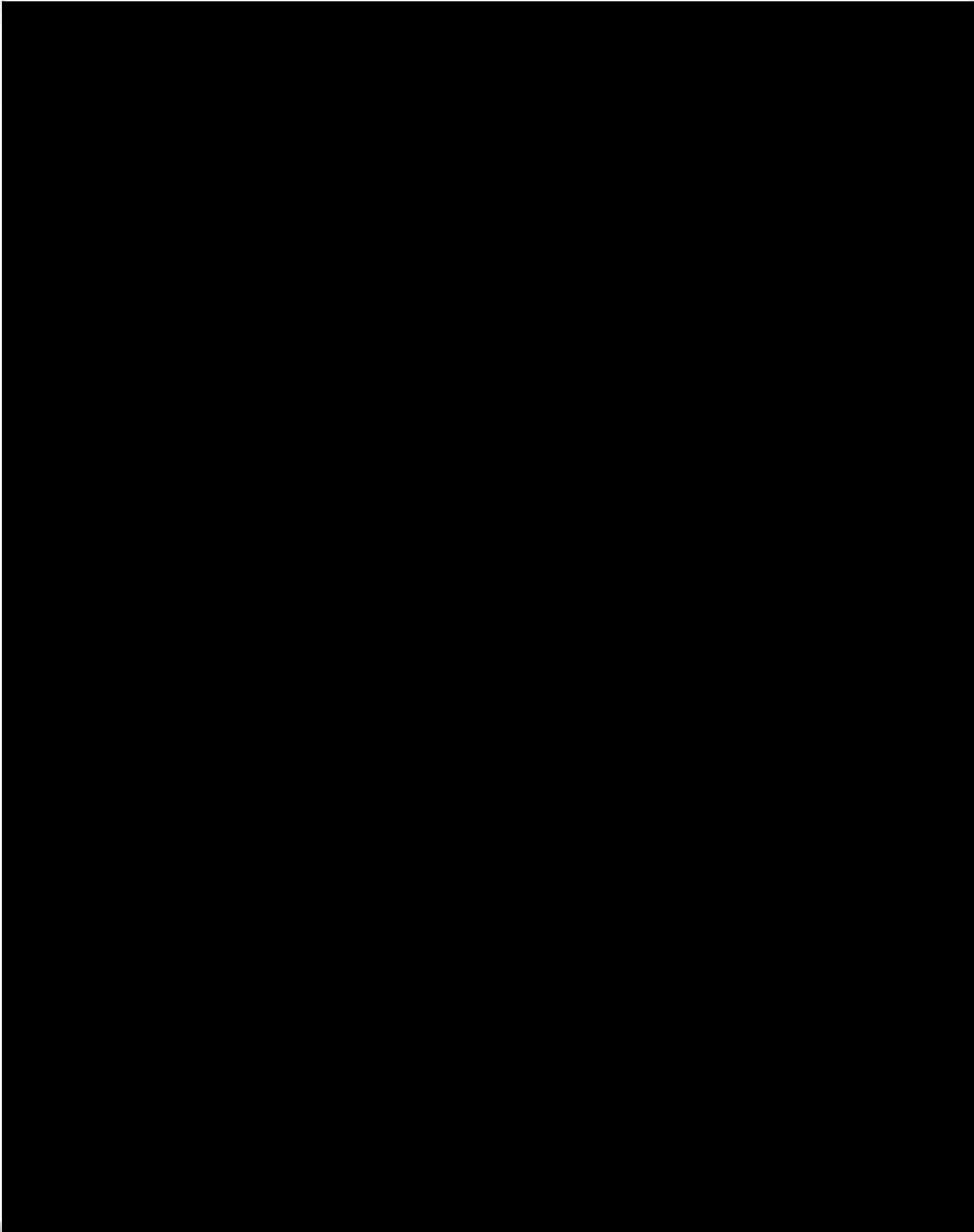
Per request, these are the only relevant documents I have which should be appear in the official counsel file.

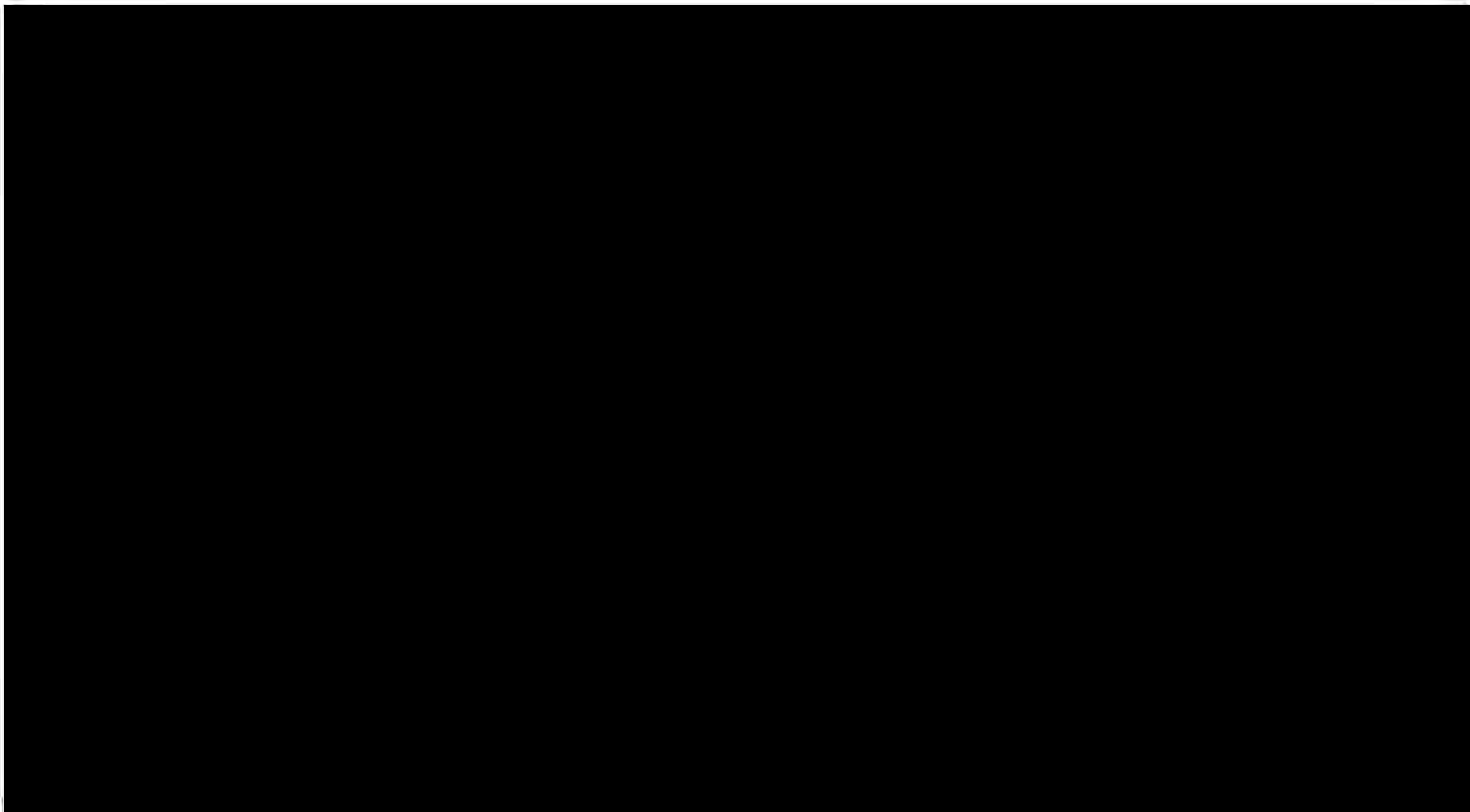
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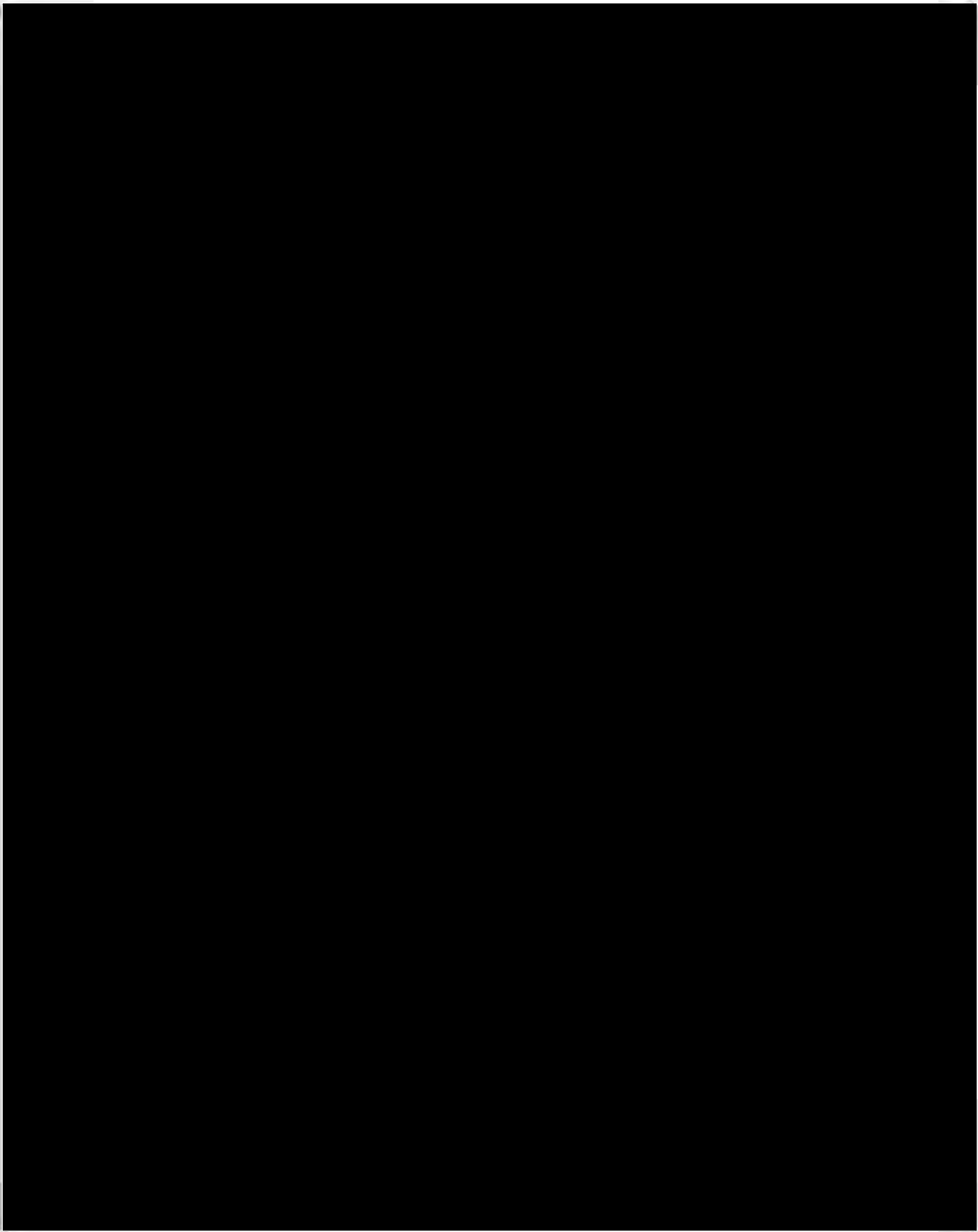


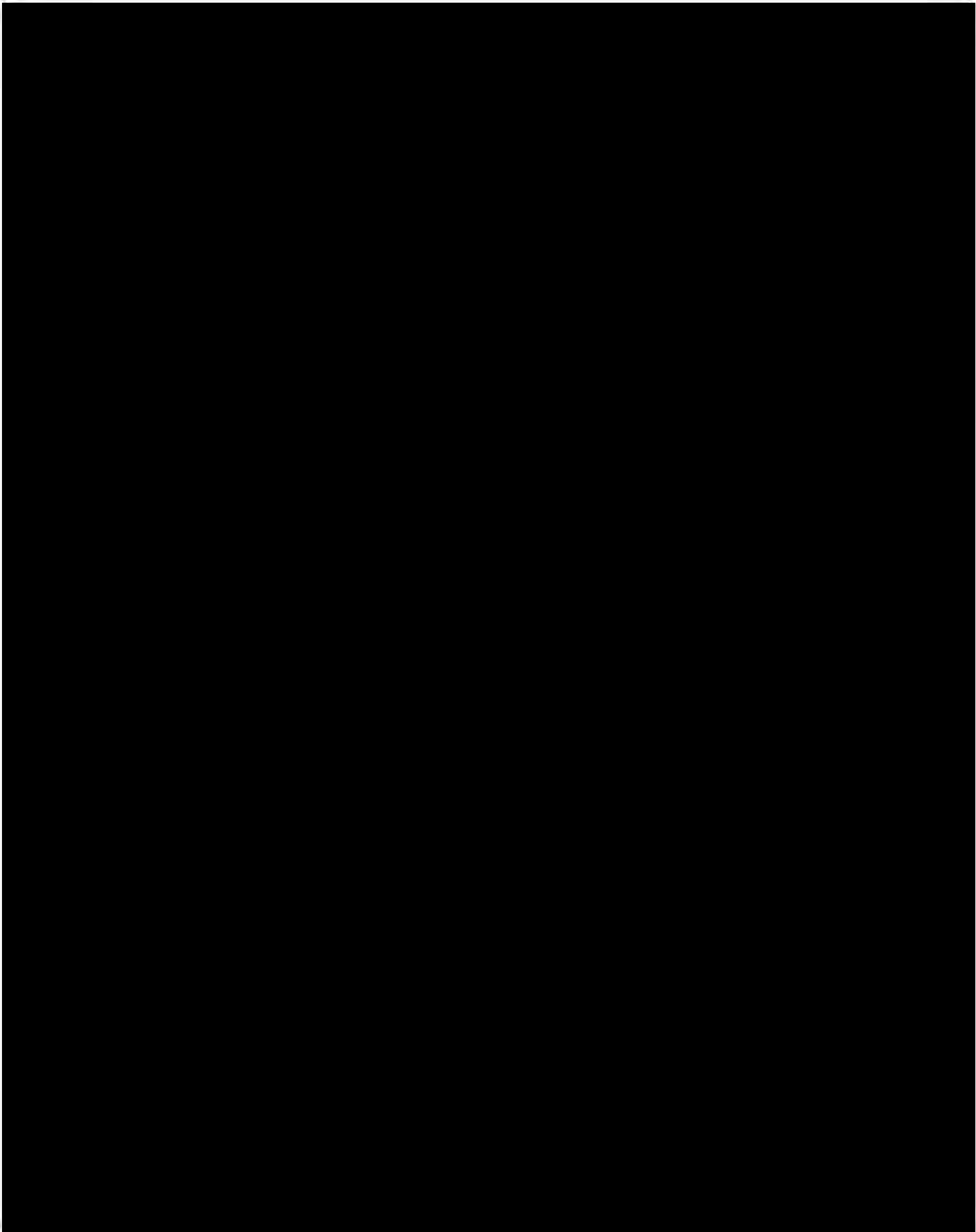
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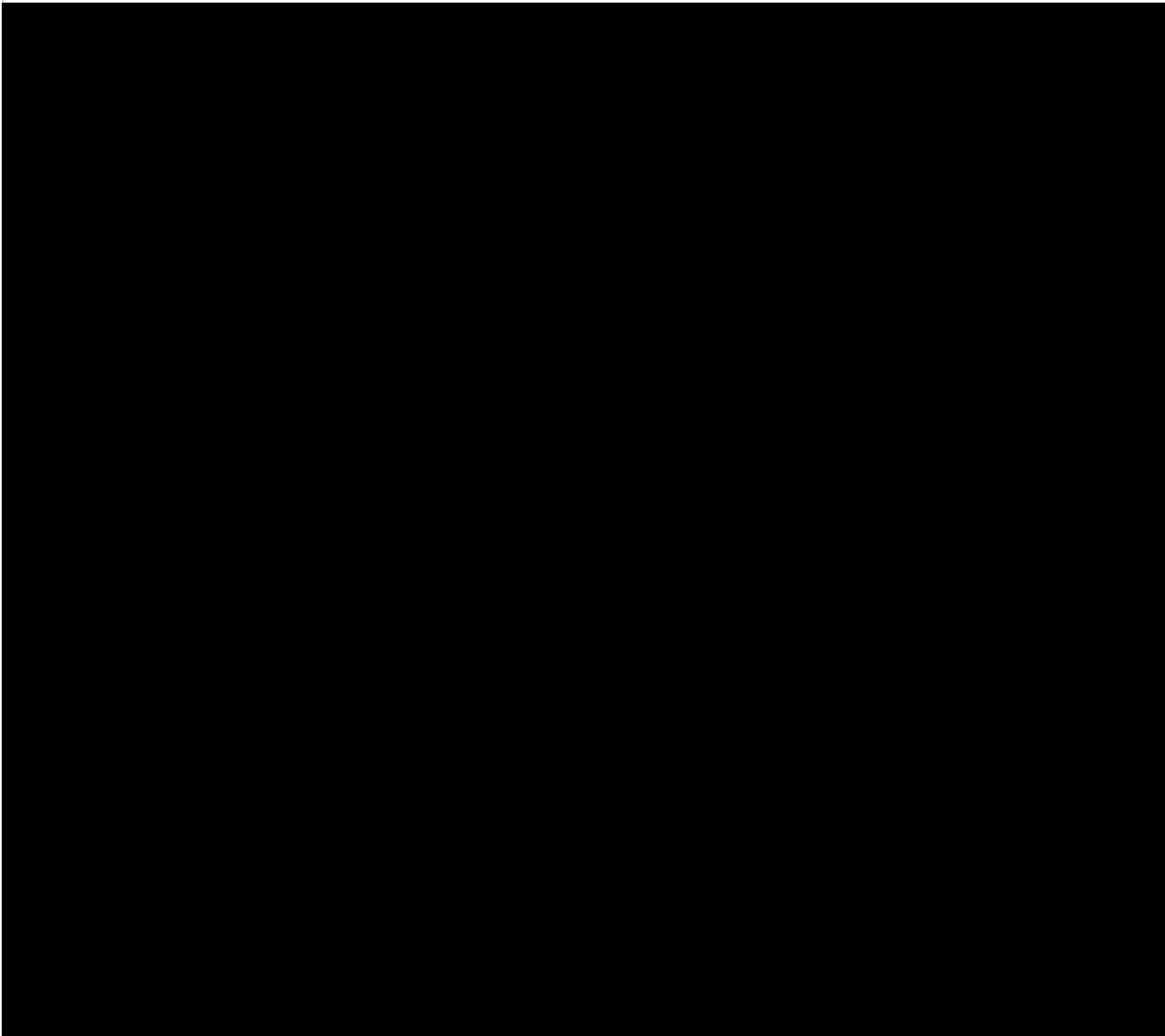




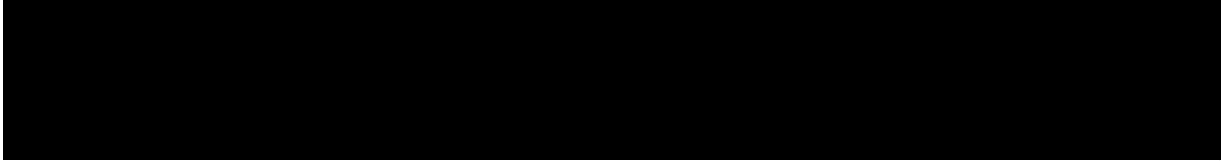
Memorandum

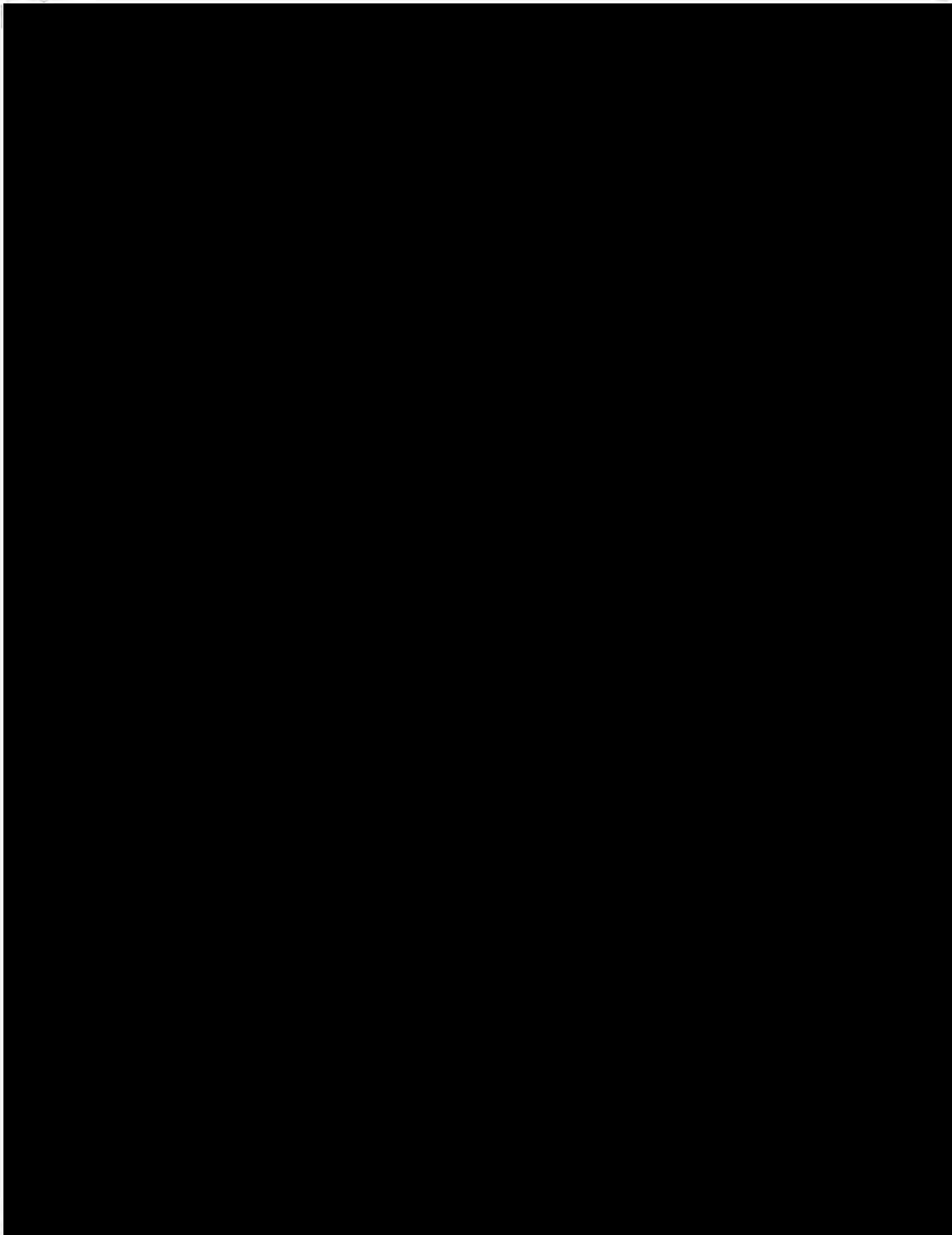
To: Alphonso David, Counsel to the Governor
From: Camille Joseph Varlack, Deputy Director of State Operations,
Chief Risk Officer and Special Counsel
Re: Confidential Personnel Matter
Date: September 20, 2018

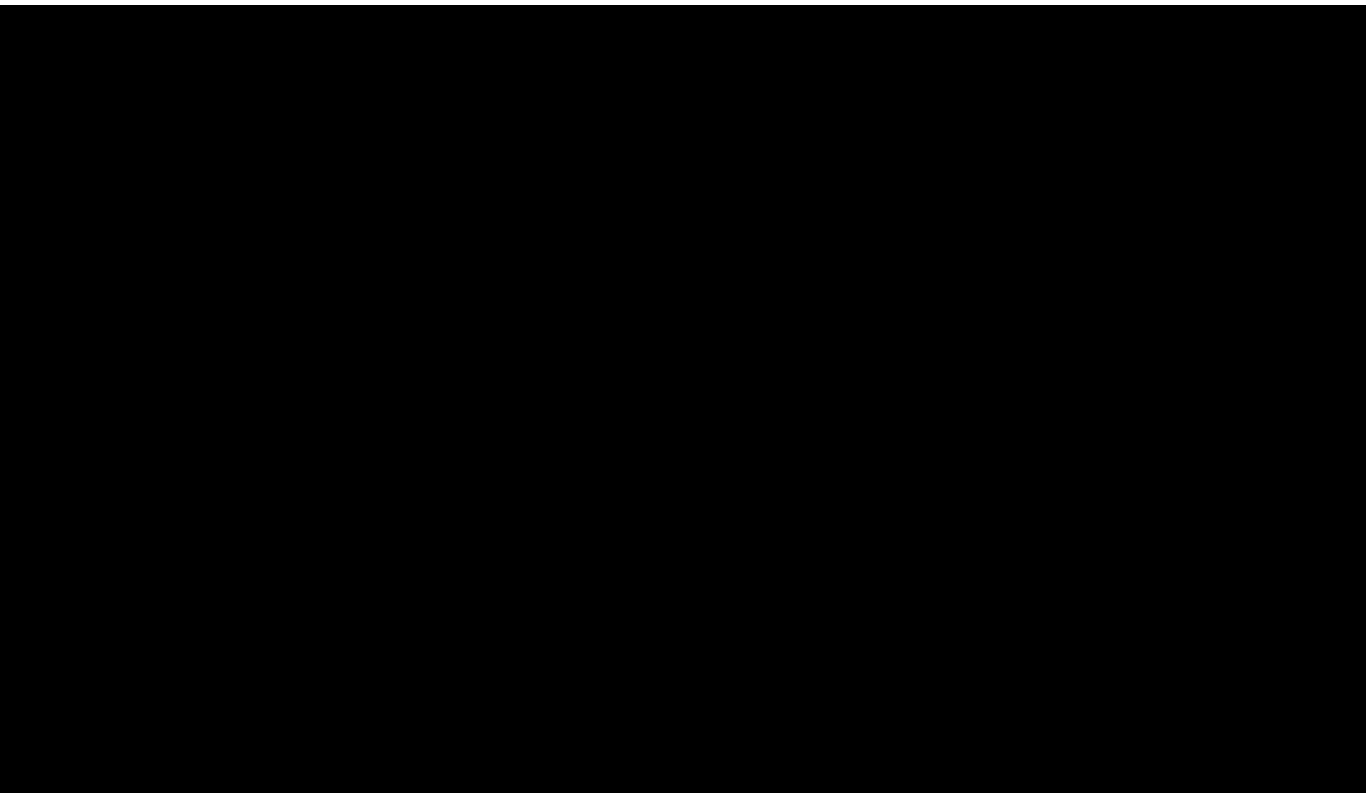
On September 20, 2018, I spoke with [REDACTED] and [REDACTED] and [REDACTED]
[REDACTED] and [REDACTED], of Empire State Development (ESD),
respectively. Below please find a summary of my conversation.

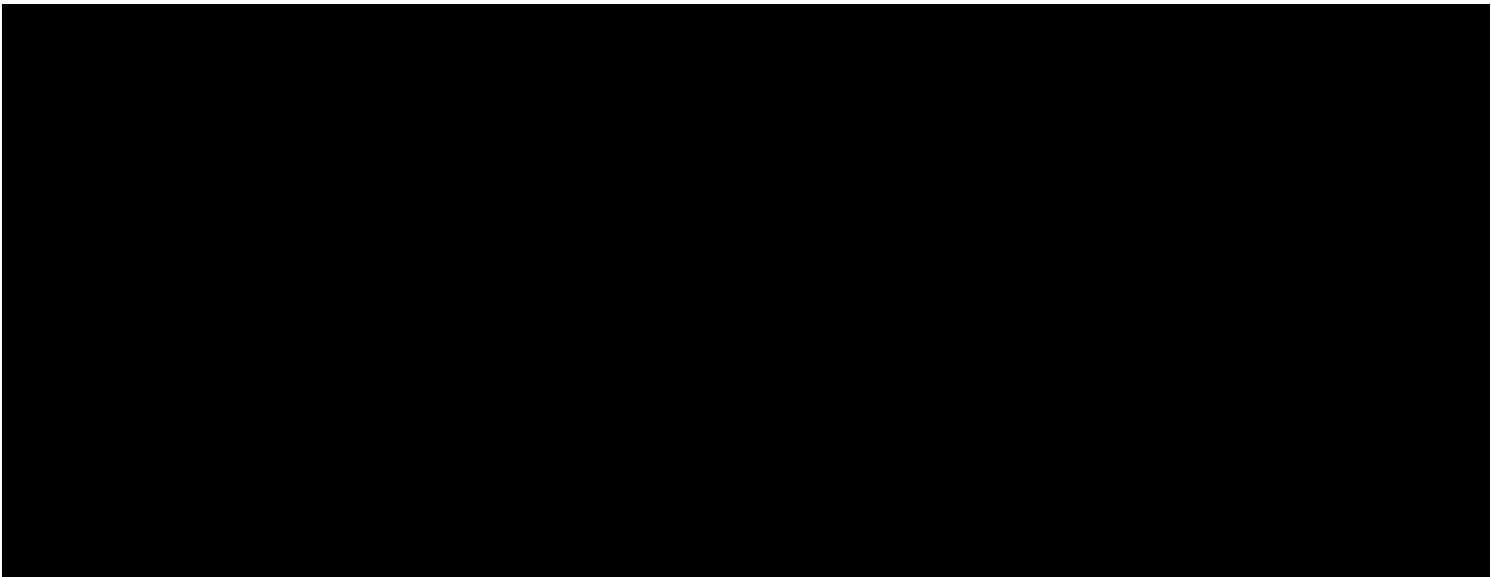


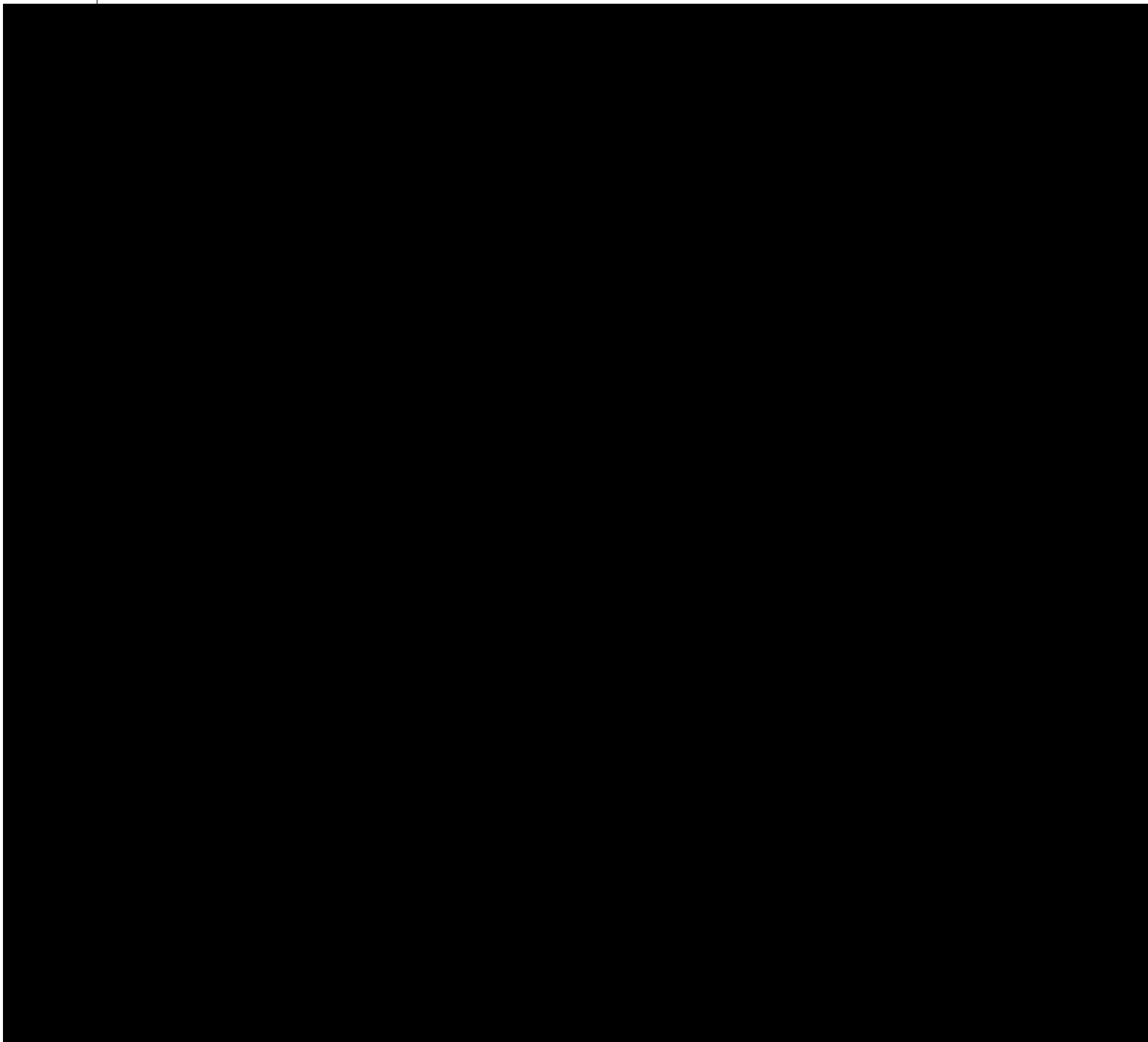
Draft/Subject to Change
Privileged & Confidential / Attorney Work Product
Agency Deliberative Communication

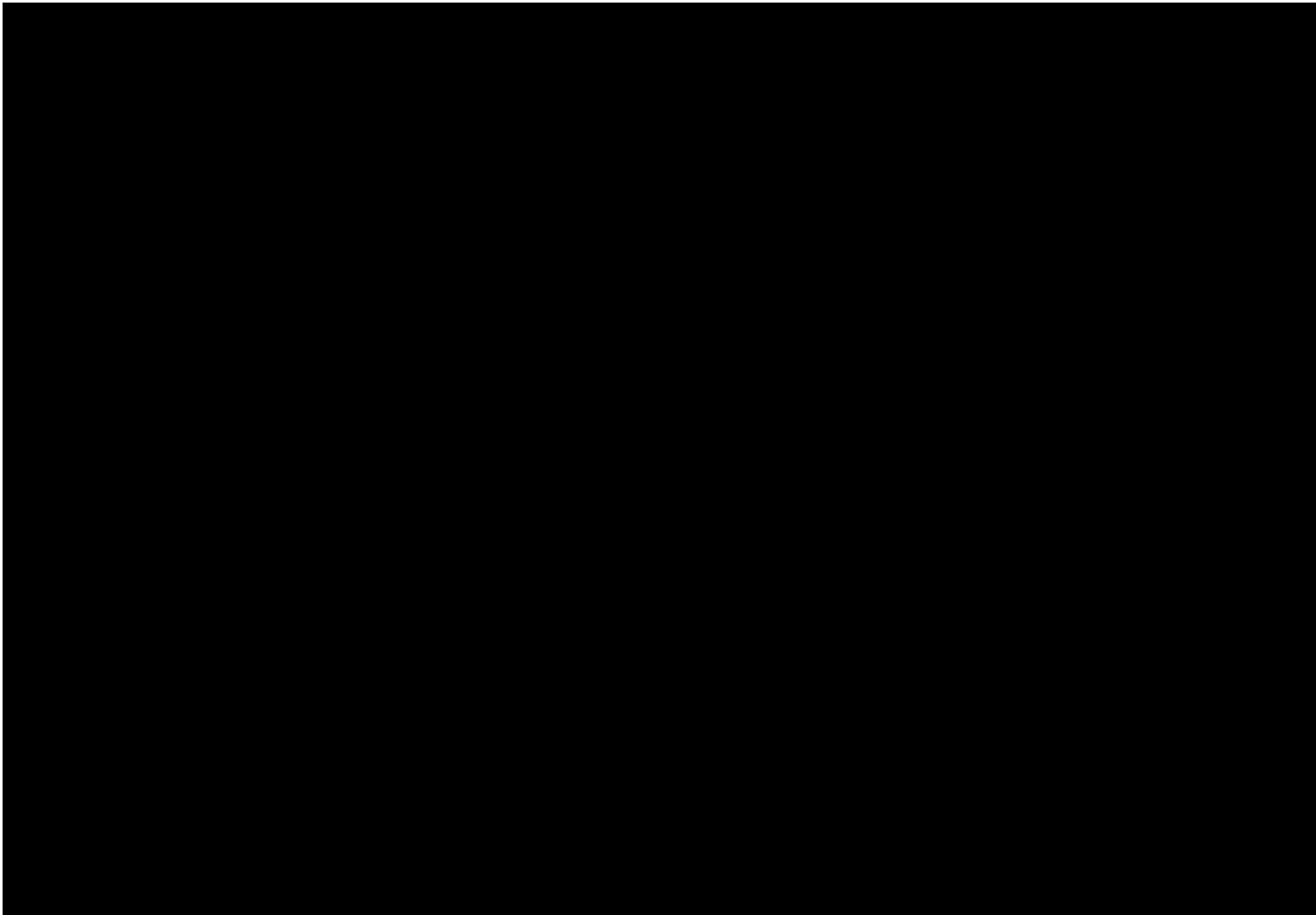












Alphonso David

From: Alphonso David
Sent: Thursday, September 20, 2018 2:41 PM
To: Melissa DeRosa
Cc: Linda Lacewell; Jill DesRosiers
Subject: RE: I have to jump off call I apologize can someone fill in for our SOTS

Privileged and confidential
Attorney client communication
Attorney work product

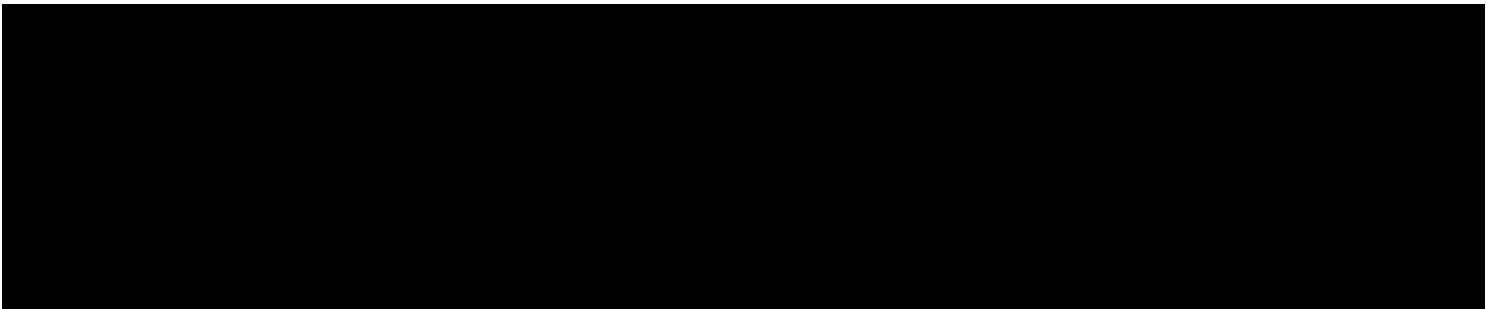
We manage all allegations/claims using the same process and applying the same standard. Accordingly, given that this was independently forwarded to counsel's office, we have already begun compiling information regarding this and other allegations regarding this employee. Thanks.

Alphonso

From: Melissa DeRosa
Sent: Thursday, September 20, 2018 2:34 PM
To: Alphonso David [REDACTED]@exec.ny.gov>
Cc: Linda Lacewell [REDACTED]@exec.ny.gov>; Jill DesRosiers [REDACTED]@exec.ny.gov>
Subject: FW: I have to jump off call I apologize can someone fill in for our SOTS

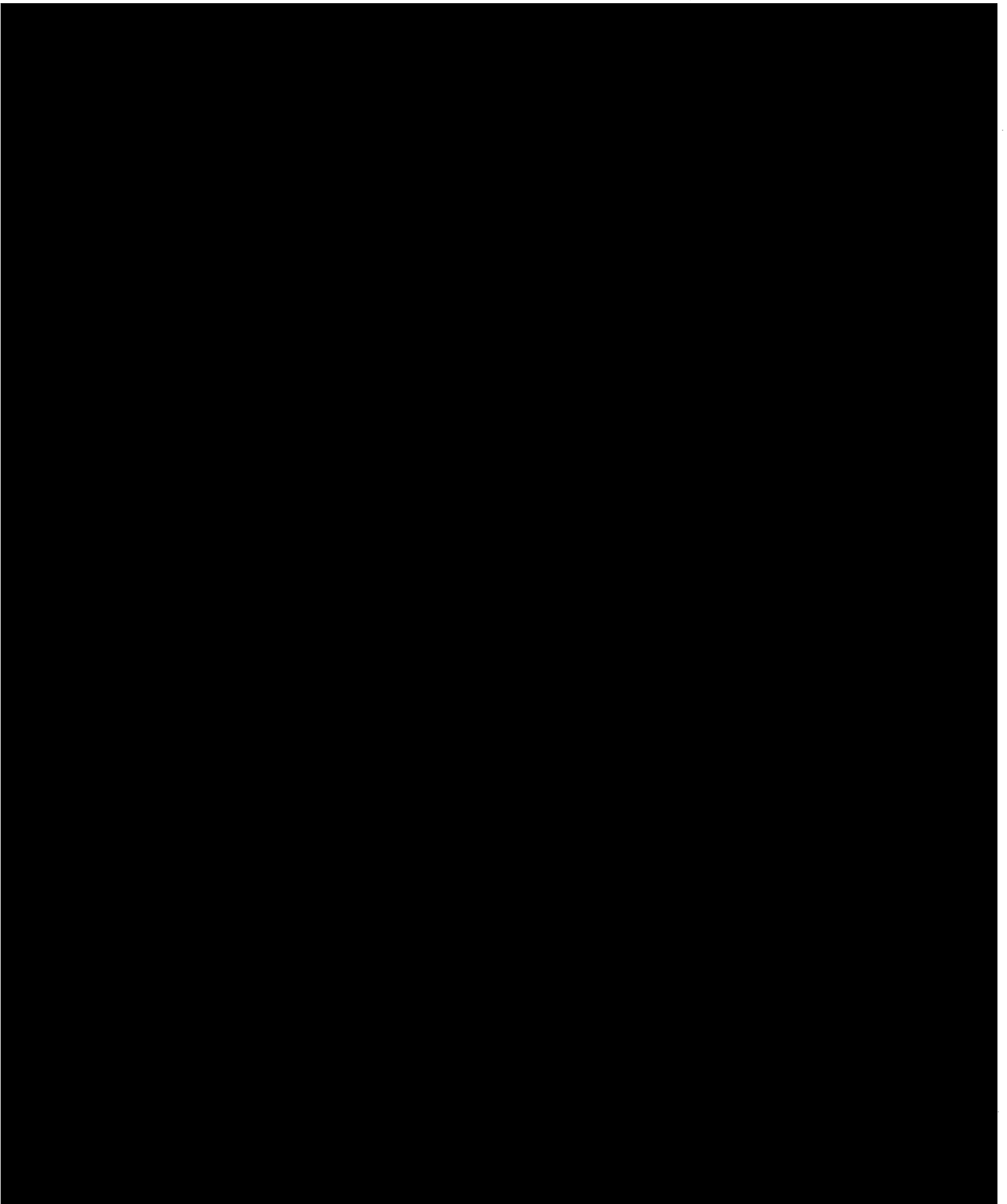
Alphonso pls create a file for lindsey
Pls put this in it

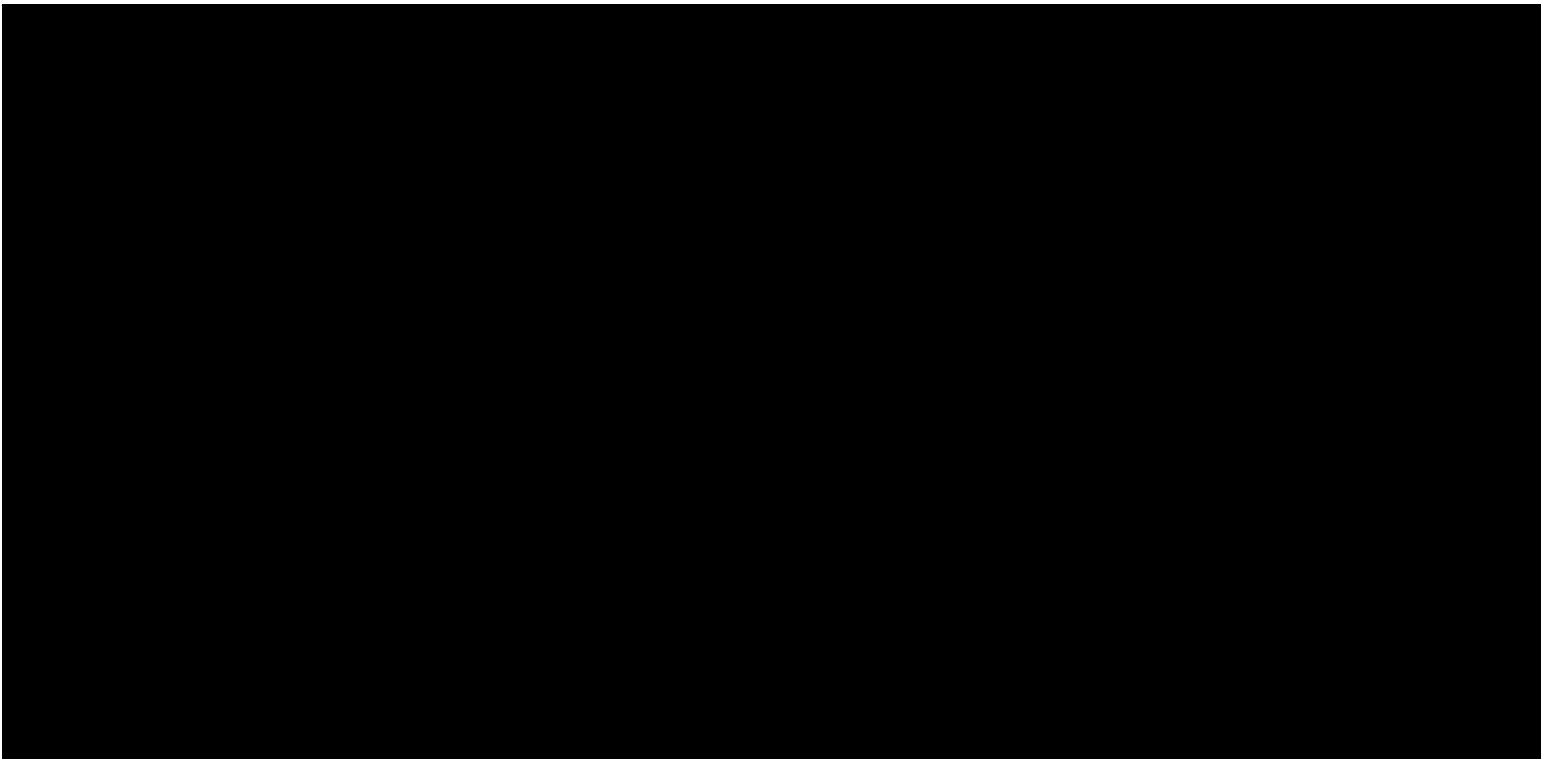
From: [REDACTED]
Sent: Wednesday, September 19, 2018 3:55 PM
To: Linda Lacewell [REDACTED]@exec.ny.gov>; Melissa DeRosa [REDACTED]@exec.ny.gov>; Jill DesRosiers [REDACTED]@exec.ny.gov>
Subject: Fw: I have to jump off call I apologize can someone fill in for our SOTS



Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Lindsey Boylan [REDACTED]@exec.ny.gov>
Sent: Wednesday, September 19, 2018 12:21 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: I have to jump off call I apologize can someone fill in for our SOTS





MEMORANDUM TO FILE

To: Alphonso David, Counsel to the Governor
From: Julia Pinover Kupiec, Assistant Counsel and Chamber Ethics Officer
Date: September 26, 2018
Subject: Employment Counseling for Lindsay Boylan

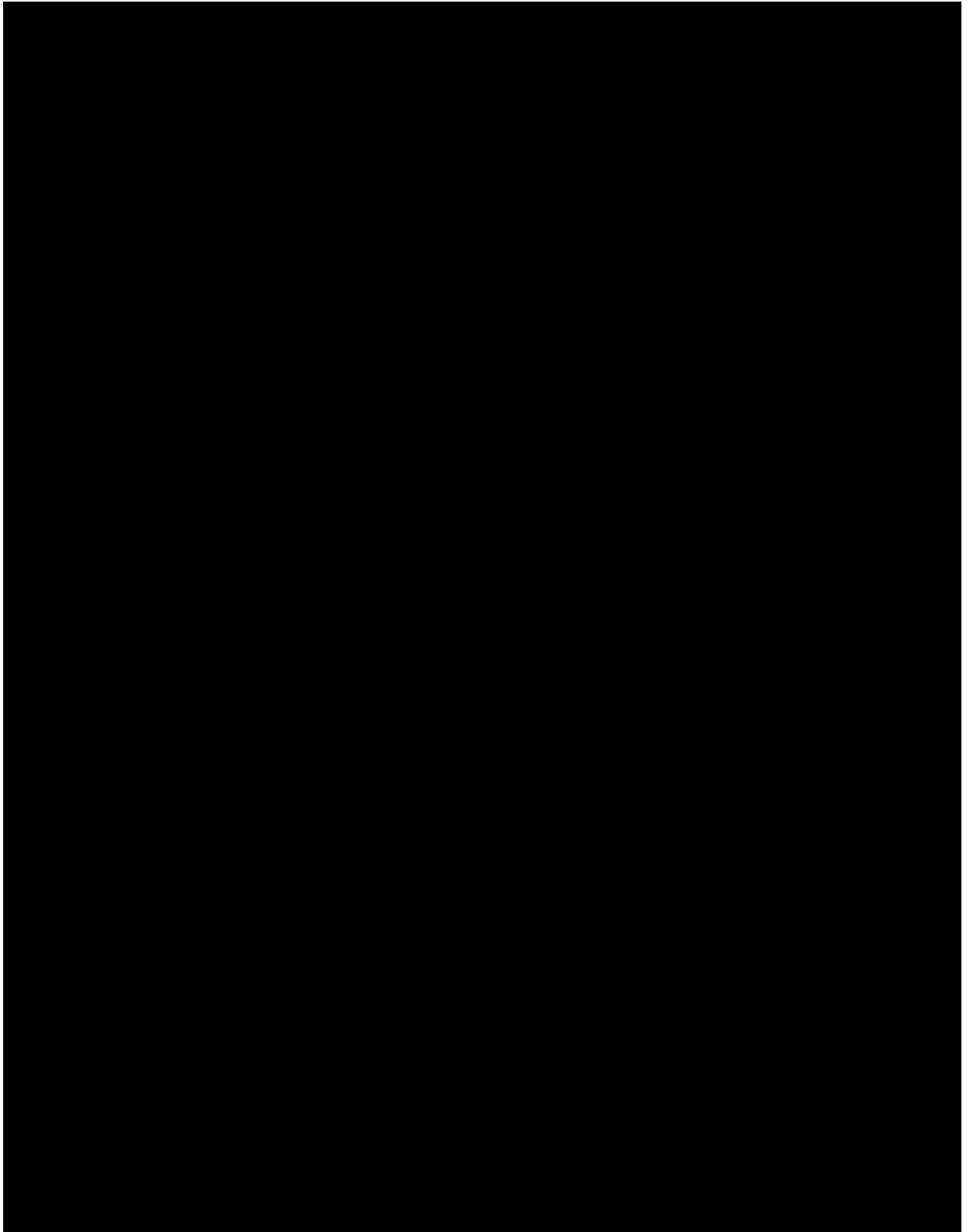
1. **Purpose**

[REDACTED]

[REDACTED] During the course of this counseling session, Ms. Boylan tendered her resignation voluntarily.

[REDACTED]

Draft, privileged and confidential - Attorney Client Privileged Communication
Intra-Agency Communication
Memo to File



3. **Ms. Boylan's Resignation**

During the meeting Mr. David was clear that she was not being asked to resign, fired, or pushed out in any way. In no uncertain terms he said that she was simply being counseled in response to the complaints that have been made about her from multiple sources.

Towards the close of this meeting Ms. Boylan voluntarily tendered her resignation, indicated that she would be leaving the office for the day and consulting with her own counsel regarding her next steps in Executive Chamber. She was clear that she intended to resign but she wished to think through the timing of her departure. Ms. Boylan expressed that she did not feel she could be effective in the Executive Chamber and as a result wished to move on. She expressed that her main priority was to leave her team – consisting of the two deputies she had hired – to be left in good stead in the Executive Chamber and suggested that they be elevated in position and rank here. Mr. David asked that Ms. Boylan advise him when she wished her resignation to be effective and offered the new year as a possibility.

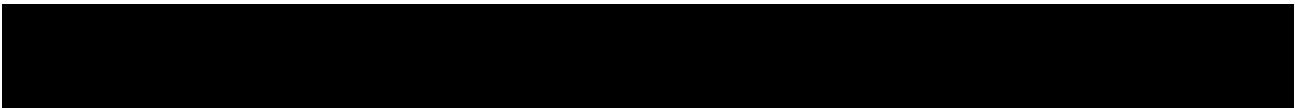
Within four hours of the meeting, Ms. Boylan sent an email to staff within and outside of the Executive Chamber indicating that she had resigned and that her resignation was effective immediately.

I wrote this memorandum on September 26, 2018 based on contemporaneous notes taken during my personal attendance at the above described meeting on September 26, 2018.

/S

Julia Pinover Kupiec

Executive Chamber Ethics Officer



< T a s k S e t >

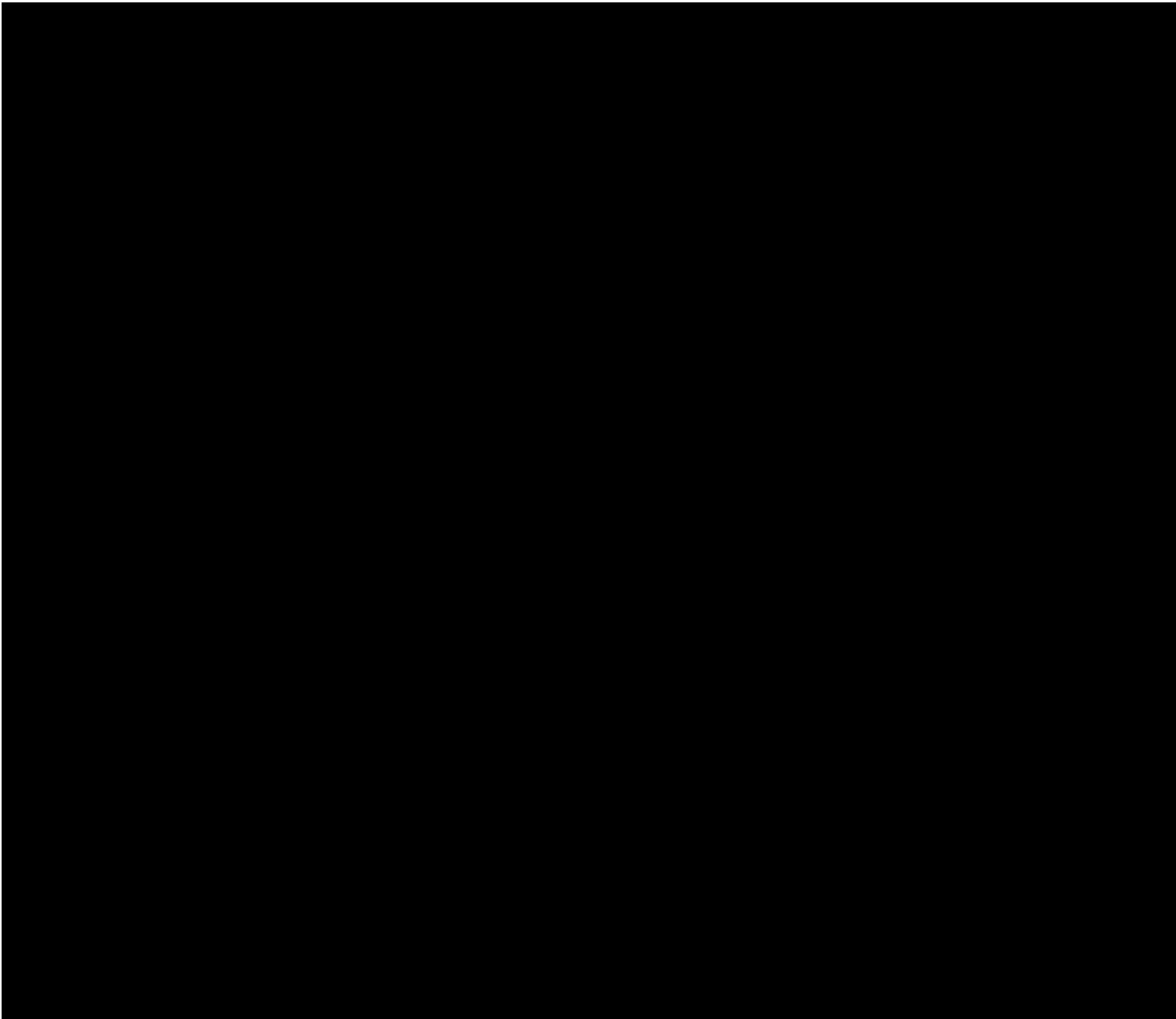
< V e r s i o n > 1 5 . 0 . 0 . 0 < / V e r s i o n >

< T a s k s >

P r i v i l e g e d a n d c o n f i d e n t i a l

A t t o r n e y c l i e n t c o m m u n i c a t i o n

A t t o r n e y w o r k p r o d u c t

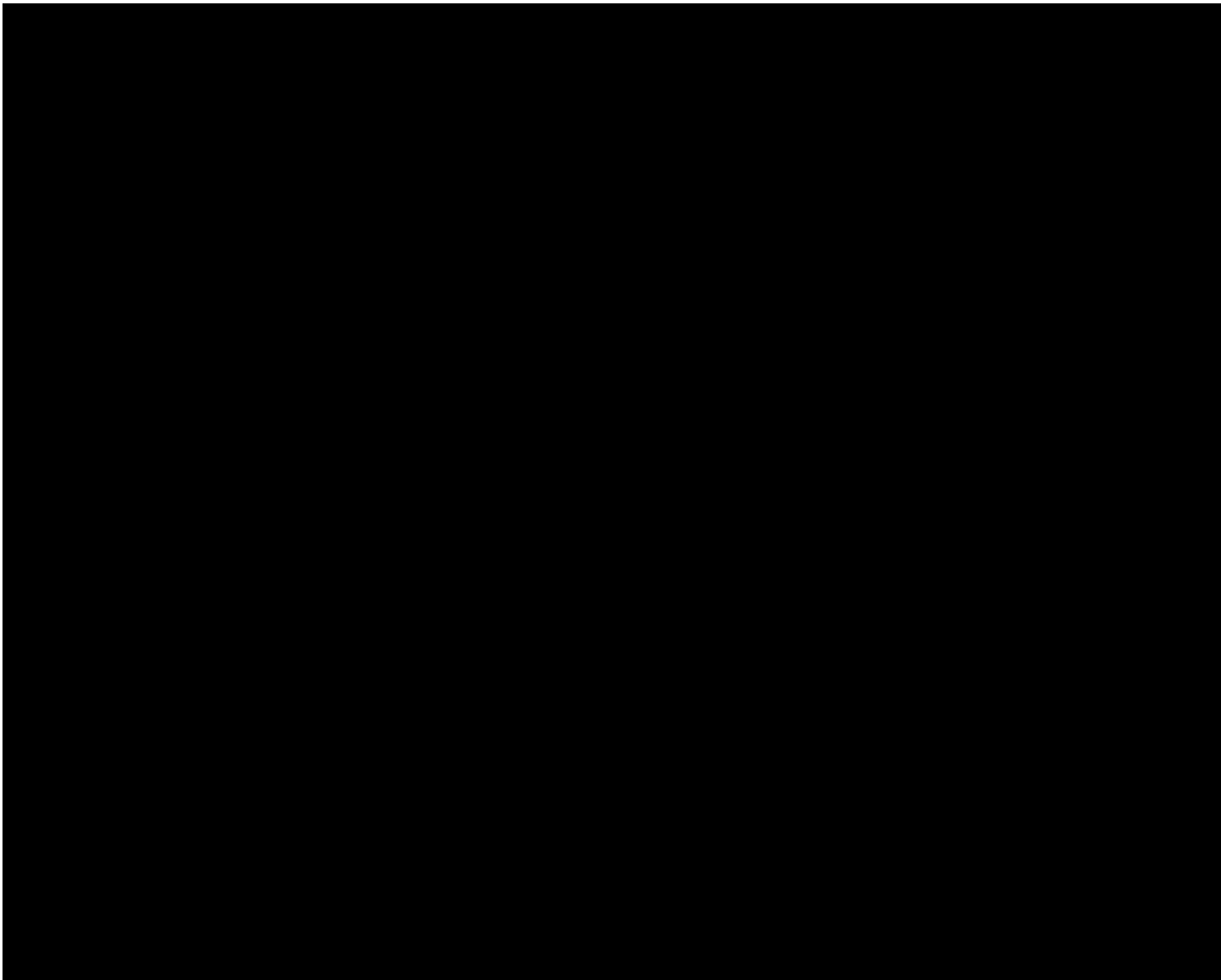


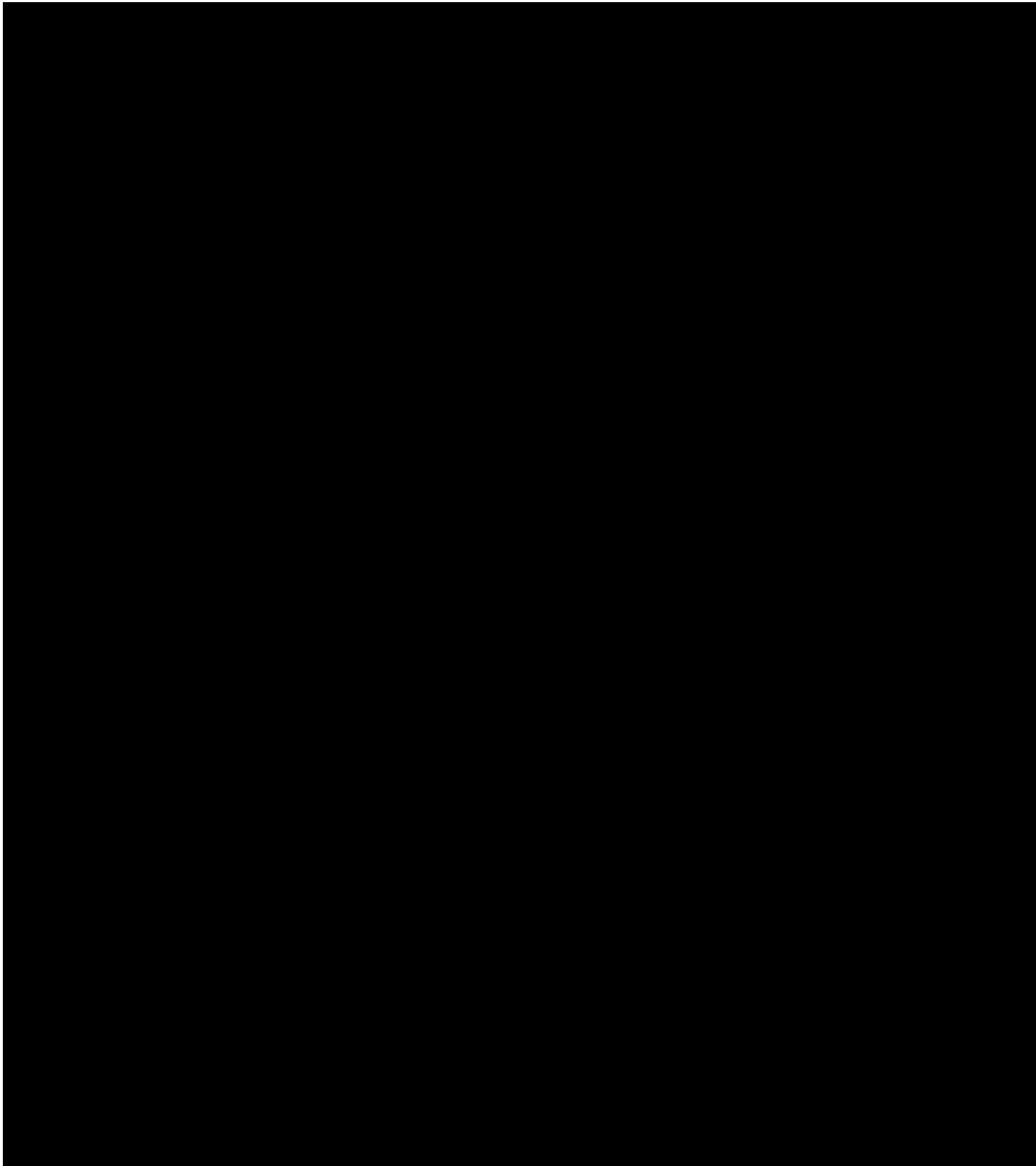
[REDACTED]

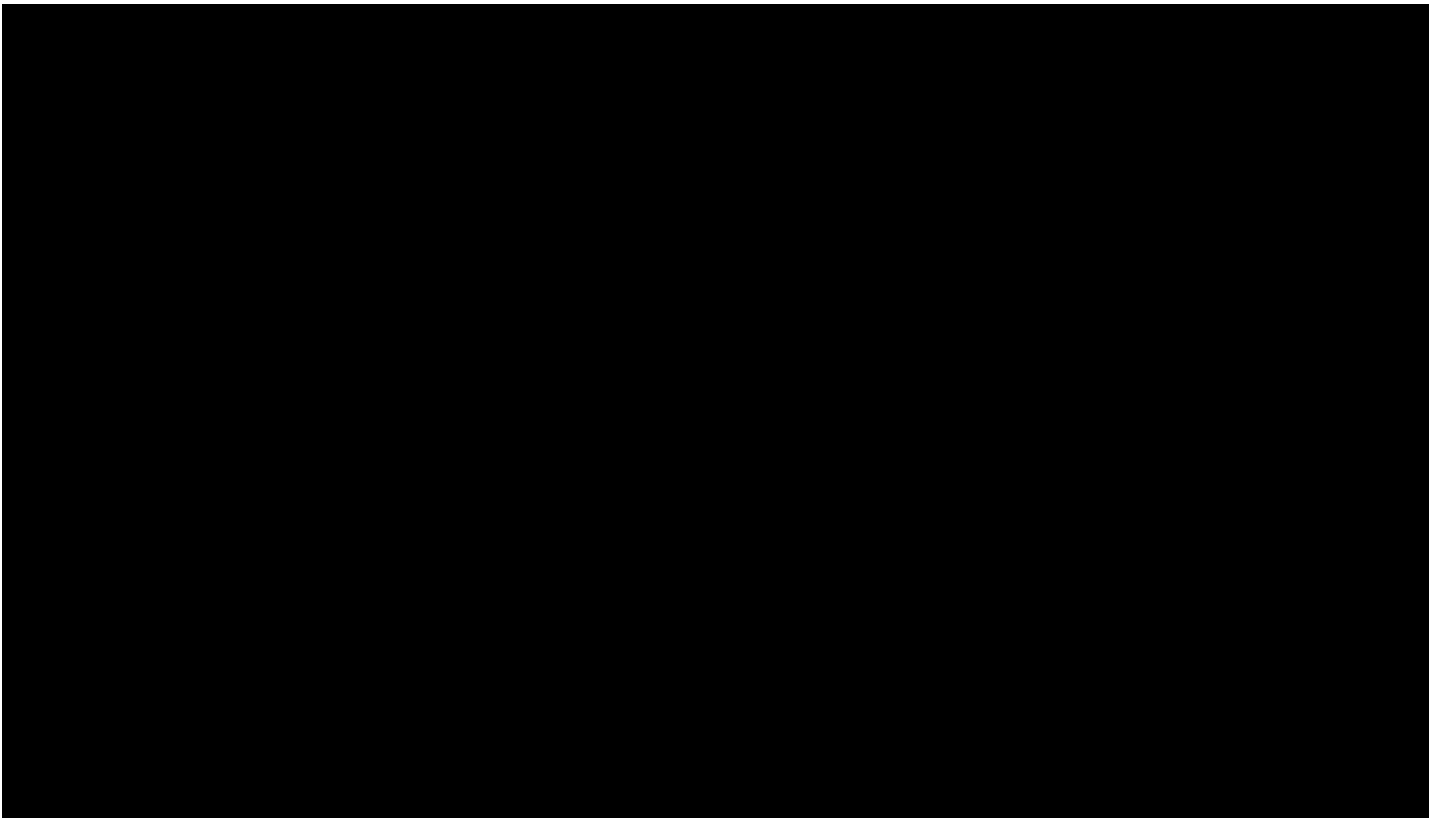
Further, she has notified practically all state employees and many external stakeholders of her voluntary resignation, which was accepted. We will need to think about whether that issue can be effectively managed. I advised her I would get back to her with a formal response to her request.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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<Assignees >
<EmailUser Id = "[REDACTED]@exec.n







[REDACTED]@gmail.com <mailto:[REDACTED]
[REDACTED]@gmail.com >
[REDACTED]

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[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] (NYC)

[REDACTED] (Albany)


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r " >
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g o v < / E m a i l S t r i n g >
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< / EmailSet >

exec.chamber.state.ny.usInternal
en

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NT=3];SBMID=10;SBT=29;THA=753680982;FIXUP=
51.1282;Version=Version 15.0 (Build 1365.0
) , Stage=H7

@exec.ny.gov
Julia Kupiec

Julia Kupiec
Alphonso David

8B55935323364E33AB55A8618D141
B92-JULIA KUPIEC 8B55935
323364E33AB55A8618D141B92-JULIA KUPIEC

Camille Varlack

Camille Varlack /O=NYE
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HF23SPDLT)/CN=RECIPIENTS/CN=8B55935323364E
33AB55A8618D141B92-JULIA KUPIEC EX

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) /CN=RECIPIENTS/CN=ADAVID EX

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Alphonso David r !
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GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=385C0BB98755491DA62E563041C5A489-CAMILLE
VARLACK pÿÿÿ pÿÿÿÿÿÿÿ

From: Alphonso David
Sent: Wednesday, December 16, 2020 12:40 PM
To: Melissa DeRosa; Linda Lacewell; Richard Azzopardi
Subject: Draft statements

Draft and confidential

PLEASE NOTE THAT CATHY HAS TO GET APPROVAL FROM HER BOSS BUT HERE IS THE DRAFT.

Cathy Calhoun, former State Director of Operations, said, "I served as Director of State Operations for the State of New York and I can say unequivocally that I was never a victim of sexual harassment by the Governor and never saw it happened to anyone. And, as Director of State Operations, all deputy secretaries directly to me and never reported any allegations of sexual harassment to me or anyone else to my knowledge."

I CAN SAY THE FOLLOWING:

Alphonso David, former Counsel to the Governor, said "As Counsel to the Governor for many years, I never received any complaints from Lindsey Boylan or anyone else regarding any allegations of sexual harassment by the Governor. Further, when I met with Ms. Boylan before her departure from state government, she never alleged, intimated, or suggested any sexual harassment or inappropriate conduct by the Governor."

Sent from [Outlook](#)

ADSUB000038

From: Melissa DeRosa

Sent: Thursday, December 17, 2020 1:27 PM

To: Alphonso David; Dani Lever; Judith Mogul; Linda Lacewell; Stephanie Benton; richard bamberger

Subject:



Lindsey Boylan ✓
@LindseyBoylan



Proud to work for a governor who
takes women seriously

[@NYGovCuomo](#) [@NOW_NYC](#)



NOW-NYC ✓ @NOW_NYC · 8/15/18

"Governor, you have delivered for the women
and girls in New York year in and year out."
#StopChildTrafficking @NYGovCuomo

3:05 PM · 8/15/18 · [Twitter for iPhone](#)

2 Retweets 1 Like





Lindsey Boylan @LindseyBoylan

"You cannot have the word progressive without the word progress. It doesn't work," he said. "And we provided and achieved progress and that's the message of last night." nytimes.com/2018/09/14/nyr...



1



2



11



Lindsey Boylan ✓

@LindseyBoylan



So proud of my boss @NYGovCuomo and all of Team Cuomo.

8:40 PM · 9/14/18 · [Twitter for iPhone](#)

1 Retweet 2 Likes



Tweet your reply



21:51



Lindsey Boylan >

NEWS: The safety of NYers is our top priority.

I'm signing an Executive Order to reduce the # of Petition Signatures to 30% of the statutory threshold; Petition period will end at 5PM, Tues 3/17.

This will ensure our electoral process goes on while safeguarding public health.



Andrew Cuomo

twitter.com

Absolutely not helpful please relay that while we are ok, I see what the point is here and I will find ways to respond.

Life is long.

And so is my memory.

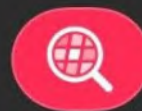
And so are my resources.



iMessage



Apple Pay



4:02



New iMessage

Cancel

To: Lindsey Boylan

Ulster.

Hope all well xo

May 21, 2019, 2:58 PM

Hey do you have a second?

It's pretty important

Sat, Mar 14, 4:53 PM

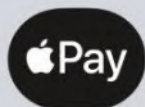
NEWS: The safety of NYers is our top priority.

I'm signing an Executive Order to reduce the # of Petition Signatures to 30% of the statutory threshold; Petition period will end at 5PM, Tues 3/17.

This will ensure our electoral process goes on while safeguarding public health.



iMessage



ADSUB000044

4:02

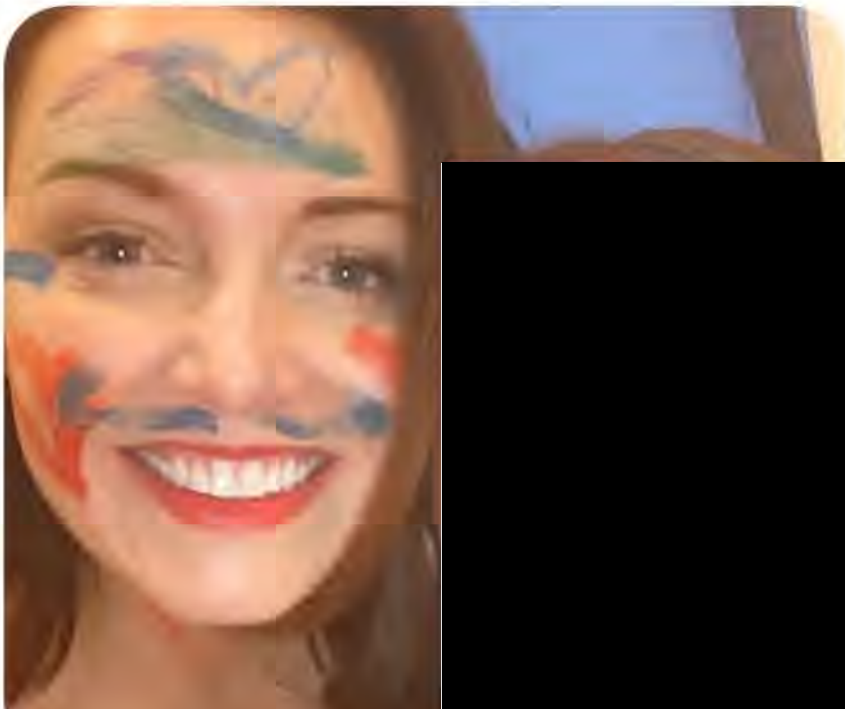


New iMessage

Cancel

To: [Lindsey Boylan](#)

Absolutely not helpful specific response to a tragedy but please relay that while we are ok, I see what the point is here and I will find ways to respond to the message.



The future is coming after
assholes.

Wed, May 6, 6:15 PM

I hope that journalists will be
looking into NDAs etc as



iMessage





Lindsey Boylan ✓

@LindseyBoylan



Andrew Cuomo Is New York's Best
Choice for Governor 🙌🙌👍👍

nytimes.com/2018/11/01/opi...

7:08 AM · Nov 4, 2018 · Twitter for iPhone



Melissa D. DeRosa

From: Linda Lacewell
Sent: Thursday, December 17, 2020 1:53 PM
To: Melissa DeRosa
Cc: Alphonso David; Dani Lever; Judith Mogul; Stephanie Benton; richard bamberger
Subject: Re:

Yes there are 3 similar I sent on text chain yesterday

Sent from my iPhone

> On Dec 17, 2020, at 1:27 PM, Melissa DeRosa <[REDACTED]@gmail.com> wrote:
>
>
> <IMG_6803.jpeg>
> <IMG_6824.jpeg>
> <IMG_6831.jpg>
> <IMG_6832.jpg>
> <IMG_6833.jpg>
> <IMG_6802.jpeg>
> --
> Melissa D. DeRosa
> [REDACTED]
>
>

From: Linda Lacewell
Sent: Thursday, December 17, 2020 1:53 PM
To: Melissa DeRosa
Cc: Alphonso David; Dani Lever; Judith Mogul; Stephanie Benton; richard bamberger
Subject: Re:

Never mind

Sent from my iPhone

> On Dec 17, 2020, at 1:27 PM, Melissa DeRosa <[REDACTED]@gmail.com> wrote:
>
>
> <IMG_6803.jpeg>
> <IMG_6824.jpeg>
> <IMG_6831.jpg>
> <IMG_6832.jpg>
> <IMG_6833.jpg>
> <IMG_6802.jpeg>
> --
> Melissa D. DeRosa
> [REDACTED]
>
>

From: Melissa DeRosa

Sent: Thursday, December 17, 2020 11:22 AM

To: Steven Cohen; Linda Lacewell; Alphonso David; Josh Vlasto

Subject:

Subject: Letter on Tom Brokaw

As professional women, we fully endorse the conversation around abuse of power in the workplace. In the context of that conversation, we would like to share our perspectives on working with Tom Brokaw.

We are current and former colleagues of Tom's, who have worked with him over a period spanning four decades. We are producers, correspondents, anchors, directors, executives, researchers, personal assistants, editors and technical staff.

Tom has treated each of us with fairness and respect. He has given each of us opportunities for advancement and championed our successes throughout our careers. As we have advanced across industries — news, publishing, law, business and government — Tom has been a valued source of counsel and support. We know him to be a man of tremendous decency and integrity.

From: Linda Lacewell
Sent: Thursday, December 17, 2020 11:40 AM
To: Melissa DeRosa
Cc: Steven Cohen; Alphonso David; Josh Vlasto
Subject: Re:

This type is easy

Sent from my iPhone

On Dec 17, 2020, at 11:22 AM, Melissa DeRosa <[REDACTED]@gmail.com> wrote:

Subject: Letter on Tom Brokaw

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From: Melissa DeRosa

Sent: Thursday, December 17, 2020 10:56 AM

To: Alphonso David; Steven Cohen; Josh Vlasto; Judith Mogul; Linda Lacewell; Dani Lever

Subject: priv and confidential

We are former senior staff members of Governor Andrew Cuomo's Office.

We are writing in response to the claims made on twitter by Lindsay Boylan. We do so reluctantly. Each of us is a longtime and active supporter of civil rights and women's engagement. We believe women must be heard and that allegations of workforce misconduct must be taken seriously. However, when an accusation is unfounded and seemingly launched to gain a political advantage, standing by silently is not an option. To do otherwise, risks delegitimizing the rights of survivors of workplace abuse.

Ms. Boylan only began raising complaints about her experience last year when she launched a Congressional campaign. The claim of sexual harassment for inappropriate comments was never mentioned. Indeed, the accusation did not occur until two days after she launched a new campaign for Manhattan Borough President.

In March, during the height of the COVID crisis, the Governor issued an Executive Order truncating the petitioning period and reducing the number of signatures mandated to run for public office. The order affected every political race in the state. However, Ms. Boylan assumed it was a personal attack on her and believed the change was not helpful for her candidacy for Congress. Immediately thereafter, Ms. Boylan texted Robert Mujica, State Budget Director, "Absolutely not helpful please relay that while we are ok, I see what the point is here and I will find ways to respond. Life is Long. And so is my memory. And so are my resources." She texted Dani Lever, Director of Communications, at the same time. "Absolutely not helpful specific response to a tragedy but

please relay that while we are ok, I see what the point is here and I will find ways to respond to the message. The future is coming after assholes.” Ms. Boylan’s political motivation against the Governor was clearly premediated and purposeful.

We understand from credible sources that female members of Ms. Boylan’s campaign team were offended and actually quit when they heard she and her campaign planned to make such sweeping claims without any proof or specific allegations.

We each know Ms. Boylan personally; we served with her when she was an advisor to the Governor both in the Governor’s Office and at Empire State Development Authority. It is likely that almost every interaction between the Governor and Ms. Boylan took place in either our presence or the presence of another Senior Staff member. Indeed, Ms. Boylan says as much herself. What we witnessed was a forceful and demanding Chief Executive requiring his staff do their best at all times. It was challenging work and at times it was hard both for all staff – men and women. In other words, it is what you would expect in a high-pressure environment where the accomplishments and failures matter and impact the lives of 19 million New Yorkers. What we did not see was any kind of sexual harassment suggested by Ms. Boylan’s summary and unsubstantiated assertion on twitter.

We are also aware that during Ms. Boylan’s tenure no less than six official complaints were raised about her conduct. The complaints came from peers and subordinates, from men and women. This is relevant to assessing Ms. Boylan’s claim, to understand that she left State employment after being formally confronted by repeated official complaints that she “treats [subordinates] like children” and made them feel like a “punching bag”, was “degrading”, “insulting”, and “harassing”. In response, Ms. Boylan resigned. Several days later Ms. Boylan contacted Mr. David and said she changed her mind and wanted to return to her position. Mr. David said that was not

possible. Afterwards Ms. Boylan attempted to contact the Governor, but Mr. David advised the Governor to not discuss the situation with Ms. Boylan as the complaints were outstanding.

During her tenure, at the time of her departure and after her departure, no complaint – formal or informal – was ever raised about the Governor. In fact, Ms. Boylan praised the Governor and the staff for his work and accomplishments. Ms. Boylan tweeted six weeks before her departure, "I'm proud to work for a Governor who takes women seriously". And another tweet, 12 days before her departure, "So proud of my boss Andrew Cuomo and all of Team Cuomo". Six weeks after leaving she also tweeted, "Governor Cuomo is the best choice for Governor".

We encourage all women to come forward with valid complaints of harassment. But weaponizing a claim of sexual harassment for personal political gain or to achieve notoriety cannot be tolerated. False claims demean the veracity of credible claims.

From: Stephanie Benton
Sent: Friday, December 18, 2020 9:22 AM
To: Linda A Lacewell (dfs.ny.gov); Alphonso David
Subject: RE: Privileged Confidential

I'm gonna do a real list so we can track who is calling whom and their agreement to sign

From: Lacewell, Linda A (DFS) <[REDACTED]@dfs.ny.gov>
Sent: Friday, December 18, 2020 9:18 AM
To: Stephanie Benton <[REDACTED]@exec.ny.gov>; Alphonso David <[REDACTED]@hotmail.com>
Subject: Re: Privileged Confidential

also I got

[REDACTED]

-

From: Lacewell, Linda A (DFS) <[REDACTED]@dfs.ny.gov>
Sent: Friday, December 18, 2020 9:09 AM
To: Benton, Stephanie (CHAMBER) <[REDACTED]@exec.ny.gov>; Alphonso David <[REDACTED]@hotmail.com>
Subject: Re: Privileged Confidential

Fonz let us know who you take to call

I have signoff from

[REDACTED]

-

From: Lacewell, Linda A (DFS)
Sent: Friday, December 18, 2020 4:37 AM
To: Benton, Stephanie (CHAMBER) <[REDACTED]@exec.ny.gov>
Cc: DeRosa, Melissa (CHAMBER) <[REDACTED]@exec.ny.gov>
Subject: Re: Privileged Confidential

[REDACTED]

We have lots more on the original list you did with Judy

Sent from my iPhone

On Dec 17, 2020, at 9:53 PM, Stephanie Benton
<[REDACTED]@exec.ny.gov> wrote:

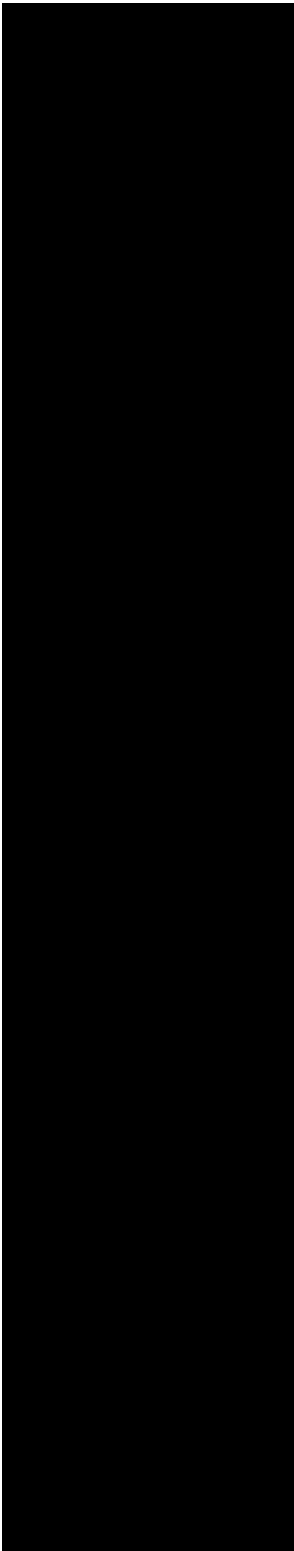
[REDACTED]

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network

From: Stephanie Benton
Sent: Thursday, December 17, 2020 9:43 PM
To: Linda A Lacewell (dfs.ny.gov)
Cc: Melissa DeRosa
Subject: Privileged Confidential

So this is progress. How do we get him 50 plus names. Would be great to keep his mind on this path and would be real shot in the arm if we can get him names in am.

[REDACTED]



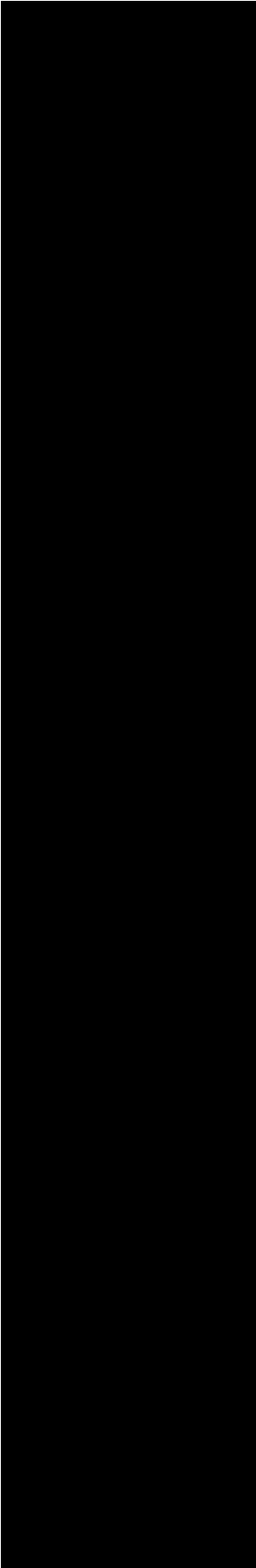
And I want to put eyes on stupid list again to grab more of the kids. But I can't right now. I just can't.

Send to linda tell her ask 50 names to sign the following letter. "We all worked for Governor Cuomo directly. His motto wa Performance Integrity Pride, we

work for the people. He has always been true to that pledge. He is strong tough respectful inclusive and effective. He showed the teams capacity with a long record of accomplishments and the world sw it in the teams product during covid. We are all glad and proud to have served him and the people of the state.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

To Be Called



Person Calling

Linda
Linda

Steph
Steph

Linda
Linda
Linda
Steph

Linda
Linda

Steph

Steph

Linda

Linda



Steph

Steph
Steph

Yes or No

Y

Y

Y pending work

Y

Y

Y

Y

Y

Y

Y

Y pending work

Y

Y

Y

Y

Y

Y

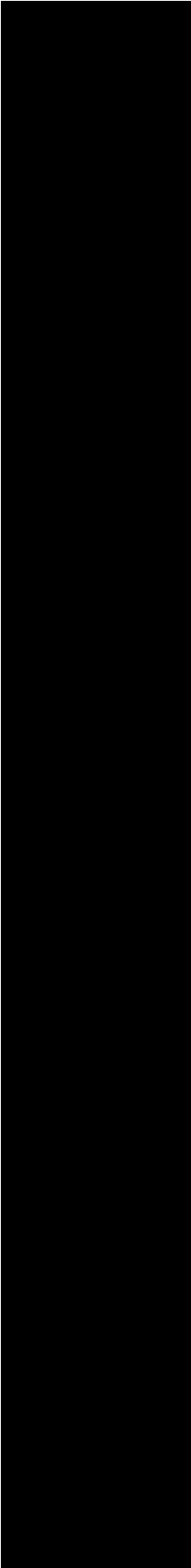
Y

From: Stephanie Benton
Sent: Friday, December 18, 2020 10:35 AM
To: Linda A Lacewell (dfs.ny.gov); Alphonso David
Subject: Privileged Confidential

Update

From: Stephanie Benton
Sent: Friday, December 18, 2020 11:07 AM
To: Linda A Lacewell (dfs.ny.gov); Alphonso David
Subject: Privileged Confidential

To Be Called



Person Calling

Linda
Linda

Steph
Steph

Linda
Linda
Linda
Steph

Linda
Linda

Steph

Steph

Steph

Steph
Steph

Linda

Linda



Steph

Steph
Steph

Yes or No

Y

Y

Y pending work

Y

Y

Y

Y

Y

Y

Y

Y pending work

Y

Y

Y

Y

Y

Y

Y

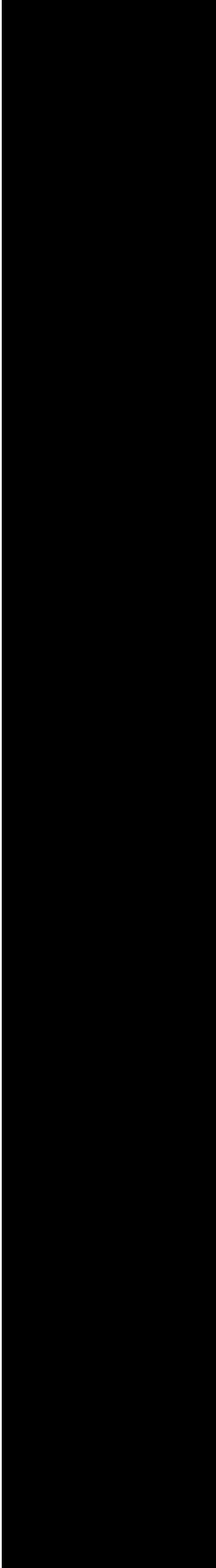
Y

Y

Y

From: Stephanie Benton
Sent: Friday, December 18, 2020 12:39 PM
To: Linda A Lacewell (dfs.ny.gov); Alphonso David
Subject: Privileged Confidential

To Be Called



Person Calling

Linda
Linda

Alphonso
Alphonso
Alphonso
Steph
Steph

Linda
Linda
Linda
Steph

Linda
Linda
Steph
Steph
Alphonso
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Linda
Steph



Steph

Steph
Steph

Yes or No

Y

Y

Y pending work

Y

Y

Y

Y

Y

Y

Y

Y pending work

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

Y

< 378



3 People >

iMessage
Wed, Dec 9, 7:32 PM

Melissa DeRosa



The first time I heard someone tell me that Cuomo had abused his position of power over her was 2009.

He wasn't even governor yet. That's how far back and consistent the pattern of abuse is.

Lindsey Boylan @Lindsey... · 11h
I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say, @NYGovCuomo will go down as one of the biggest abusers of all time. ...

1 comment 5 retweets 14 likes share



Lindsey Boylan @LindseyBoylan

Replying to @chimeracoder

It's an open secret.

6:55 PM · 12/9/20 · [Twitter for iPhone](#)

Institutions like NYS gov't are designed to protect their own at the expense of others' humanity. It doesn't matter if you're an aide or the Governor.

We'll continue fighting for survivors—both known & unknown—until we achieve a [#HarassmentFreeAlbany](#).



iMessage



< 379



3 People >

Institutions like NYS gov't are designed to protect their own at the expense of others' humanity. It doesn't matter if you're an aide or the Governor.

We'll continue fighting for survivors—both known & unknown—until we achieve a [#HarassmentFreeAlbany](#). We are stronger together.

Lindsey Boylan @LindseyBoylan · 11h

I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say, @NYGovCuomo will go down as one of the biggest abusers of all time. ...

6:45 PM · 12/9/20 · [Twitter Web App](#)

@EricaForNY

If you've been harassed, assaulted, or abused by Cuomo or frankly any other institutionally protected power abuser: I've been there. So have far too many others. You are not alone. We will stand with you.

My DMs are open.

[#HarassmentFreeNY](#)
[#HarassmentFreeAlbany](#)



iMessage



< 379



3 People >

Lindsey Boylan ✓ @LindseyBoylan · 11h
 I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say, @NYGovCuomo will go down as one of the biggest abusers of all time.
 ...

MD

Alphonso I need to see her full file

MD

Emails etc

All of that is in possession of the state. Judy should be able to get you the file for the time while she was in chamber. There will be an esd component as well but you can start with chamber.

Melissa DeRosa

MD

Linda do u see this?!?!

Linda Lacewell

Yes

Talking to Judy now

Judy has the file -



iMessage



< 379

3 People >

MD Emails etc

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Melissa DeRosa

MD Linda do u see this?!?!

Linda Lacewell

Yes

Talking to Judy now

Judy has the file -

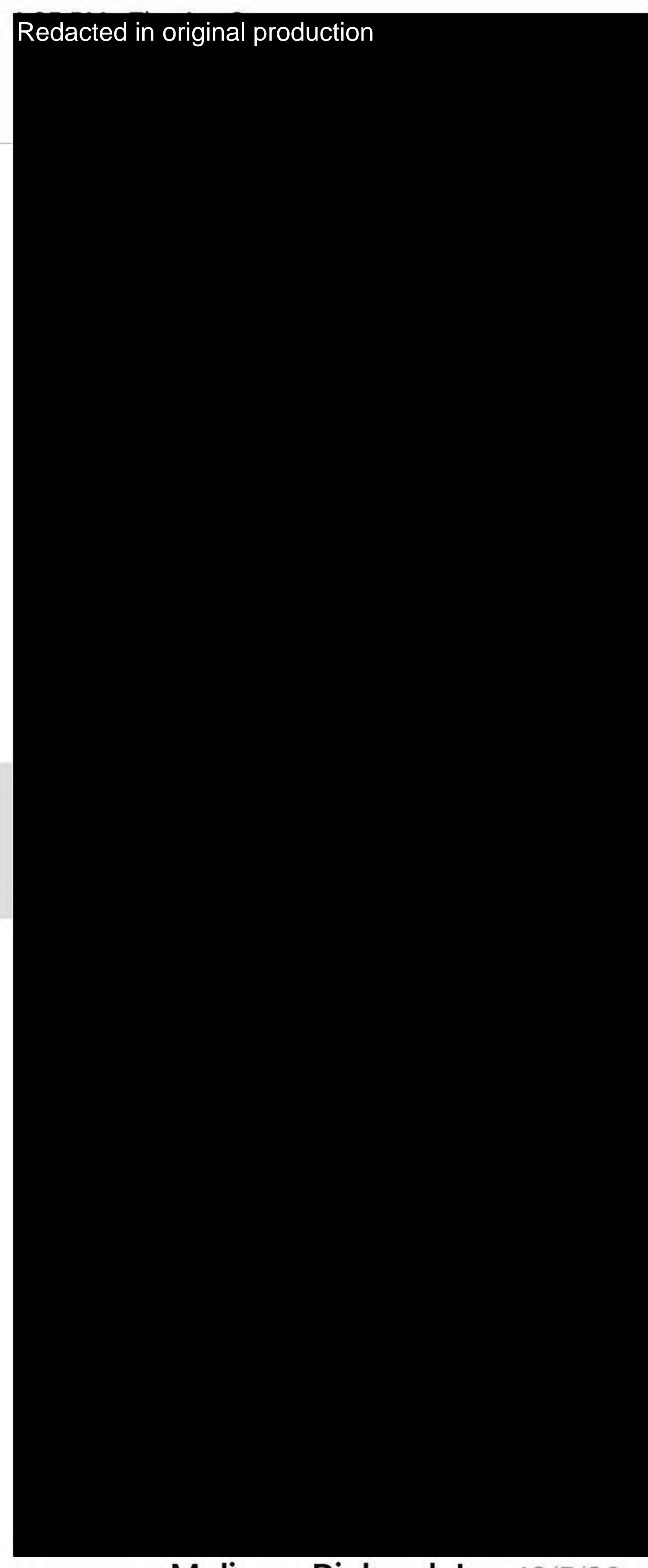
Everything should be in that file. Emails regarding harassment at esd, counseling memo etc.

Linda Lacewell

Yup

iMessage





3 People >

iMessage
Fri, Dec 18, 11:10 AM

Stephanie Benton

SB [redacted] and [redacted] both raised why no men on sign on.

Linda Lacewell

LL Ok

Stephanie Benton

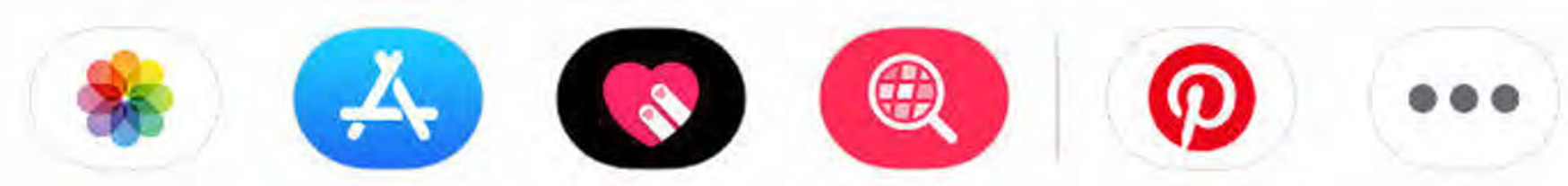
SB Who can help make these calls. Really hard for me while with him.

Linda Lacewell

LL Fonz about to call me



Camera App Store iMessage Voice Recorder





4 People >

iMessage
Tue, Dec 8, 9:32 AM

Melissa DeRosa

Yesterday was an extremely weird day, responding to the news world finally waking up about the whispers they have heard about @NYGovCuomo over the years. It's worse than the gossip, by far.

My hope is he is on notice and won't harm more people, especially women.



Lindsey Boylan
twitter.com

MD

She went on another tirade this morning

Linda Lacewell

LL

Can I respond

Melissa DeRosa

And say what?

What do we do w this app

MD

It's crazy

MD

Look at the thread

Judith Mogul



iMessage





4 People >

Judith Mogul

Linda what would you say?

Richard Azzopardi

Just remember she s a crackpot who only got 22 percent of her own neighbors to vote for her.

Judith Mogul

It feels to me like she is trying to bail us into saying something as anything we do say will give this more oxygen.

Linda Lacewell

Yeah

He should be prepared to briefly respond though if he receives questions at one of his press conferences.

Wed, Dec 9, 10:00 AM

Melissa DeRosa

Verizon LTE 10:00 AM

< Tweet

Lindsey Boylan @LindseyBoylan

I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say,

iMessage input area with camera, app icons, and microphone.

iOS dock with various app icons.



4 People >

Wed, Dec 9, 10:00 AM

Melissa DeRosa

Verizon LTE

10:00 AM



Tweet



Lindsey Boylan

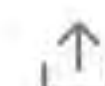
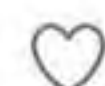
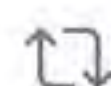
@LindseyBoylan

I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say, @NYGovCuomo will go down as one of the biggest abusers of all time.

Will it take decades more for this to be common knowledge?

8:18 AM · 12/9/20 · Twitter for iPhone

15 Retweets 8 Quote Tweets 108 Likes



MD

again this morning

Linda Lacewell

LL

Only tweet 8:18am. Let's still be patient and not give it oxygen. The responses to her tweet are not good for her.



iMessage





Stephanie >

Wed, Sep 20, 8:51 PM



How are you!

Hey there. Doing ok. Just got to DC for event tomorrow. It's all recorded except for some pieces which I am doing live. Doing good. The world is upside down and the work is even more important now than ever before. 6 weeks left.

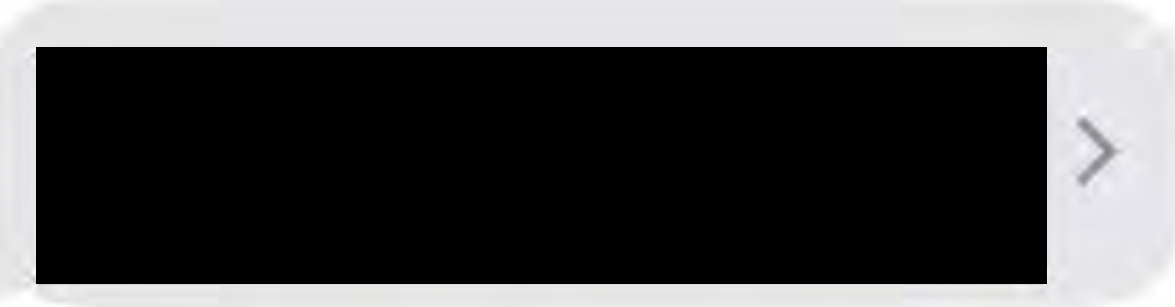
You got that right my friend. I really do miss you. Huge hug.

Mon, Dec 14, 11:34 AM

Hey doll. Hope to see you and him before I leave.

Delivered

Thu, Dec 17, 1:02 PM



Also she is knowledgeable on the ESD complaints

From [redacted]: Thanks again for reaching out and including me. Miss you and the office very much!



< 384



Jesse >

Text Message
Jun 18, 2016, 1:45 PM

Have fun in Spain. Let's catch up when you get back.

Absolutely. Hope you finally got some sleep

Thu, Mar 11, 10:23 AM

Alphonso, Jesse McKinley here. Wondering if you have a moment for an off the record chat? Hope all is well with you.

Camera, App Store, Text Message, Send button





Tue, Mar 16, 4:15 PM

It's Jimmy. 

Wed, Mar 17, 8:42 PM

<https://twitter.com/jimmyvielkind/status/1372335112537440266?s=10>

So this is in addition to Fishman and Hormozi? Or it's the same thing?

<https://www.timesunion.com/news/article/Cuomo-s-office-conducting-its-own-inquiry-of-16033347.php?IPID=Times-Union-HP-CP-Spotlight>

Fri, Mar 19, 12:09 PM

<https://twitter.com/jimmyvielkind/status/1372941441912217600?s=21>

The sender is not in your contact list.

[Report Junk](#)

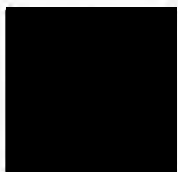


Message



ADSUB000084

6:27



< 202

iMessage
Tue, Mar 16, 2:24 PM

Hi [REDACTED] I understand you are trying to reach me. Let me know. Thanks. Alphonso

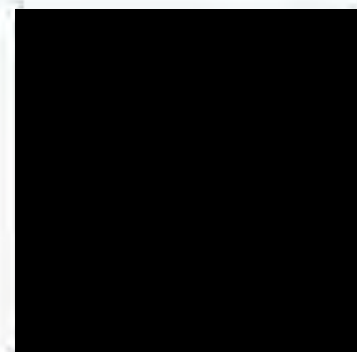
Delivered



iMessage



ADSUB000085



Alphonso...Merry Christmas and a Happy & Healthy New Year to you and your family..

Dec 26, 2017, 7:04 AM

Happy holidays

Apr 23, 2018, 11:59 AM

Alphonso...the EVP of Capital Projects and the Head of Energy Projects at NYCHA would like to meet with me for 45 min this afternoon. As you know, NYCHA is NYPA's Customer. We sell them electricity and also energy efficiency services. My plan is to listen only and see what they have in mind. Any concern form your end? Please let me know..

Lindsey Boylan asked me to check with you first..

swamped right now. Let's talk this afternoon and let's use official work email if necessary.

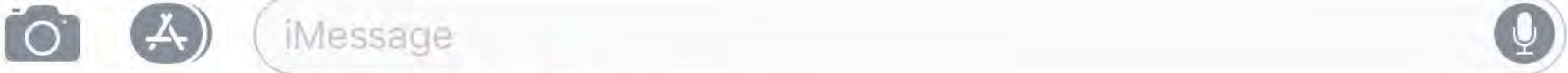
OK - I will call your office to set up a quick call.

Apr 23, 2018, 9:06 PM

Ok. Around tomorrow.

Read 4/23/18

Got it. Will follow-up.





I will call you back. We are swamped with end of session.

Who feel the Gov could do something but is choosing not to

Jun 20, 2018, 9:01 PM

Ok

Jun 21, 2018, 12:11 PM

Don't forget me

Jun 21, 2018, 7:03 PM

I called you back.

Jun 24, 2018, 5:52 PM

Did you ever find out

Who was on Citilights?

Jun 25, 2018, 7:25 PM

Yes they are working on it. Lindsey boyland is working on it and getting details.

Delivered

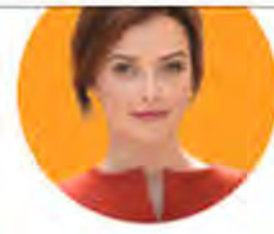
Thx

iMessage input field with camera, app store, and microphone icons

App Store, App Store, App Store, App Store, App Store icons



Somehow, we're in charge. >



Lindsey Boylan
@Lindsey_Boylan

Meanwhile, @jimmalatras
@NYGovCuomo @melissadderosa
this is me doing mom things while
being a boss. Something the
admin did NOT help me do. End of
message.



JM

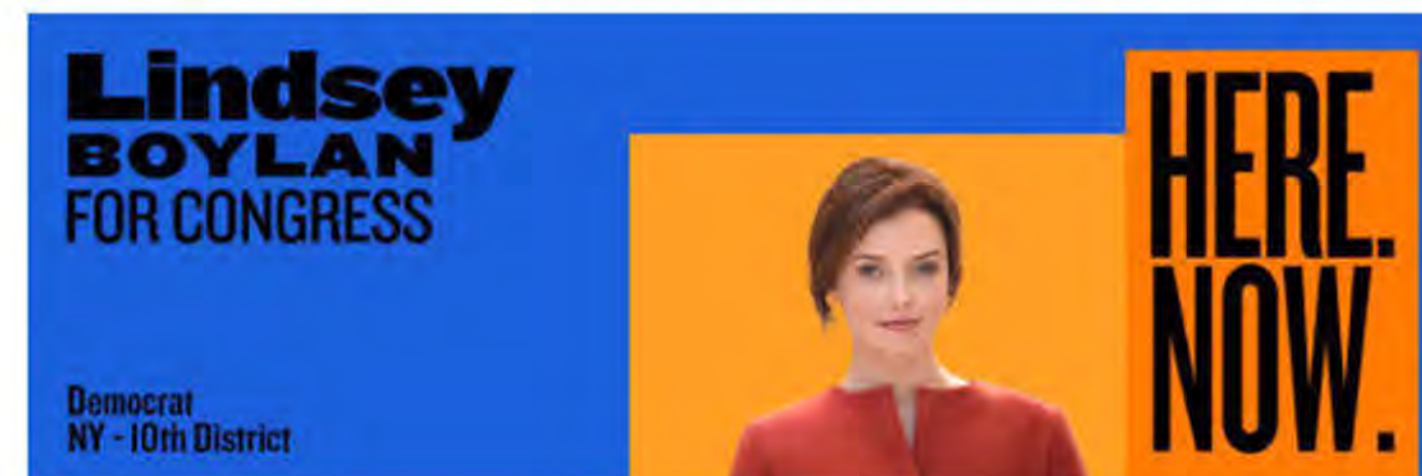
Hey MDR— welcome to the party!

Richard Azzopardi

RA

We re not a daycare

Jim Malatras



Dear Jim



Somehow, we're in charge. >

Jim Malatras



Dear Jim,

Why is mental health one of the issues at the forefront of our campaign?

Because 1 in 5 people will be affected by mental illness in their lifetime.

Because my family, like countless others, has been affected by mental illness.

This month I was proud to stand with NAMIWalks NYC, the largest mental health event in the country, to show my support for the National Alliance on Mental Illness.



This email makes sense now



Melissa DeRosa



Follow

Lindsey Boylan

@Lindsey_Boylan

Candidate for US Congress, NY-10. Democrat. Mama 2 [#BossVivie](#). Wife 2 LeRoy. Govt & Biz Leader. New Yorker. [#donutfan](#). [#primarynadler](#)



Somehow, we're in charge. >

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New York City, NY lindseyboylan.com

Joined November 2016

4,959 Following 5,036 Followers



Followed by Dana Rubinstein, Josh Vlasto, Michael McAuliff, and 11 others

Tweets Tweets & replies Media Likes

Pinned Tweet



Lindsey Boylan @Lindsey_Boylan · 5d

We are asked if we are ready. We are informed it's not our time. We are pat on the back & told we will be taken care of - our concerns will be tended to by men

Lindsey_Boylan has been muted Undo

Guys she's [redacted]

MD We should just ignore

Jim Malatras

Yup





Somehow, we're in charge. >

Jim Malatras



JM

May 22, 2019, 12:31 PM

Jim Malatras

JM

Malatras to Boylan: go fuck yourself.



May 22, 2019, 4:38 PM

Jim Malatras



JM

Retweet opportunity



Somehow, we're in charge. >

Annabel Walsh

experience, especially pregnancy, happy to have your insights. & when u no longer report 2 the 2nd floorhappy 2listen. #tonedeaf @jimmalatras

Jim Malatras @jimmalatras · 1d

I saw someone Twitterbombing about family life on the 2nd Floor to get some attention for unrelated political purposes. That's their prerogative. Is working in the chamber tough? You bet. Long hours? Yes. It should be. But my son was often a welcomed part of it so I could serve.



For the record, here is what I wrote, and I stand by it now and in the future. To anyone. Anywhere. Come at me.

Lindsey Boylan @Lindsey_Boylan · 2d

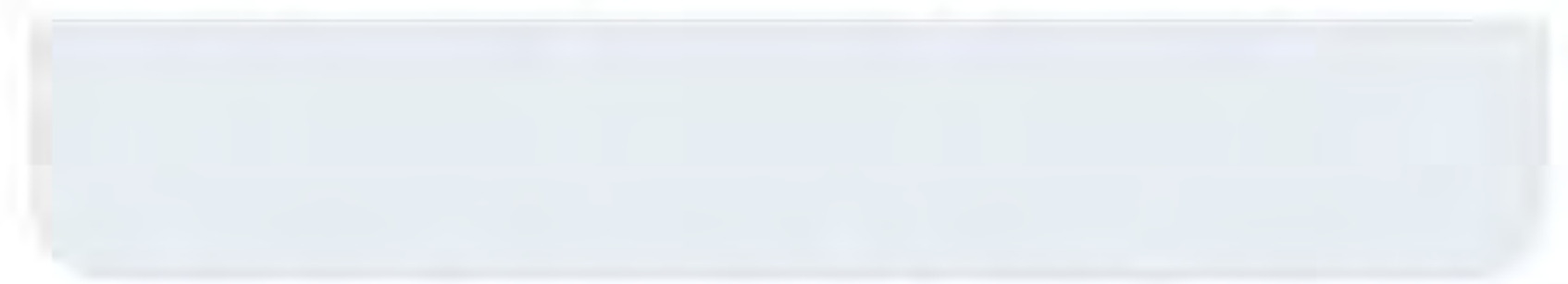
I was the only mother of young children on senior staff in my last job in politics. They didn't "get it" even with all the "right" policies. It was a toxic and demoralizing experience. Now I run my own company full...



Somehow, we're in charge. >

12:48 PM · 5/23/19 from [Manhattan, NY](#) · [Twitter for iPhone](#)

1 Like



AW Alphonso you have a fantastic photo featured in this

Richard Azzopardi

RA Correct

Jim Malatras

JM She's on a roll now. Dicker-esque

Richard Azzopardi

RA Can't wait for her amazon reviews on the various weapons she's stockpiling

Jim Malatras

Lol

JM You think it's too much if I say Fred, is that you?

Richard Azzopardi

RA She won't get it anyway

Jim Malatras

JM Yeah I think we just keep retweeting mine without comment. It's clearly driving her nuts.



Somehow, we're in charge. >

JM

"Come at me" ummm the places I could go with that... but I'm a matured president now.

Richard Azzopardi

RA

(Redacted by Alphonso David)

Jim Malatras

JM

Lol



Lindsey Boylan
@Lindsey_Boylan

Meanwhile, @jimmalatras
@NYGovCuomo @melissadderosa
this is me doing mom things while
being a boss. Something the
admin did NOT help me do. End of
message.



JM

Hey MDR— welcome to the party!

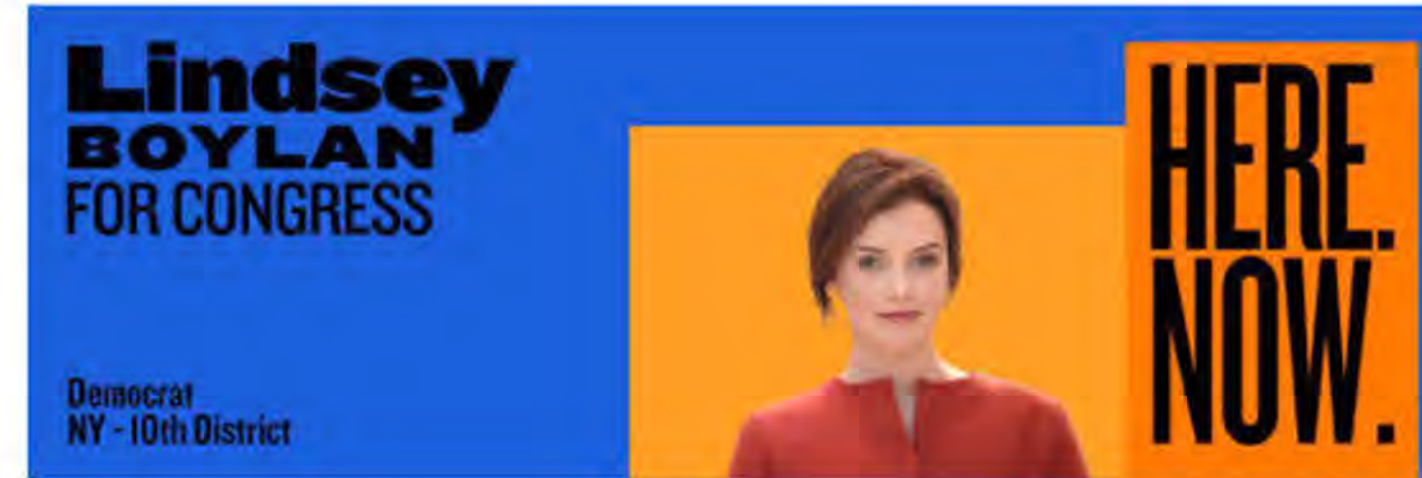
Richard Azzopardi



Somehow, we're in charge. >

RA We re not a daycare

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JM

JM This email makes sense now

Melissa DeRosa



Lindsey Boylan

@Lindsey_Boylan



Somehow, we're in charge. >

Melissa DeRosa



Follow

Lindsey Boylan

@Lindsey_Boylan

Candidate for US Congress, NY-10. Democrat. Mama 2 #BossVivie. Wife 2 LeRoy. Govt & Biz Leader. New Yorker. #donutfan. #primarynadler

New York City, NY lindseyboylan.com

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Tweets Tweets & replies Media Likes

Pinned Tweet



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Guys she's [redacted]

MD We should just ignore

Jim Malatras

Yup





8 People >

iMessage
Sat, Dec 19, 3:27 PM

Melissa DeRosa



Lindsey Boylan's accusation that Gov. Cuomo sexually harassed her appears had an unintended consequence.

Her communications consultant has left Boylan's campaign for Manhattan BP.

Cuomo has said, "It's just not true."

<https://t.co/5vyZCybOip>

 **New York Daily News**
twitter.com

MD

MD

Haven't read yet

Richard Bamberger



Do we want on empire ?

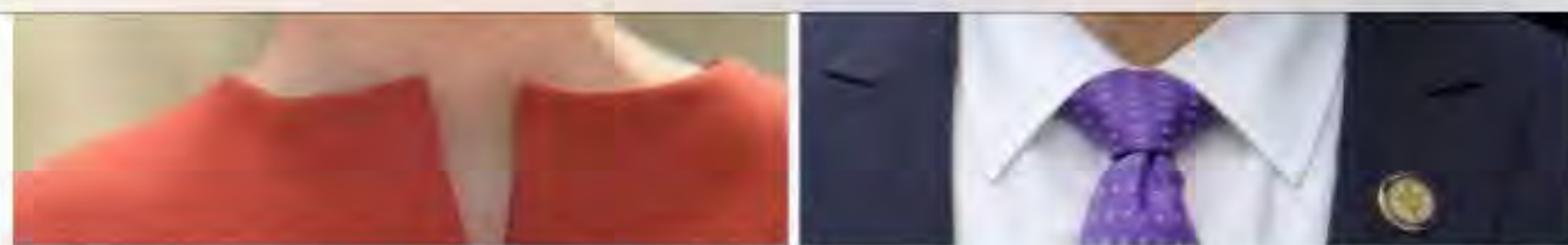


iMessage





8 People >




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<https://t.co/5vyZCybOip>

 New York Daily News
twitter.com

MD

MD Haven't read yet

Richard Bamberger

 Do we want on empire ?

Richard Azzopardi

RA I think yes. She wouldn't say she didn't believe her? That's the implication but still.

Melissa DeRosa

W header that ppl quit

MD Campaign





3 People >

Linda Lacewell

I've had many jobs. Waitressing at @Friendlys as a teenager was an infinitely more respectful environment. Even when I had bad customers who tipped poorly.

7 3 64



Lindsey Boylan @LindseyBo... · 47m

If people weren't deathly afraid of him, they'd be saying the same thing and you'd already know the stories.

3 3 58



Lindsey Boylan @LindseyBo... · 33m

Seriously, the messages and texts I receive when I speak the truth about this...it's a whole book of people who have been harmed.

2 27



Lindsey Boylan @LindseyBoy... · 33s

Don't be surprised that it's the same small group of white people sitting alongside him at every presser. The same group that he has had by him the whole time, doing his dirty work. If you're not one of those handful, your life working for him is endlessly dignifying

LL

Wed, Dec 9, 11:27 AM

Melissa DeRosa

MD

How long did she work here?

No idea. Admin would know. she was at esd and then chamber. My guess is a year or less in chamber.



iMessage





3 People >

MD How long did she work here?

No idea. Admin would know. she was at esd and then chamber. My guess is a year or less in chamber.

Linda Lacewell

LL Will get

LL Her LinkedIn says 3/15 to 10/18 for whole period. March to October 2018 as dep sec and special adviser to gov

Melissa DeRosa

MD How long was she in the chamber

Linda Lacewell

LL March to October 18
See
Above

Melissa DeRosa

Ok so 6 months

MD In the chamber

Linda Lacewell

Appts says 2/22/18 resigned 9/26/18

LL 7 mths

iMessage input area with camera, app store, and microphone icons

iOS home indicator bar with various app icons



3 People >

Appts says 2/22/18 resigned 9/26/18

LL 7 mths

Thu, Dec 17, 3:33 PM

Bad news from [REDACTED]
Connected with my counsel and as the company's spokeswoman they prefer I not sign on. Let me know if there is any other way I can be helpful.
Sorry this didn't work out.

Would still focus on the strategy. Can cross this bridge more later.

Thu, Dec 17, 5:24 PM

Call me together.

Linda Lacewell

LL She is sending dial in

Ok. Let's do dial in.

Melissa DeRosa

MD Steph is sending

Melissa DeRosa added Steve Cohen to the conversation.
Thu, Dec 17, 5:32 PM

iMessage input area with camera, app store, and microphone icons

iOS dock with various app icons




2 People >

fonz. Lindsey is coming after Jim now and doubling down. What do you think of this

Lindsey - I tried to have this conversation over the phone and do this respectfully but since you didn't respond, I am putting this in writing. On more than one occasion, we had personal conversations about our relationships and personal lives and you told me that you could in fact [REDACTED] [REDACTED] if you wanted to and stay in the workplace because you had "money to throw at the problem" and could afford [REDACTED] and to take taxis. Further, [REDACTED] was always a welcomed part of our office and in fact, [REDACTED] [REDACTED], something we were all supportive of. I'm not quite sure what you are doing and find it bizarre but if press should come to me asking for comment, I will be honest.

DL

 For the record, here is what I wrote, and I stand by it now and in the future. To anyone. Anywhere. Come at me.

 **Lindsey Boylan** @Lindsey_... · 2d
I was the only mother of young children on senior staff in my last job in politics. They didn't "get it" even with all the "right" policies. It was a toxic and demoralizing experience....



Lindsey Boylan Retweeted

 **Dana Rubinstein** @danarubins... · 1h
Interesting exchange here --->

 Lindsey Boylan @Lindsey_... · 1h



iMessage





2 People >

Lindsey Boylan Retweeted



Dana Rubinstein @danarubins... · 1h

Interesting exchange here --->



Lindsey Boylan @Lindsey_... · 1h

The note was about being a mother, being pregnant, & deciding when and if it was feasible to have children myself. When you've lived that experience, especially pregnancy,...

Show this thread



Lindsey Boylan @Lindsey_Boylan · 1h

The note was about being a mother, being pregnant, & deciding when and if it was feasible to have children myself. When you've lived that experience, especially pregnancy, happy to have your insights. & when u no longer report 2 the 2nd floor happy 2listen. #tonedeaf @jimmaltras



Jim Malatras @jimmaltras · 1d

I saw someone Twitterbombing about family life on the 2nd Floor to get some attention for unrelated political purposes. That's their prerogative. Is working in the chamber tough? You bet. Long hours? Yes. It should be. But my son was often a welcomed part of it so I could serve.



iMessage





2 People >



Lindsey Boylan @Lindsey_Boylan · 1h

@RockefellerInst is this a good use of leadership time? Is there a board that independently reviews staff time or is this meant to be a reflection of the concerns women in the workplace have?



Lindsey Boylan @Lindsey_Boylan · 1h

@SUNY is this the kind of conversation you want leadership, that is meant to preside over female students as well? Is it appropriate to have one of your affiliated institution's leaders, in govt no less, defend @NYGovCuomo on the admin record with moms? Wow!



Lindsey Boylan @Lindsey_Boylan · 2h

This — for the reasons u mention @nhannahjones. In my field of econ dev, ppl talk a lot abt changes in tech etc2explain econ advances in time. We never begin w the economic manipulation/engine of slavery & how foundational this was 2the history of our

DL

DL

Fonz?

What is this? This is nuts.





2 People >



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DL

DL

Fonz?

What is this? This is nuts.

Dani Lever

Look at what I sent above the screen shots

DL

As a text to her

Your text is fine.

Melissa DeRosa

MD

Did u text her?

Dani Lever

DL

No should I?

Thu, Dec 17, 1:27 PM

Melissa DeRosa

MD

Sent package



iMessage



Redacted in original production



6 People >

iMessage
Thu, Dec 17, 10:57 AM

Melissa DeRosa

Look In in box



Attempt to clean up

Linda Lacewell



Much better

Judith Mogul



Agree



iMessage 



Redacted in original production



4 People >



iMessage
Fri, Dec 11, 3:05 PM

Melissa DeRosa
Lindsey Boylan
@LindseyBoylan

I have been in an abusive relationship before. It was a work relationship.
You are not weak because you fall victim to an abusive relationship.
Strong people can be victimized by the powerful. It happens to every "type" of person every day and indicating otherwise is harmful.

2:57 PM · 12/11/20 from [Manhattan, NY](#) · [Twitter for iPhone](#)

13 Retweets 1 Quote Tweet 64 Likes



Beth Joy
@BethP... · 6m ...
Replying to @LindseyBoylan

Linda Lacewell

Yeah. Could have been anywhere





4 People >

Linda Lacewell



Yeah. Could have been anywhere



She's reacting to fka twigs

Sun, Dec 13, 10:22 AM

Melissa DeRosa



Lindsey Boylan

@LindseyBoylan

To be clear: I have no interest in talking to journalists.

I am about validating the experience of countless women and making sure abuse stops.

My worst fear is that this continues. And as @FKAtwigs said yesterday, my second worst fear is having to talk about and relive this.

10:00 AM · 12/13/20 · Twitter for iPhone

7 Retweets 1 Quote Tweet 109 Likes



Chris Bold @fingertrick · 16m



iMessage





4 People >

10:00 AM · 12/13/20 · Twitter for iPhone

7 Retweets 1 Quote Tweet 109 Likes



Chris Bold @fingertrick · 16m

I could never anticipate what to expect: would I be grilled on my work (which was very good) or harassed about my looks. Or would it be both in the same conversation? This was the way for years.

175 1,481 2,671

Lindsey Boylan @LindseyBoylan · 1h

Not knowing what to expect what's the most upsetting part aside from knowing that no one would do a damn thing even when they saw it.

No one.

And I *know* I am not the only woman.

7 81 682

Lindsey Boylan @LindseyBo... · 56m

I'm angry to be put in this situation at all. That because I am a woman, I can work hard my whole life to better myself and help others and yet still fall victim as countless women over generations have. Mostly silently.



iMessage





3 People >

iMessage
Wed, Dec 9, 7:32 PM

Melissa DeRosa



The first time I heard someone tell me that Cuomo had abused his position of power over her was 2009.

He wasn't even governor yet. That's how far back and consistent the pattern of abuse is.

Lindsey Boylan @Lindsey... · 11h

I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say, @NYGovCuomo will go down as one of the biggest abusers of all time. ...

1 5 14



Lindsey Boylan
@LindseyBoylan

Replying to @chimeracoder

It's an open secret.

6:55 PM · 12/9/20 · [Twitter for iPhone](#)

Institutions like NYS gov't are designed to protect their own at the expense of others' humanity. It doesn't matter if you're an aide or the





3 People >

Institutions like NYS gov't are designed to protect their own at the expense of others' humanity. It doesn't matter if you're an aide or the Governor.

We'll continue fighting for survivors- both known & unknown-until we achieve a [#HarassmentFreeAlbany](#). We are stronger together.

Lindsey Boylan @LindseyBoylan · 11h

I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say, @NYGovCuomo will go down as one of the biggest abusers of all time.

6:45 PM · 12/9/20 · [Twitter Web App](#)



@EricaForNY

If you've been harassed, assaulted, or abused by Cuomo or frankly any other institutionally protected power abuser:

I've been there. So have far too many others. You are not alone. We will stand with you.



iMessage





3 People >

I've been there. So have far too many others. You are not alone. We will stand with you.

My DMs are open.

[#HarassmentFreeNY](#)

[#HarassmentFreeAlbany](#)

Lindsey Boylan @LindseyBoylan · 11h
 I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say, @NYGovCuomo will go down as one of the biggest abusers of all time.
 ...

MD

Alphonso I need to see her full file

MD

Emails etc

All of that is in possession of the state. Judy should be able to get you the file for the time while she was in chamber. There will be an esd component as well but you can start with chamber.

Melissa DeRosa

MD

Linda do u see this?!?!

Linda Lacewell

Yes



iMessage





3 People >

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Melissa DeRosa



Linda do u see this?!?!

Linda Lacewell

Yes

Talking to Judy now



Judy has the file -

Everything should be in that file. Emails regarding harassment at esd, counseling memo etc.

Linda Lacewell



Yup



iMessage





4 People >

Wed, Dec 9, 10:00 AM

Melissa DeRosa

Verizon LTE

10:00 AM



Tweet



Lindsey Boylan @LindseyBoylan

I've been getting all these messages from people I won't be sharing, because it's their truth, but I must say, @NYGovCuomo will go down as one of the biggest abusers of all time. Will it take decades more for this to be common knowledge?

8:18 AM · 12/9/20 · Twitter for iPhone

15 Retweets 8 Quote Tweets 108 Likes



MD again this morning

Linda Lacewell

LL Only tweet 8:18am. Let's still be patient and not give it oxygen. The responses to her tweet are not good for her.



iMessage





3 People >

Mon, Dec 7, 10:03 AM

Melissa DeRosa

Is Lindsey tweeeetinh more

MD

Or is this same stuff from Saturday

Richard Azzopardi

RA

Stuff from Saturday but she talked to the post and said she stood by it

RA

Running in Manhattan against us and through right wing media seems to be a winning strategy

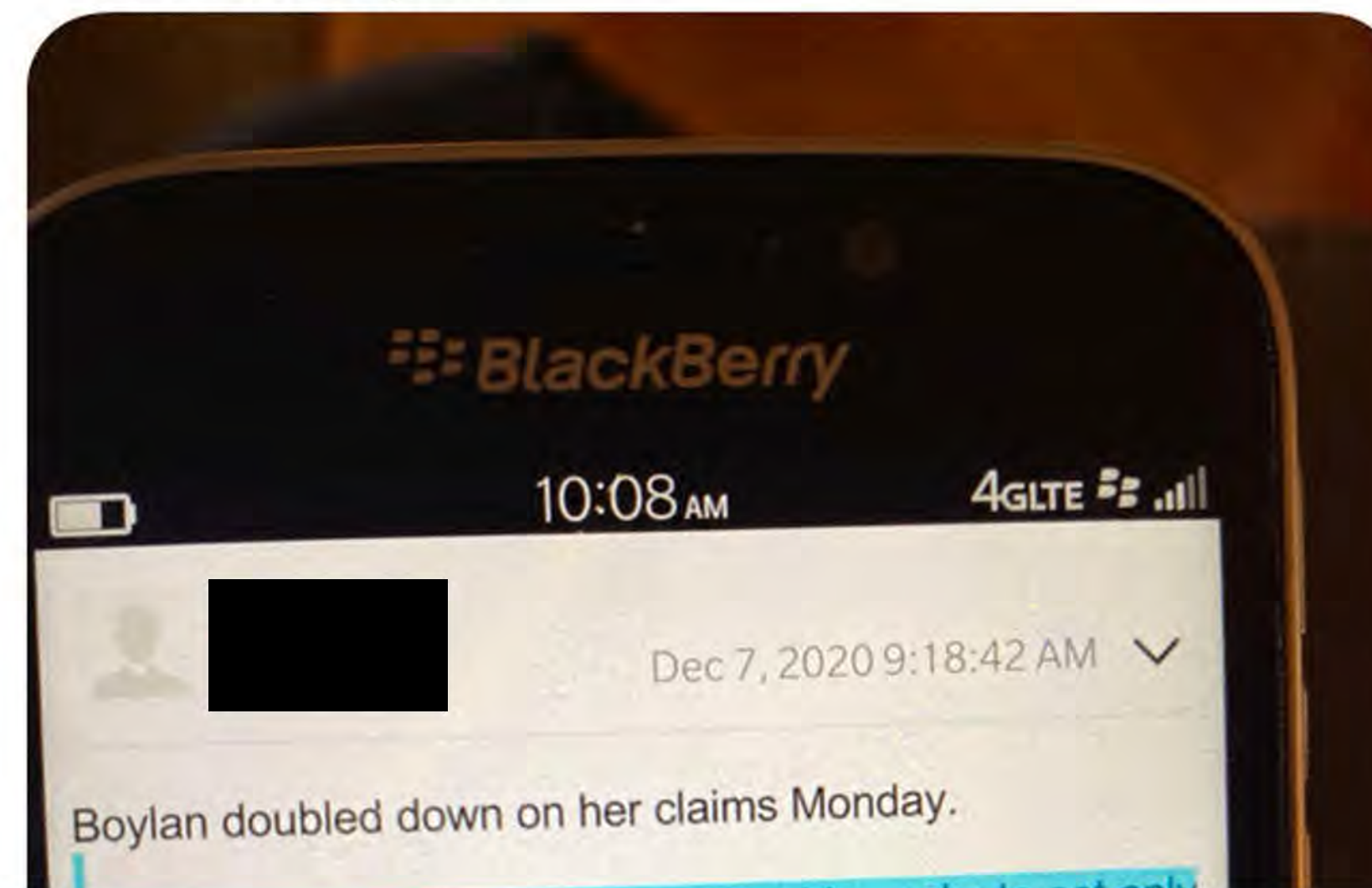
Melissa DeRosa

Did she say anything more

MD

Or just that she stood by it

Richard Azzopardi



iMessage



MD RA LL

3 People >

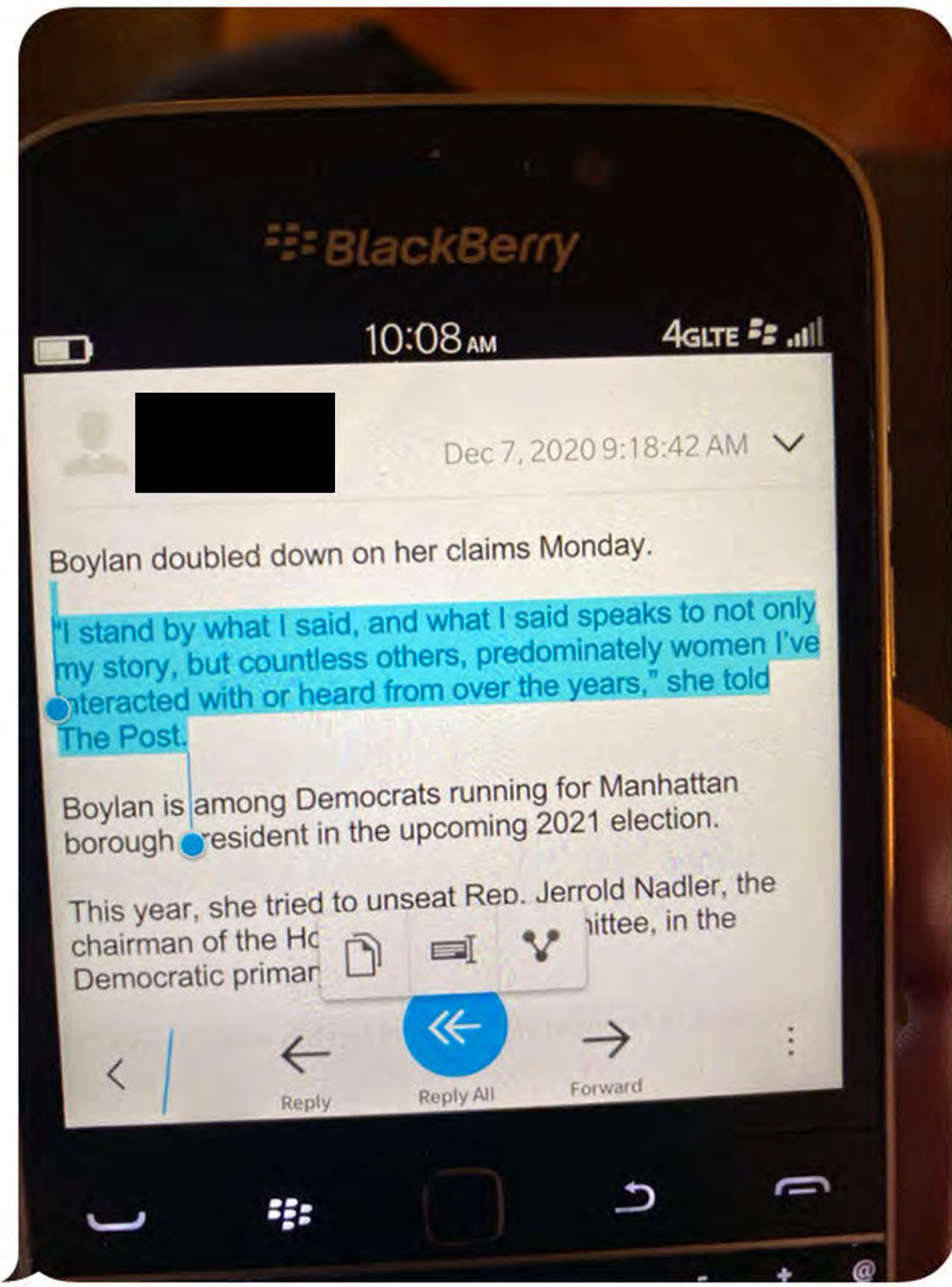
RA Running in Manhattan against us and through right wing media seems to be a winning strategy

Melissa DeRosa

Did she say anything more

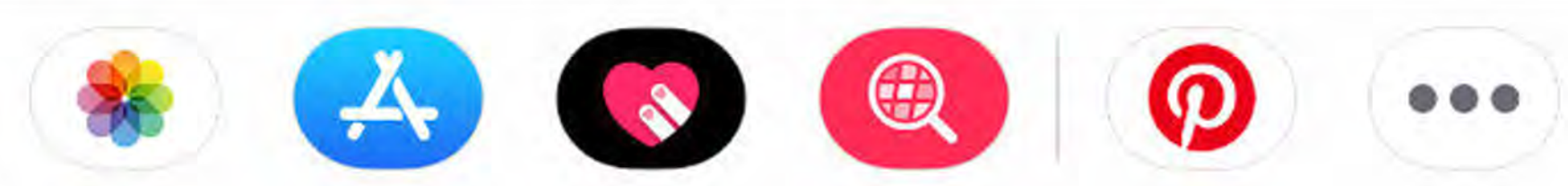
MD Or just that she stood by it

Richard Azzopardi



RA

iMessage





4 People >

iMessage
Sat, Dec 5, 3:09 PM

Melissa DeRosa

Verizon LTE

3:09 PM

5%



Tweet

↻ Lindsey Boylan Retweeted

 **Jeremy Rosenberg**
@JeremyR1992

Same. Literally.

 **Lindsey Boylan** ✓ @LindseyBoylan · 2h
Most toxic team environment? Working for @NYGovCuomo.
[Show this thread](#)

2:32 PM · 12/5/20 · [Twitter for iPhone](#)

3 Retweets 10 Likes

Anyone know this person!

MD

?

Richard Azzopardi

RA

Nope. Probably here for 5 mins



iMessage



Redacted in original production



4 People >



Jeremy Rosenberg
@JeremyR1992

Same. Literally.



Lindsey Boylan @LindseyBoylan · 2h
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[Show this thread](#)

2:32 PM · 12/5/20 · [Twitter for iPhone](#)

3 Retweets 10 Likes



Anyone know this person!

MD

?

Richard Azzopardi

RA

Nope. Probably here for 5 mins

Looks like he was a "legislative fellow" at DHCR.

Richard Azzopardi

RA

So a snowflake



iMessage





5 People >

Jun 27, 2019, 7:05 PM

Linda Lacewell



Richard Azzopardi

I mean



She likes him and hates us, I got that right. Right?

Linda Lacewell





5 People >



LL

Richard Azzopardi

I mean

RA

She likes him and hates us, I got that right. Right?

Linda Lacewell

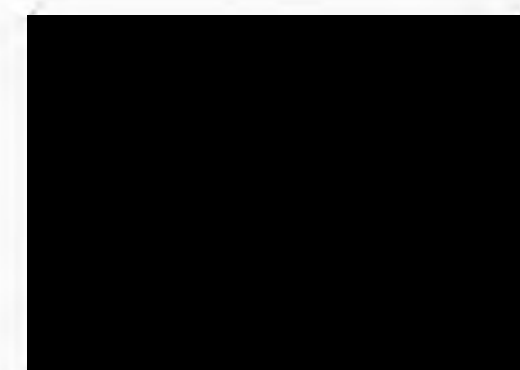
LL

Yeah



iMessage





Thu, Dec 17, 1:32 PM

Hi,
Connected with my folks internally on our procedure for this and was told I need to check in with our counsel. I'll get back to you, sorry for the extra process.
[Redacted]

No worries.

Delivered

Thank you, get right back to you.

Thu, Dec 17, 3:30 PM

Connected with my counsel and as the company's spokeswoman they perder I not sign on. Let me know if there is any other way I can be helpful.
Sorry this didn't work out.

Thu, Dec 17, 5:17 PM

iMessage
Today 5:08 PM

Would love to talk offline advance on work. Won't mention I talked to you if game.

iMessage input field with camera, app store, and microphone icons.

Bottom dock with icons for Photos, App Store, Health, Safari, Drive, and Pinterest.

Sorry this didn't work out.

Thu, Dec 17, 5:17 PM

iMessage
Today 5:08 PM

Would love to talk offline
advance on work. Won't
mention I talked to you if
game.

FYI I just received this message now:

She's going to call me in 15 or so.



iMessage



< 377

Group chat header with avatars for LL, RA, MD, and an unnamed person, and the text "4 People >"

MD Look at the thread

Judith Mogul

[Avatar] Linda what would you say?

Richard Azzopardi

RA Just remember she s a crackpot who only got 22 percent of her own neighbors to vote for her.

Judith Mogul

[Avatar] It feels to me like she is trying to bail us into saying something as anything we do say will give this more oxygen.

Linda Lacewell

LL Yeah

He should be prepared to briefly respond though if he receives questions at one of his press conferences.

Wed, Dec 9, 10:00 AM

Melissa DeRosa

iMessage input area with camera, app store, microphone, and text input field containing "iMessage"

< 377



4 People >

press conferences.

Wed, Dec 9, 10:00 AM

Melissa DeRosa

Verizon LTE 10:00 AM

< Tweet



Lindsey Boylan @LindseyBoylan

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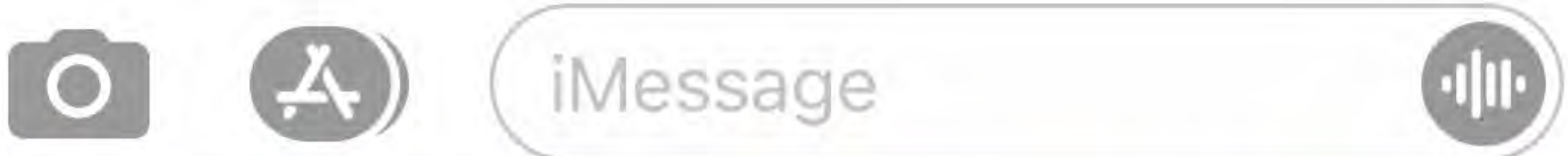


MD again this morning

Linda Lacewell

Only tweet 8:18am. Let's still be patient and not give it oxygen. The responses to her tweet are not good for her.

LL





Somehow, we're in charge. >

Melissa DeRosa



WHY I'M RUNNING FOR #NY10

This is a time for moral clarity and courage. For action, not empty talk. I'm inspired by the words of @tayari, who asked, "What is halfway between moral and immoral?" We can't settle for half-measures when our democracy and values are on the line. <https://t.co/HCJsIBK8AE>



Lindsey Boylan

twitter.com

Jul 11, 2019, 1:05 PM

Jim Malatras



The New Yorker

< 377



Somehow, we're in charge. >

RA

Ohs nose

Jim Malatras



JM

May 22, 2019, 12:31 PM

Jim Malatras



JM

Malatras to Boylan: go fuck yourself.

May 22, 2019, 4:38 PM

Jim Malatras



JM

Retweet opportunity

Richard Azzopardi

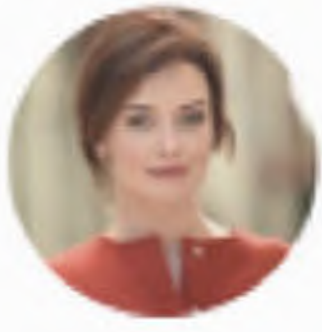
RA

Ha

< 377



Somehow, we're in charge. >



Lindsey Boylan @Lindsey_Boylan

Glad this is getting the attention and scrutiny it deserves. "How Luxury Developers Use a Loophole to Build Soaring Towers for the Ultrarich in N.Y." - @nytimes



How Luxury Developers Use a Loophole

JM

Woke Boylan

Melissa DeRosa

----- Forwarded message -----
From: Lindsey [redacted]
Date: Thu, Feb 28, 2019 at 11:31 AM
Subject: Re: [redacted]
To: [redacted]

I'm sorry you feel this way [redacted] and I'm sorry that you feel it's necessary and appropriate to try and diminish and scare me in this way. It is not.

It's not why I'm running but a serious consideration for why I feel it's important now - to prevent a few people like you from swaying power over everything and everyone regardless of the democratic process.

It is good to know you will use your resources against me - it's unfortunate that some people who I have great respect for will try to diminish what I am about, who I am, and why I am doing this to begin with.

It's about my daughter's future.

On Thu, Feb 28, 2019 at 11:27 AM [redacted] wrote:

I was disappointed to read that you floated your name as a primary opponent to Jerry Nadler. It is a shame that you did not listen to me. Of course, I am totally behind Nadler. If you run, I seriously doubt you will reach the 11% level his last opponent did. And unfortunately you may have seriously impaired any realistic chance to run for the other offices you were considering.



Somehow, we're in charge. >

Jim Malatras

Guess who said this?

"My Governor is a white man. My Mayor is a white man. My Council Speaker is a white man and as such, my current (and acting) public advocate is a white man. My Comptroller is a white man."

An Open Letter to Women Who Want to Lead – Lindsey Boylan – Medium
medium.com



Melissa DeRosa

I'm genuinely terrified of her

Jill DesRosiers

From the time I was a little girl, my mother always told me, "If you don't have a seat at the table, you are on the menu."

Stephanie Benton

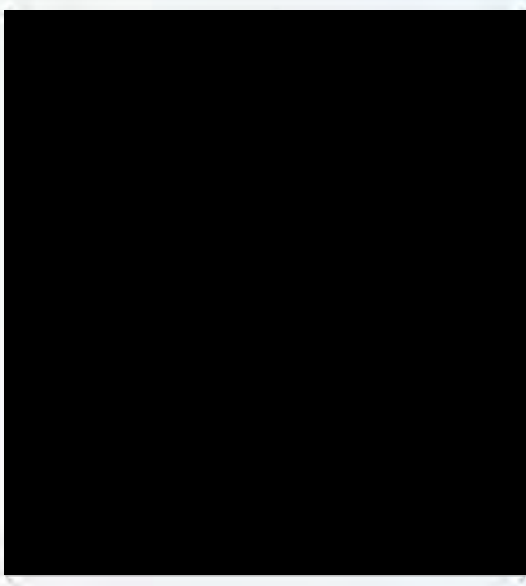
All you have to do is send an email or sign a petition.

Richard Azzopardi

Just stay perfectly still, she detects motion

Stephanie Benton

Wait, she graduated from



< 377

Alphonso...the EVP of Capital Projects and the Head of Energy Projects at NYCHA would like to meet with me for 45 min this afternoon. As you know, NYCHA is NYPA's Customer. We sell them electricity and also energy efficiency services. My plan is to listen only and see what they have in mind. Any concern form your end? Please let me know... [redacted]

Lindsey Boylan asked me to check with you first.. [redacted]

swamped right now. Let's talk this afternoon and let's use official work email if necessary.

OK - I will call your office to set up a quick call.

Apr 23, 2018, 9:06 PM

Ok. Around tomorrow.

iMessage input field with camera, app store, and voice recording icons





Somehow, we're in charge. >

Pete Sikora liked



Lindsey Boylan
@Lindsey_Boylan

#stopNESE

Pete Sikora @PeteSikora1 · 1h
Good morning @NYGovCuomo today's the day to #StopNESE
nytimes.com/2019/05/15/nyr...

7:23 AM · 5/15/19 from Manhattan, NY ·
Twitter for iPhone

2 Likes



JM

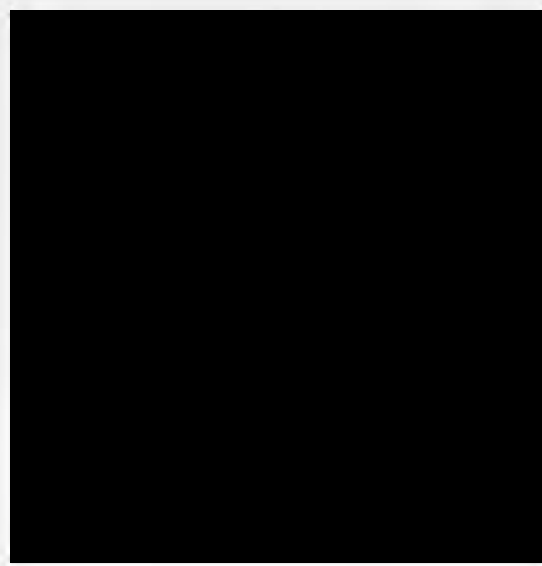
Well that settles it.

May 15, 2019, 9:57 AM

Richard Azzopardi

N.R.A.'s Cash Machine Sputters, Fueling Infighting and an Inquiry — 4 col., below the fold: "Tech-Savvy City Bans a Crime-Fighting Tool: Facial Recognition" — Wall Street Journal: — 1 col., above the fold: "FAA Left 737 MAX Review To Boeing" — 2 col., below the fold: "Tehran Blames U.S. For Mideast Tensions" — [See them](#)

QUOTE OF THE DAY: "Me doing stand up is like Bill de Blasio running for President. Except I would figure it out because I'm not the worst." — Comedian Tina Fey, at Comedy vs. Cancer charity event last night, per a



< 377

Will you be at the Christmas Party? [redacted] and I want to say "hi"

Albany? Today?

Yes

Jul 18, 2016, 7:31 PM

Lindsey Boylan is handling STARTUP -- [redacted] -- [redacted]@esd.ny.gov

Jul 19, 2016, 10:51 PM

Did you call [redacted]?

Yes and left a vm. He did not return my call. I will call again in the morning

Aug 21, 2016, 1:03 PM

Happy belated brother

Thank you thank you. Happy Sunday.



Text Message



< 374



Stephanie >

pieces which I am doing live. Doing good. The world is upside down and the work is even more important now than ever before. 6 weeks left.

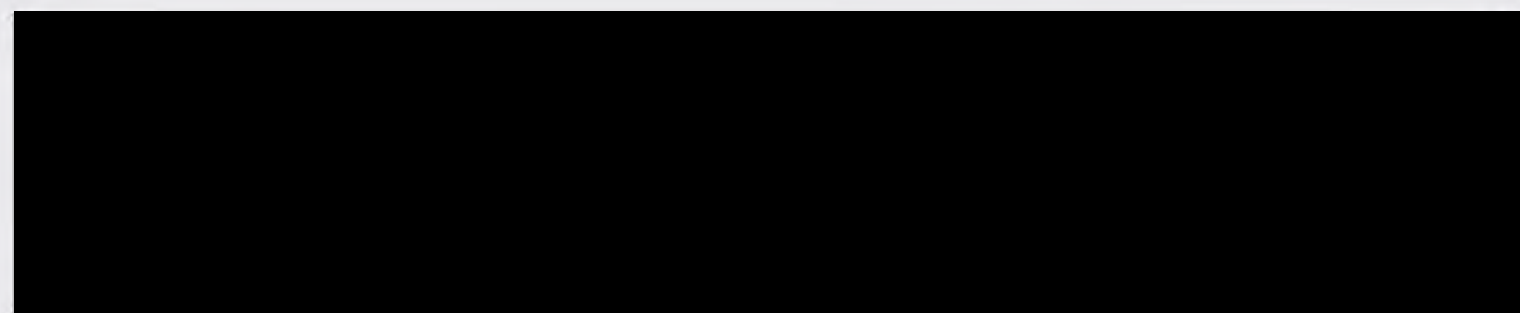
You got that right my friend. I really do miss you. Huge hug.

Mon, Dec 14, 11:34 AM

Hey doll. Hope to see you and him before I leave.

Delivered

Thu, Dec 17, 1:02 PM



Also she is knowledgeable on the ESD complaints

From [redacted]: Thanks again for reaching out and including me. Miss you and the office very much!



iMessage



Redacted in Original Production

From: **Melissa DeRosa** [REDACTED] <[REDACTED]@gmail.com>

Date: Wed, Dec 16, 2020 at 5:58 PM

Subject: priv and confidential

To: Steven Cohen [REDACTED] <[REDACTED]@yahoo.com>, Linda Lacewell [REDACTED] <[REDACTED]@gmail.com>, Judith Mogul [REDACTED] <[REDACTED]@gmail.com>, Alphonso David [REDACTED] <[REDACTED]@hotmail.com>, Dani Lever [REDACTED] <[REDACTED]@gmail.com>, Josh Vlasto [REDACTED] <[REDACTED]@gmail.com>, richard bamberger [REDACTED] <[REDACTED]@gmail.com>

We are former senior staff members of Governor Andrew Cuomo's Office.

We are writing in response to the claims made on twitter by Lindsay Boylan. We do so reluctantly. Each of us is a longtime and active supporter of civil rights and women's engagement. We believe women must be heard and that allegations of workforce misconduct must be taken seriously. However, when an accusation is unfounded and seemingly launched to gain a political advantage, standing by silently is not an option. To do otherwise, risks delegitimizing the rights of survivors of workplace abuse.

And, while we are fully aware of the all too frequent phenomenon where those who are subject to abuse do not come forward and even deny the abuse they have endured, we think it is significant to note that Ms. Boylan only began raising complaints about her experience last year when she launched a Congressional campaign. And even then, she only complained that the Governor's Office was an abusive environment (an assertion we dispute), the claim of sexual harassment for inappropriate comments was never mentioned. Indeed, the accusation did not occur until two days after she launched a new campaign for Manhattan Borough President.

EXHIBIT

11

The political retribution against the Governor by Ms. Boylan comes as no surprise and was directly forecasted by her. In March, during the height of the COVID crisis, the Governor issued an Executive Order truncating the petitioning period and reducing the number of signatures mandated to run for public office. The order effected every political race in the state. However, Ms. Boylan assumed it was a personal attack on her and believed the change was not helpful for her candidacy for Congress. Immediately thereafter, Ms. Boylan texted Robert Mujica, State Budget Director, “Absolutely not helpful please relay that while we are ok, I see what the point is here and I will find ways to respond. Life is Long. And so is my memory. And so are my resources.” She texted Dani Lever, Director of Communications, at the same time. “Absolutely not helpful specific response to a tragedy but please relay that while we are ok, I see what the point is here and I will find ways to respond to the message. The future is coming after assholes.” Ms. Boylan’s political motivation against the Governor was clearly premediated and purposeful.

Ms. Boylan is supported by lawyers and financial backers of Donald Trump: an active opponent of the Governor. We understand from credible sources that female members on Ms. Boylan’s campaign team were offended and actually quit when they heard she and her campaign planned to make such claims for purely political advantage.

We each know Ms. Boylan personally; we served with her when she was an advisor to the Governor both in the Governor’s Office and at Empire State Development Authority. It is likely that almost every interaction between the Governor and Ms. Boylan took place in either our presence or the presence of another Senior Staff member. Indeed, Ms. Boylan says as much herself. What we witnessed was a forceful and demanding Chief Executive requiring his staff do their best at all times. It was challenging work and at times it was hard both for men and women. In other words, it is what you would expect in a high-pressure environment where the accomplishments matter and failures have consequences. It isn’t for everyone. What we did not see was any kind of sexual harassment suggested by Ms. Boylan’s summary and unsubstantiated assertion.

Unfortunately, we are also aware that during Ms. Boylan’s relatively brief tenure, no less than six complaints were raised about her conduct. The complaints came from peers and subordinates, from men and women. We are not here to castigate Ms. Boylan. But it is relevant to assessing Ms. Boylan’s claim, to understand that she left State employment after being formally confronted by repeated official

complaints that she “treats [subordinates] like children” and made them feel like a “punching bag”, was “degrading”, “insulting”, and “harassing”. As a consequence of inappropriately firing a subordinate, Ms. Boylan was formally counseled about her conduct by Mr. David. In response, Ms. Boylan resigned. Several days later Ms. Boylan contacted Mr. David and said she changed her mind and wanted to return to her position. Mr. David said that was not possible. Ms. Boylan attempted to contact the Governor, but Mr. David advised the Governor to not discuss the situation with Ms. Boylan as the complaints were outstanding.

Ms. Boylan suggests the Governor made comments about her looks. This is ironic because we know Ms. Boylan referred to the Governor as “handsome” and said she “loved” him to staff; which we do believe were inappropriate comments. As professional women, we also know her behavior to be inappropriately intimate with her coworkers in public, in the presence of other coworkers.

During her tenure, at the time of her departure and after her departure, no complaint – formal or informal – was ever raised about the Governor. In fact, Ms. Boylan praised the Governor and the staff for his work and accomplishments. Ms. Boylan tweeted six weeks before her departure, "I'm proud to work for a Governor who takes women seriously". And another tweet, 12 days before her departure, "So proud of my boss Andrew Cuomo and all of Team Cuomo". She also tweeted, after she left, “Governor Cuomo is the best choice for Governor”.

We are not naive. We understand politics, especially in the current environment, can be a nasty and dirty business. We know the Governor understands that one must endure the slings and arrows to be in the public arena. But it demeans all women when allegations of harassment are made for political or extortive purposes.

We encourage all women to come forward with valid complaints of harassment. But weaponizing a claim of sexual harassment for personal political gain or to achieve notoriety cannot be tolerated. False claims demean the veracity of credible claims.