



The City of New York  
Department of Investigation

ROSE GILL HEARN  
COMMISSIONER

80 MAIDEN LANE  
NEW YORK, NY 10038  
212-825-5900

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**CONTACT: DIANE STRUZZI**  
**(212) 825-5931**

**DOI RECOMMENDS NEW YORK CITY ASSIGNED COUNSEL PLAN CHANGE ITS PROCEDURES AFTER FINDING MITIGATION SPECIALIST BILLED APPROXIMATELY \$61,000 FOR WORK HE NEVER PERFORMED**  
*--Mitigation Specialist was also convicted of defrauding Philadelphia's Assigned Counsel Panel in 2007--*

ROSE GILL HEARN, Commissioner of the New York City Department of Investigation ("DOI"), announced today that a DOI investigation uncovered serious wrongdoing by Richard Gottfried, a "Mitigation Specialist," who was able to exploit the New York City Assigned Counsel Plan ("ACP") by overbilling the system for phantom services he did not provide. The investigation also revealed significant vulnerabilities in the operation of the City's ACP and, as a result, DOI has recommended a number of changes to the application process and the process by which participating members are paid for their work.

The DOI Report discusses the fact that the Office of the ACP, which reports to the City's Criminal Justice Coordinator ("CJC"), is responsible for managing an organization of court-approved attorneys who provide representation to indigent persons charged with crimes in the New York City courts. This group of attorneys are on what is known as the Assigned Counsel Panel ("Panel"). In addition to the Panel, the ACP also oversees a roster of investigators and other experts ("Expert Roster") who can be appointed to provide assistance to defense counsel in connection with their representation of criminal defendants. One such expert is a Mitigation Specialist, who assists defense counsel gather information about a criminal defendant for presentation to the court in the hope of seeking a lesser sentence. The ACP oversees both the Panel and Expert Roster with the assistance of two Administrators who are appointed and supervised by the Presiding Justices of the First and Second Departments. The Panel and Expert Roster are authorized by New York County Law and funded by New York City.

An individual interested in becoming a member of the Panel or the Expert Roster must submit an application describing his or her professional qualifications, including educational background and relevant work experience. Once accepted, Panel members and experts can be appointed by the court to provide professional services to indigent criminal defendants. To get paid for their work by the City, Panel members and experts must submit vouchers to the court that describe what they did and how long it took them to complete the work. From fiscal year 2003 through fiscal year 2006, the Panel approved the payment of \$225 million to lawyers and experts.

DOI's investigation began in November 2005 after Polly Horton, the ACP's new Director, received a complaint alleging that Gottfried fraudulently obtained a position on the Expert Roster as a Mitigation Specialist by omitting material information in his application. Ms. Horton then referred the complaint to DOI for investigation.

DOI's investigation confirmed that Gottfried failed to disclose his 1996 federal wire fraud conviction and subsequent 20-month prison sentence in his October 2004 application to the Expert Roster. Gottfried's appointment to the Expert Roster enabled him to bill for cases he allegedly worked on. DOI also found that Gottfried failed to disclose in that same application that a Philadelphia court had disqualified him in 2002 from acting as an expert in connection with the Philadelphia's Assigned Counsel Panel. During its investigation, DOI also learned that Gottfried was under investigation by the Philadelphia District Attorney's Office for the submission of hundreds of fraudulent vouchers for purported services rendered by him in connection with Philadelphia's Assigned Counsel Panel. On February 5, 2007, Gottfried pleaded guilty to a number of charges arising from that investigation, including theft by deception, forgery, and tampering with public records. On March 19, 2007, he was sentenced to a minimum term of 11 months and 15 days up to a maximum term of 23 months on two counts of the indictment, to be served consecutively. He was also ordered to pay approximately \$302,000 in restitution.

During its investigation of Gottfried, DOI also discovered significant weaknesses in the application and screening process for membership to the ACP, the assignment of experts and the billing process by which those experts are paid.

On July 31, 2006, DOI referred its findings to date to the Office of Bronx District Attorney Robert T. Johnson and began working with that office toward a criminal prosecution of Gottfried.

DOI Commissioner Rose Gill Hearn said, "Mr. Gottfried has already been convicted in Philadelphia of illegally pocketing funds from that City's judicial system. DOI's thorough investigation of Mr. Gottfried's affiliation with the New York City ACP revealed not only similar allegations of fraudulent activity but also serious concerns about the ACP's application and screening processes. To its credit, the ACP has already adopted several positive changes making it less susceptible to fraud. But it needs to do more. DOI's recommendations will help the ACP make additional adjustments to improve its operations and establish policies to protect the City-funded organization that aids indigent individuals accused of crimes. DOI will continue to ensure that these funds are used to help those in need rather than line the pockets of those interested in pilfering from the City."

As part of its investigation, DOI interviewed lawyers on the Panel who Gottfried claimed he had performed work for, ACP staff members, judges on the Bronx County Supreme Court/Criminal Division, staff of the Office of Court Administration (OCA), employees of the New York City Department of Correction (DOC) and representatives of the Philadelphia District Attorney's Office. Investigators also reviewed Gottfried's application for admission to the Expert Roster, his billing vouchers and his bank records. In addition, they reviewed policies and procedures relating to the Expert Roster's application process for admission to the organization.

DOI's investigation found:

1. Gottfried omitted information on his background when he sought appointment to the Expert Roster as a Mitigation Specialist. Specifically, Gottfried failed to disclose his 1996 wire fraud conviction in New Jersey and his 20-month prison sentence in connection with the mortgage fraud scheme. He also failed to disclose that in 2002 a Philadelphia court disqualified him from acting as an expert in connection with the Philadelphia's Assigned Counsel Panel after misrepresenting his educational background and training during a court proceeding.

2. From July 2004 to September 2005, New York City paid Gottfried nearly \$160,000, based on vouchers he submitted for work as a Mitigation Specialist. DOI determined that Gottfried was paid about \$61,000 in City funds for work he never performed and that he substantially overstated the work he did for the remaining approximately \$97,000.
3. Gottfried also forged two letters from lawyers to secure a professional pass from the DOC, which allowed him access to any DOC facility.

DOI's report describes some of the examples investigators uncovered of Gottfried's fraudulent billings, including one case in which Gottfried billed for work he claimed to have performed after the case had been disposed of in court. In addition, DOI found no one questioned a curious statement by Gottfried in a 2004 application to the Panel in which Gottfried described his own personal experience with the criminal justice system saying, "The time that I have spent inside the prison walls has allowed me a greater affect of heartfelt solutions. ... I would not be as effective an advocate if I have not experienced a facility." Of course, what those reviewing his application did not realize was that his personal experiences included his own incarceration.

DOI discussed its findings with the ACP and CJC, which has already led to a number of changes in the application and payment processes for experts, including:

- The ACP now uses a new application form for all potential experts that calls for more specifics from the applicant, including whether the applicant has been convicted of a crime or if they have had any professional licenses suspended or revoked. In addition, the application now requires applicants to swear to the accuracy of their responses subject to criminal charges.
- The ACP will soon require the assigned attorney to certify, under penalty of perjury, that the expert was appointed to work on the case and the attorney utilized the expert's services.
- The two Administrators who were responsible for reviewing expert applications, and who told DOI that their review was solely a check for "facial sufficiency," have retired.

In addition to the measures that the ACP has already undertaken, DOI also discussed the following recommendations with the ACP, the CJC and the two Presiding Justices:

- A full background check – including a criminal history check – should be conducted on all professionals applying for admission to Panel and Expert Roster. A written protocol outlining a proper background check should be put in place and DOI should be permitted to examine that protocol before it is adopted. DOI has been informed that the CJC will increase ACP's budget to cover the cost of hiring a Background Review Manager to perform these checks.
- All requests seeking appointment of an expert or other professional to a case should be submitted by a lawyer assigned to that case.
- Payment vouchers submitted by an expert should be signed by the lawyer on the case attesting that the expert did in fact perform the work listed on the voucher.
- The ACP should conduct random audits of the payment vouchers submitted by Panel members. The ACP does not currently have adequate staff to perform this function and DOI recommends that the ACP receive additional lines and/or funding to hire audit staff. DOI has been informed that the CJC will increase ACP's budget to cover the cost of hiring a Deputy Director of Audits to conduct such audits.
- The ACP should have some sort of monitors in place that flag irregularities or suspicious voucher submissions. DOI suggests that the ACP consider identifying indicia of suspicious billing activity that could help detect other fraudulent schemes. The ACP has advised DOI that it intends to accomplish this with the development of a new database that is currently under development as

well as by hiring a Deputy Director for Payments to increase oversight and supervision of payment clerks.

- The ACP should establish written policies and procedures that govern Panel members from application process through, and including, the submission of payment vouchers.
- Currently, the Administrators responsible for overseeing the application and payment of experts are paid by the City, but report to the respective Presiding Justices of the First and Second Departments. Given that the CJC is ultimately responsible for the operations of the Panel, the Administrators should report directly to the CJC. The Presiding Justices of the First and Second Departments and the CJC have agreed to jointly select and supervise the Administrators. This arrangement includes promulgating standards and implementing performance measures, and is expected to increase oversight and accountability.
- Criminal history checks should be performed on all applicants applying for passes to Department of Correction facilities. That check should be conducted by DOC or OCA staff. In addition, DOC staff should contact all attorneys or other professionals who submit letters on behalf of experts for passes to DOC facilities to confirm that the letters of support are genuine.

Commissioner Gill Hearn thanks Bronx District Attorney Robert T. Johnson, and members of his staff; the Office of the Assigned Counsel Plan, and members of its staff, in particular, Polly Horton, the new Director of the ACP; the office of the Criminal Justice Coordinator, and members of its staff; and the New York City Department of Correction and members of its staff, for their assistance in this investigation.

*DOI is one of the oldest law-enforcement agencies in the country. The agency investigates and refers for prosecution City employees and contractors engaged in corrupt or fraudulent activities or unethical conduct. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City.*

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To report someone ripping off the city, call DOI at (212) 825-5959.***