



5 Great Valley Parkway, Suite 210 • Malvern, PA 19355  
610-251-6869 FAX: 610-983-0743 • www.verita.us

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**To:** SC, Esq., Assistant General Counsel & Ethics Officer  
**From:** Marie A. Latoff, Esq.  
**Date:** January 30, 2012  
**Re:** Investigation of complaint by SP against NP

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**SUMMARY OF ALLEGATIONS:**

SP, Clerk at ABC Company in Phoenix, Arizona, alleges that her supervisor, NP, engaged in misconduct at work. Specifically, SP alleges that NP:

- Had her handle personal matters for him during work time;
- Had her complete on-line training courses for him;
- Had her make him and others drinks at the holiday party;
- Utilized, along with others, a hotel room that SP was staying in on the night of the holiday party; and
- Yelled at her in front of other staff members.

**DOCUMENTS REVIEWED:** See Appendix A

**WITNESSES INTERVIEWED:**

FA, Marketing Representative, January 17, 2012  
MA, Vice President of Sales, January 18, 2012  
CB, Payroll Clerk, January 17, 2012  
AB, , Clerk, January 18, 2012  
RC, Marketing Representative, January 20, 2012 (by telephone)  
SP, Clerk, January 17, 2012  
NP, Manager, January 18, 2012

**FACTS:**

**I. Background Information**

SP's employment at ABC

SP began working for ABC in May, 2011 as a Clerk reporting to NP.

She has submitted her resignation, effective February 13, 2012, to join her husband in Colorado where he is stationed in the military. SP said she had planned to leave ABC even before she made the decision to file this complaint.

### NP's employment at ABC

NP started working for ABC in April, 2005. He transferred to the Phoenix office in 2008.

NP said he has enjoyed working with SP, that she does great work, and that he has had no problems with her. He said he was surprised to learn that she made a complaint against him.

NP admitted that he is not very good on the computer and is not a fast typist and that, as a result, he frequently dictates work to SP which she then types. SP concurred that NP is not proficient using a computer.

## **II. Personal work allegedly done on work time**

### NP's resume

According to SP, in or about June, 2011, NP emailed her his resume and asked her to update it for him. He provided her with the relevant information, she revised the document and emailed it back to him. She did this during her regular work hours on her work computer.

NP admitted that he asked SP to revise his resume. He confirmed that he gave her the substantive information, and she typed it.

FA recalled learning that SP had helped NP update his resume, so he asked her if she would help him update his resume, as well. FA emailed it to SP, gave her the relevant information, she revised it and emailed it back to him.

SP admitted that she had also revised FA's resume at his request.

### NP's internal job posting applications

Also in or about June, 2011, SP said that NP asked her to sit at his computer and prepare and submit an ABC internal job posting application. *See Exhibit 1.*

SP said that in or about October, 2011, NP asked her to update his application on his computer and submit it again. When the application was sent back to NP for modifications, he asked her to stay late on the night her husband was being deployed to Iraq in order to correct it. When she refused, he allegedly told her that she "needed to get her priorities straight."

Again, SP said this was done during her regular work hours.

NP admitted that he asked SP to help him complete the internal ABC job posting application. He said he dictated the information, and she typed it.

NP did not recall any applications being kicked back to him or asking SP to stay late to fix it on the night her husband was deployed. He denied telling her she needed to get her priorities straight.

### Hamberg Leadership Assignments

SP said that, in or about July, 2011, NP asked her to help him complete his monthly Hamberg Leadership Assignments. In an email dated July 8, 2011, NP said, "I need you to look at this and help me come up with this for the Month." (Exhibit 2). SP said NP dictated his responses to the assignments to her. However, for the last three in September, October and November, 2011 he emailed them to her and told her he didn't have time to complete them, so she completed them for him during work time. *See, e.g.,* Exhibit 3.

NP denied that SP completed any Hamburg Leadership Assignments for him, though he admitted he emailed them to her for ideas and that they had discussions about the responses in his office.

### Traffic ticket and on-line traffic school

In or about September, 2011, NP received a speeding ticket. SP said NP asked her to help him figure out the specific violation (because it was unclear on the face of the ticket) and to find an on-line traffic training school for him to complete.

SP said she spent about 4 work hours over the course of two weeks exchanging calls and emails with the Sheriff's Office to obtain the necessary information and to locate an appropriate on-line traffic training school.

NP admitted getting a speeding ticket and telling SP that he couldn't figure out what the violation was for. He said that she volunteered to call the police department and gather information for him. He admitted that she made calls during work hours, though he does not know how much time it took. NP also admitted that SP found an on-line traffic course for him to take, also during work time.

SP denied volunteering to handle the speeding ticket issues, but said NP asked her to do it.

According to SP, several weeks later, in October, 2011, NP reported that he hadn't had time to complete the on-line traffic course. Together, on her work computer, they located the registration on-line, SP input his credit card information, and they began to complete the course, which consisted of a series of videos and a test at the end. After about five minutes, NP got called away. He told SP to close the door so no one could see what she was doing and to complete the course. She watched all the videos and completed the test at the end, which took about 6 hours. When she told NP she finished it, he said, "You better have gotten 100%."

NP confirmed that SP set-up the on-line traffic course on her computer and that he gave her his credit card information. He said he then sat to take the test, but SP said to him, "There's no way you are going to do this. Move aside. I will do it." NP claims that he sat next to SP and watched the videos. However, because there was a substantial amount of time between each one (15 to 18 minutes), he got up and did work in the Operations Area while he waited for her to tell him when the next video appeared. After a while, he noticed that SP had not called him, so he went into his office. SP told him that she had just completed the test. He denied asking her to do it. He denied telling her to shut the door or not to show anyone what she was doing or that he said, "You better have gotten 100%."

### E-learning assignments

According to SP, she also completed for NP an e-learning training course required by ABC on budgeting, in or about October, 2011. She completed it on NP's computer during her regular work hours.

According to SP, while she was completing the assignment at NP's computer, CB walked in.

CB recalled seeing SP on NP's computer on one occasion, but said she does not know what SP was doing.

NP denied asking SP to complete any e-learning courses for him.

### **III. The company holiday party**

#### The hotel rooms

According to SP, the company holiday party was organized by JW at the Holiday Inn in Phoenix, Arizona, several miles from the company, on December 17, 2011.

The hotel gave the company two free rooms, one of which was to be used to hold the raffle prizes and other company things related to the party, and the other which could be used by employees who live far away to spend the night.

JW took one of the rooms (a suite on the first floor) and gave the other to SP because SP lives some distance from the facility. SP invited CB to spend the evening in the room that she had been given.

CB confirmed that SP invited her to spend in the evening in the hotel room that JW had given to SP.

#### People show-up for drinks

According to SP, while she was getting ready for the party in the hotel room, CB informed her that NP and another ABC employee, LH, were coming up for a drink. SP said that, although she felt uncomfortable, she allowed NP and LH to come up and the four of them had a drink. All but SP then left, and SP stayed behind to finish getting ready for the party.

According to CB, since the party had a cash bar, they decided to put some alcohol in the room where she and SP were staying, and SP was agreeable to this. This would allow employees to make their own drinks during the party. NP and LH brought the liquor to the room before the party started.

NP and LH confirmed that alcohol was stored in the room that SP and CB were sharing and that, early in the evening, they went to the room to have a drink with SP and CB. They then left so SP could finish getting ready.

SP denied that CB had any discussion with her about bringing liquor to the room and using it during the night as a place where people could come to avoid paying for drinks at the bar. She

said she was uncomfortable with people going in and out of the room where she was staying all evening.

Individuals have drinks in the room during the party

According to SP, at some point during the party, she went back to the hotel room with co-workers RC and JG and found CB, NP, LH and another employee, MA, in the room drinking.

According to SP, NP said, "What are you doing? You can't bring anyone in here." After about ten minutes, SP, RC and JG left the room and returned to the party.

NP recalled returning to SP's room several times during the party to replenish his drink, along with SP, CB, LH, and MA. He denied telling SP she couldn't bring anyone to the room.

CB, LH, MA and AB all confirmed that, throughout the night, they and others went to SP's hotel room to replenish their drinks. None of them recalled hearing NP tell SP that she couldn't bring anyone to the room.

NP tells SP to make him a drink

According to SP, as the evening went on, employees eventually ended up in JW's room. NP was there, as well, along with CB, AB, LH, MA and others.

JW confirmed that a number of individuals were in and out of the room all evening, including NP, LH, AB, CB and others. She said that she had also brought alcohol to her room so that people could make drinks during the party.

SP said that, at one point, NP told her to make him a drink. When she replied, "I'm not your Clerk," NP said, "You are always my Clerk." SP said she felt pressured to make NP a drink, so she did. SP said NP then told her to make CB a drink and to get more ice. Again, she felt pressured to comply, so she did.

NP confirmed that he and others spent time in JW's room during the evening. He recalled SP standing behind the bar in the room and saying to her, "Can you make us [meaning whoever was there] a drink?," to which she replied, "I'm not your secretary." NP said, "You're my secretary here and at work." NP said he was joking and everyone laughed. SP did not seem angry or upset, but she did not make him a drink. Instead, JW did. He denied asking SP to get ice.

CB, AB, and JW all recalled NP asking or telling<sup>1</sup> SP to make him a drink, her replying that she wasn't his Clerk or secretary, and NP saying she was always his Clerk. They said that everyone, including SP, laughed. JW said she then made a drink for NP.

CB, AB and JW did not recall NP asking SP to make a drink for anyone else or to get ice.

The others (MA, LH, RM and RC) did not hear NP ask SP to make him or anyone else a drink or to get ice.

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<sup>1</sup> CB said NP said, "Hey, Sue, make me a drink." AB said NP said, "Make me a drink." JW said NP and CB both "asked" SP to make them a drink.

#### CB leaves the hotel

According to SP, NP then announced that they were going back to SP's room. NP, CB, SP and LH all went to SP's room. They gathered the remaining alcohol, CB grabbed her overnight bag and they left, leaving SP alone.

CB said that she told SP as she was leaving that she was coming back to the room, but that she left with LH and MA and did not return. (CB did not say that she also left with NP.)

NP said that he, CB and MA left the party and went back to LH's house. He said he wasn't sure what time they left LH's (he said it was the "wee hours" of the morning), but said LH gave CB a ride to the hotel to retrieve her car and then took him home.

According to LH, NP asked him for a ride home from the party and said that CB and MA wanted to go to his (LH's) house for a drink. LH drove NP and CB to his house. MA drove her own car and met them there.

LH said they had a few drinks and then he fell asleep. He woke up the next morning to find NP tapping him on the shoulder asking him for a ride home. CB was on another couch sleeping. LH drove NP home and drove CB back to the Holiday Inn to retrieve her car. (MA had driven herself home at some point during the evening.)

#### **IV. After the holiday party**

##### SP and CB exchange emails

According to CB, after the party, she noticed that SP was avoiding her. On December 19 and 20, 2011, CB and SP exchanged emails in which SP expressed her disappointment in CB for leaving her the evening of the party and her anger at NP. SP also blasted CB for "the way [she] and [NP] were hanging out" which "had everyone watching you guys." (Exhibit 4).

CB acknowledged that there have been rumors about her and NP "from the very beginning," but denied that anything inappropriate occurred between them or that she and NP had been alone in SP's room. She apologized for leaving SP at the hotel. (Exhibit 4).

According to SP, there is constant gossip at the facility about CB and NP. NP is constantly in Medical where CB works, and they flirt at work. SP acknowledged that she does not know if NP and CB are involved and that she is not aware of them socializing together outside of work, but said that the way they act together leads people to think they are involved.

CB acknowledged that there have been rumors about her and NP because they are very friendly, but denies that they have ever had a romantic relationship. The only time she and NP have socialized outside of work is when NP's girlfriend (who works at ABC's Chandler facility nearby) has also been present. CB said she currently has a boyfriend.

Others interviewed said they are aware of and have heard rumors and gossip that NP and CB are involved. However, none of them has ever seen CB and NP alone together outside of work. No one saw them alone in SP's hotel room during the holiday party.

### NP notices SP is acting differently towards him

After the holiday party, NP left for a 2-week vacation. While out, he emailed SP, but she did not initially respond.

NP returned to work on January 3, 2012 and said he noticed that SP was acting differently towards him – She was “cold,” not “bubbly, as she usually is, and there was no casual conversation. NP said he asked SP if something was wrong, but she said, “No.”

SP said that when NP returned from vacation, she had resolved not to do any “extra” work for him and not to be friendly with him any longer.

### The food trays

On or about January 4, 2012, FA asked SP to get several trays of food from the kitchen for him, NP and two others. As FA and NP were walking in the kitchen, SP told FA that the food would be a bit longer.

According to SP, NP began to yell at her, “Hey, who are you talking to? You answer to me! I am your supervisor.” As she turned away, he again yelled, “Don’t turn away from me!” Quietly, he then told her he was “just joking.” (Exhibit 5).

According to SP, CW, who had been standing in the vicinity, said to her, “I can’t believe you let him speak to you that way.”

NP denied raising his voice at SP, but admitted that he said something like, “What, am I invisible?” He denied saying, “You report to me” or “You answer to me.”

FA said that NP did not raise his voice to SP or say, “You answer to me! I am your supervisor,” but instead said something like, “You don’t talk to me anymore?” He said he did not think NP spoke to SP in a way that would be embarrassing to her.

CW, however, said that NP was “pretty loud” and addressed SP saying, “Why are you telling him? ... “You don’t work for him. You work for me.” He confirmed that he told SP, “You shouldn’t let him talk to you like that.” CW said SP was flushed and seemed frustrated, but was not crying.

### The conversation in SP’s office

According to SP, the next day, NP came to her office, shut the door and asked to talk to her about whatever was bothering her. She asked if she had been unprofessional, and he said, “No.” She then told him that she didn’t want to discuss it. (Exhibit 5).

NP then began to yell at her that she was bringing things from outside work into the workplace, that he was not alone in the hotel room with CB, that he was joking about having her make drinks, that he appreciated all the work she did for him, but that she was “out of control.” He then stormed out of her office. (Exhibit 5).

NP admitted that after the incident in the kitchen and after noticing that SP was treating him differently, he went to her office and asked her what was going on. SP told him that he had treated her unprofessionally in the chow hall and that she was upset by events that occurred at the holiday party. NP said he told her that whatever happened at the holiday party occurred outside of work and that it should stay outside of work. He then left her office. He denied yelling or raising his voice.

FA recalled seeing NP and SP in SP's office a few days after the food tray incident. The door was closed, however, and he could not hear what they were saying

AB saw SP after an interaction with NP and said that SP was crying, saying that she had gotten in an argument with him.

## **CONCLUSION:**

### **I. Whether NP had SP handle matters not related to her job**

#### Whether NP had SP handle personal matters for him during work time

SP alleges that NP had her handle several non-work-related matters for him during work time – revising his resume, preparing and submitting internal job posting applications, researching the speeding ticket and taking the on-line traffic training course.

NP admits that, although he supplied the substantive information, he had SP revise his resume, and prepare and submit internal job posting applications for him. He admits that she did these things for him during her regular work hours.

NP says that SP “volunteered” to research the speeding ticket issues and to finish the on-line traffic course for him. Regardless of whether SP “volunteered” to handle these things or not, he admits that they were done during SP's regular work hours, when she was being paid to do work for ABC.

With respect to the on-line traffic course, it is curious that NP would have had SP set-up the class on *her* computer if he had planned to complete it. Thus, I don't find his version of events credible and believe that he intended for SP to complete it for him.

#### Whether NP had SP perform work assignments that he was supposed to complete

SP also alleges that NP had her handle work-related matters and assignments that were supposed to be completed by him – the e-learning course and the Hamberg Leadership Assignments.

With respect to the Hamberg Leadership Assignments, NP admits emailing them to SP when they came in and discussing the responses with her. Indeed, in July, 2011, he did just that. *See* Exhibit 8. NP claims that he dictated the responses, and SP merely typed them. He denies that she completed the September, October and November, 2011 assignments on her own without any input from him, as she alleges.

It is a bit unclear as to why NP would have to “discuss” the responses with his Clerk if he was providing all the substantive information and she was merely transcribing his answers. Rather, it appears that he was looking for, and got, substantive input from her. And, while it appears that

SP may have taken some initiative in playing a larger role than she should have in completing, or helping him complete, these assignments, it does not appear that NP did anything to prevent or discourage that.

With respect to the e-learning course, I am unable to verify whether or not SP completed the course for NP. If, as she alleges, she completed it on NP's computer, there would presumably be no way to determine whether he or she was the one actually completing the assignment.

## **II. The issues at the holiday party**

With respect to the issues involving the holiday party, several things are worth noting. First, several of those interviewed commented or asked what the actions at a party occurring after work hours and at an off-site location had to do with work. Second, it appears that SP's relationship with NP soured after the holiday party as a result of, not only things that he did, but things that SP's friend and co-worker, CB, did.

SP was upset that CB abandoned her at the party, after CB promised to "hang out" with her all evening. *See Exhibit 8.* Instead, SP observed CB spend much of the evening socializing with NP and others and, ultimately, leaving SP alone in the hotel room that they were supposed to share in order to spend additional time with NP at LH's house. As a result, after the party, SP cut-off her friendly relationship with CB and with NP and, by her own admission, decided she was no longer going to do any "extra" work for him. She then filed this complaint.

Whether NP, and others, utilized the hotel room that SP was staying in at the holiday party  
SP alleges that she was uncomfortable with the fact that NP and others utilized her hotel room during the holiday party to make drinks and that plans to use it as an alternate bar were not discussed with her, and that NP told her she couldn't bring people to the room.

I find SP's claims a bit disingenuous. She claims that she did not know there were plans to use her room to make and replenish drinks. However, when NP and LH brought a box of liquor to the room before the party even started, she apparently made no objection. Indeed, she brought people to the room during the party, as well (RC and JG). No one heard NP tell SP, as she alleges, that she was not allowed to bring others to the room when she arrived with RC and JG.

Whether NP told SP to make him and others drinks and to get ice  
No one interviewed heard NP tell SP to get ice during the evening.

NP admits (and others corroborated) that NP told SP to make him (and possibly others in the room) drinks, that she told him she wasn't his secretary, and that he told her she was always his assistant. The other individuals present said they took NP's comment as a joke and SP seemed to, as well.

## **III. Whether NP yelled at SP**

SP alleges that NP yelled at her when she addressed FA, instead of NP, regarding the food trays FA asked her to get and again in her office after the incident.

While FA appeared to corroborate NP's version of events regarding the food trays, CW corroborated SP's. I found CW to be more credible than FA – FA has a close relationship with NP and reports directly to him; CW does not report to NP and does not appear to have any motive to protect him.

While I cannot corroborate whether or not NP yelled at SP in her office, AB did see SP crying after SP reported having an argument with NP. While this isn't dispositive of whether or not he yelled at her, it makes it more likely that their exchange was heated, as SP alleges.

## APPENDIX A – Documents reviewed

### A. Personnel files/discipline

#### SP

SP's personnel file contains new hire documents (application, interview evaluations, W-4, direct deposit authorization, etc.), benefits enrollment documents, background authorizations and results, and acknowledgements of receipt of various company policies. It does not contain any performance evaluations or discipline.

#### NP

NP's file contains new hire documents (application, offer letter, interview evaluations, direct deposit authorization, etc.), payroll documents, W-4 forms, benefits enrollment information, background check authorizations and results, internal posting application, and acknowledgements of receipt of various company policies.

NP's file contains the following commendations:

- Supervisor of the Quarter dated January 13, 2009

His file also contains two counseling reports:

- October 25, 2006 written reprimand for failure to complete urinalysis tests; and
- June 25, 2007 5-day suspension for using “unprofessional language.”

In addition, NP's file contains a 2009 Letter of Concern for (1) not having a sense of urgency, (2) lack of accountability, and (3) lack of follow-up.

NP's file contains the following performance evaluations, all of which have an overall rating of “meets requirements”: 2003-2004, 2004-2005, January-June 2005, January-June,2006, 2005-2006, January-June 2007, and July-December 2007. His 2008 evaluation has an overall rating of “exceeds requirements.”

### B. Documents provided by ABC

- Internal Application of NP dated June 16, 2011 (Exhibit 1);
- July 8, 2011 email from NP to SP<sup>2</sup> (Exhibit 2);
- Leadership Lessons dated November, 2011 (Exhibit 3);
- Emails between SP and ABC employee CB dated December 19 and 20, 2011 (Exhibit 4);
- January 9, 2012 complaint letter prepared by SP (Exhibit 5); and
- January 11, 2012 emails between SP and ABC employee AB (Exhibit 6).

### C. Documents provided by SP

- Resume of NP, which SP said she revised at NP's request (Exhibit 7).

### D. Documents provided by CB

CB also provided a copy of the December 19 and 20, 2011 emails between her and SP (Exhibit 4), as well as:

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<sup>2</sup> At the time, SP's name was SB. She married in August, 2011 and changed her name to SP.

- Email dated December 21, 2011 sent by SP to other employees with attached collage of pictures from the holiday party (Exhibit 8); and
- Email dated December 21, 2011 sent by SP to other employees with humorous sayings (Exhibit 9).

**E. Company policies**

- ABC Code of Conduct
- Employee Handbook

**F. Other investigation files**

There are no other relevant investigation files involving SP or NP.