

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

THE STATE OF DELAWARE : ID NO 2206000799  
v. : INDICTMENT BY THE  
KATHLEEN K. McGUINNESS : GRAND JURY

RECEIVED AND FILED  
KENT COUNTY PROTHONOTARY  
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The Grand Jury charges KATHLEEN K. McGUINNESS with the following offenses:

**Introduction and Background Relevant to All Charges**

At all times material to this Indictment:

1. KATHLEEN K. MCGUINNESS (“DEFENDANT”) is the duly elected Auditor of Accounts for the State of Delaware, having been elected to that statewide office in 2018 and sworn in on January 1, 2019. At all times relevant to this Indictment she was serving in her official capacity of Auditor of Accounts or entering into State contracts in anticipation of her official service.

2. The Auditor of Accounts “conduct[s] postaudits of all the financial transactions of all state agencies” and has “sole responsibility” for the state’s audits. The Auditor is responsible for ensuring that, among other criteria, “all expenditures have been legal and proper and made only for the purposes contemplated in the funding acts or other pertinent regulations.” Audits must also “be made in conformity with generally accepted auditing principles and practices.” The Auditor is permitted to “[e]mploy such qualified office personnel and trained and experienced field personnel as are required to carry out such duties[.]”

3. DEFENDANT is a Certified Fraud Examiner (CFE), a trade association membership that requires an entrance exam and “denotes proven expertise in fraud

prevention, detection and deterrence. CFEs around the world help protect the global economy by uncovering fraud and implementing processes to prevent fraud from occurring in the first place.”

COUNT 1

K22-06-\_\_\_\_\_

**CONFLICT OF INTEREST:**

**VIOLATION OF THE STATE OFFICIALS’ CODE OF CONDUCT**, a misdemeanor, in violation of Title 29, Section 5805 of the Delaware Code.

4. In early March of 2020, the Office of Auditor of Accounts (“OAOA”) employed several “casual-seasonal” employees. A casual-seasonal employee, under Delaware state employment code, may be employed by the State on a temporary basis in order to assist agencies. Casual-seasonal employees are required to work thirty (30) hours per week or less; otherwise, special permission is required annually. Generally, a full-time position in state employment is based on a thirty-seven-and-one-half (37.5) hour week.

5. Early in her tenure, DEFENDANT assumed hiring decision-making for casual-seasonal employees. Full-time employees were discouraged from interacting with the casual-seasonal employees.

6. On or about March 12, 2020, Delaware Governor John Carney declared a State of Emergency, to begin on March 13, 2020, in response to the COVID-19 outbreak. Following the State of Emergency, three casual-seasonal employees at the OAOA experienced a substantial reduction in work hours.

7. On or about May 5, 2020, DEFENDANT asked her lead Human Resources employee to draft a letter informing a casual-seasonal employee,

EMPLOYEE 1, that EMPLOYEE 1's employment was ending because of lack of available work. EMPLOYEE 1 was terminated on or about May 18, 2020. From the State of Emergency onset until EMPLOYEE 1's termination on or about May 18, 2020, EMPLOYEE 1 worked a total of 42 hours, or 4.67 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 1 worked a total of 65 hours, or 8.125 hours per week.

8. On or about June 13, 2020, a second casual-seasonal employee, EMPLOYEE 2, stopped working at the OAOA because of lack of available work, due to the pandemic. From the State of Emergency onset until EMPLOYEE 2's final day on or about June 13, 2020, EMPLOYEE 2 worked a total of 64.5 hours, or 4.96 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 2 worked a total of 187 hours, or 23.375 hours per week.

9. On or about July 6, 2020, a third casual-seasonal employee, EMPLOYEE 3, stopped working at the OAOA because of lack of available work, due to the pandemic. From the State of Emergency onset until EMPLOYEE 3's last day on or about July 6, 2020, EMPLOYEE 3 worked a total of 36.5 hours, or 2.28 hours per week. In the two months preceding the State of Emergency, EMPLOYEE 3 worked a total of 180 hours, or 22.5 hours per week.

10. On or about May 18, 2020, DEFENDANT hired her daughter ("DAUGHTER"), then a senior in high school, as a casual-seasonal employee in the OAOA. Unlike the other casual-seasonal employees, DAUGHTER's casual-seasonal position permitted her to work up to 37.5 hours per week, the maximum any casual-seasonal employee is allowed under Delaware law.

11. On or about May 18, 2020, the final day of EMPLOYEE 1's employment, DEFENDANT also hired DAUGHTER's friend ("FRIEND") as a casual-seasonal employee in the OAOA. FRIEND's position only permitted her to work up to 29.5 hours per week.

12. Neither DAUGHTER nor FRIEND were interviewed by OAOA staff prior to being hired. DAUGHTER had signed employment paperwork earlier, dated March 22, 2020. DEFENDANT provided the completed employment paperwork to her full-time staff and directed them to begin DAUGHTER's and FRIEND's employment. There was no public posting of the positions they filled. DEFENDANT did not delegate the hiring of her daughter to a subordinate.

13. DEFENDANT was the supervisor for DAUGHTER.

14. On or about DAUGHTER's first days as a state employee, DEFENDANT provided DAUGHTER with access to a state vehicle.

15. In August of 2020, DAUGHTER enrolled at College of Charleston (South Carolina). DAUGHTER remained on OAOA payroll while enrolled at college. DAUGHTER was paid \$2,362.50 for hours accrued between August 29 and December 19, 2020.

16. By late August, FRIEND, while in college, was not on OAOA payroll during the fall semester.

17. During calendar year 2020, DAUGHTER never utilized the State's Virtual Private Network (VPN) to work remotely. OAOA entrance logs for six months from June to December 2020 indicate that DAUGHTER entered the office on fifteen (15) different dates, but never between August 10 and her return from college in December of 2020.

18. State email records show that DAUGHTER sent zero emails from August 17, 2020 to December 11, 2020.

19. As of August 28, 2021, DAUGHTER, a rising college sophomore, remained an OAOA employee. She was listed as the OAOA Public Information Officer and is now listed as an "intern." She has been paid a total of approximately \$19,302.50 during state employment. FRIEND was paid approximately \$7,726.25.

20. DAUGHTER's State of Delaware paychecks were deposited into a bank account in which DEFENDANT is a named owner.

21. Paragraphs 1 through 20 are incorporated herein.

22. DEFENDANT, from on or about the 22<sup>nd</sup> day of March 2020 until on or about the 10<sup>th</sup> day of September 2021, as a Delaware elected official and a public servant for all three counties, and thereby a "state officer," did participate on behalf of the State of the Delaware in the review or disposition of any matter pending before the State in which she had a personal or private interest, which impaired her independence of judgment in the performance of her duties with respect to any matter by hiring her daughter, a close relative, and giving her daughter a position with advantages unavailable to other employees, including those whose work was discontinued during the State of Emergency, thereby allowing her daughter to accrue a financial benefit to a greater extent than such benefit would accrue to others who are members of the same class or group of persons, in violation of Title 29, Section 5805 of the Delaware Code.

COUNT 2

K22-06-

**THEFT**, a felony, in violation of Title 11, Section 841 of the Delaware Code.

23. Paragraphs 1 through 22 are incorporated herein.

24. DEFENDANT, from on or about the 22<sup>nd</sup> day of March 2020 through on or about the 10<sup>th</sup> day of September 2021, as a Delaware elected official and a public servant for all three counties, did take, exercise control over, or obtain property of the State of Delaware, consisting of money valued at more than \$1,500.00, intending to deprive the State of Delaware of the money, or to appropriate it.

COUNT 3

K22-06-

**STRUCTURING: NON-COMPLIANCE WITH PROCUREMENT LAW**, a misdemeanor, in violation of Title 29, Section 6903 of the Delaware Code.

25. Title 29, Section 2906 of the Delaware Code sets forth the duties of the Auditor of Accounts. DEFENDANT, as State's elected Auditor of Accounts, advertises to "serve[] Delawareans by ensuring accountability in the use of taxpayer dollars to identify fraud, waste and abuse . . ."

26. During a political campaign in 2016, DEFENDANT utilized the services of My Campaign Group, reporting \$18,916.00 for political campaign consultant services.

27. My Campaign Group is a political campaign consultancy that "was formed to provide political candidates with comprehensive issues platforms – taking them from the campaign trail to elected office." It is a company designed "for your campaign needs." Their promotional materials say that their work "should not be left up to less experienced campaign staff or interns to initiate. With MYCG as your trusted advisor, candidates will always be confident they are armed with solid information and reliable policies . . . throughout the campaign." It continues, "[A] well-structured issues platform can meet all the expectations voters require in choosing a candidate – and that is where MYCG's services come in."

28. On or before November 12, 2019, while serving as the elected Auditor of Accounts, DEFENDANT approached My Campaign Group for a State contract for professional services. DEFENDANT informed My Campaign Group that, if the initial contract amount was less than \$50,000, the contract could be awarded without entering the public bidding process.

29. On or about December 19, 2019, DEFENDANT entered into a \$45,000.00 State contract with My Campaign Group for "communication services." The contract was not submitted for public bidding, nor was it required to be because it totaled less than \$50,000.00.

30. Delaware Division of Accounting rules at the time allowed for purchase orders or payments of \$5,000.00 or less to be processed without special approval by the Division of Accounting. The Budget and Accounting Policy Manual, before changing the threshold amount to \$10,000.00 on March 1, 2021, required that a purchase must not be split into multiple transactions under \$5,000.00 to circumvent the State Procurement Code.

31. In or about August, 2020, and again in or about September, 2020, My Campaign Group invoices exceeded \$5,000.00 in total, but were split by OAOA to be drawn from separate funding sources in amounts of less than \$5,000.00. In August, OAOA arranged for \$4,875.00 to be paid to My Campaign Group with COVID-19 (Coronavirus Relief Fund) funds, and \$4,500.00 to be paid to My Campaign Group from the OAOA's General Fund. In September, My Campaign Group submitted a single invoice to OAOA totaling \$11,250.00. At DEFENDANT's direction, OAOA arranged for this invoice to be paid in multiple payments from multiple funding sources, each of

which was under \$5,000. This included OAOA using at least \$4,900.00 in state money from outside of the original purchase order. \$2,950.00 was coded to be drawn from the General Fund, and \$1,950 was coded to be paid with Coronavirus Relief Funds. These payments appeared to bring the total amount paid to My Campaign Group with electronic funds transfers to \$49,900.00 for the first contract, which was originally set at \$45,000.

32. On or about September 30, 2020, DEFENDANT instructed an OAOA employee to use his state purchase card to pay another \$1,950.00 to My Campaign Group's founder's Paypal account, to satisfy the remaining balance on My Campaign Group's final invoice.

33. DEFENDANT engaged in at least three other contracts for \$45,000.00 each. Each of those contracts included individual payments over the \$5,000.00 reporting threshold. The My Campaign Group contract was the only OAOA no-bid contract of at least \$45,000.00 in which each payment was arranged to draw from a funding source in an amount of less than \$5,000.00.

34. In or about the month of September 2020, DEFENDANT approached My Campaign Group for a second contract, again suggesting to structure the contract for less than \$50,000.00 in order to avoid the State's public bidding process. DEFENDANT was informed that the second contract should instead proceed through the State's public bidding process.

35. My Campaign Group has never had another State contract in Delaware or any other state.



36. In or before the month of September 2020, My Campaign Group's founder established a second company, Innovate Consulting, after a state employee in another state declined to agree to a taxpayer-funded contract with a political campaign company.

37. Innovate Consulting successfully bid for the OAOA contract on September 23, 2020. The contract was for a "subject matter expert and analyst on various topics," and "communication of reports about topics including, but not limited to education and healthcare," and assisting "with the writing and editing for initiatives." Between November 4, 2020 and February 12, 2021, OAOA paid Innovate Consulting \$77,500.00. The purchase card payment DEFENDANT instructed be paid into the founder's Paypal account was paid with state funds that were set aside for the Innovate Consulting contract.

38. Paragraphs 25 through 37 are incorporated herein.

39. DEFENDANT, on or between the 28<sup>th</sup> day of December, 2018, and the 1<sup>st</sup> day of August, 2021, as an Delaware elected official and a public servant for all three counties, and with intent to avoid compliance with Chapter 69 of Title 29 of the Delaware Code, did willfully fragment or subdivide at least one contract for the purchase of professional services, by initially structuring at least one contract at an amount under fifty thousand dollars (\$50,000.00), and structuring some payments under those contracts to be less than five thousand dollars (\$5,000.00).

**OFFICIAL MISCONDUCT**, a misdemeanor, in violation of Title 11, Section 1211(1) or 1211(3) of the Delaware Code.

40. DEFENDANT, as referenced in Count One, hired her daughter and her daughter's friend into state employment, affording her daughter benefits not available to other state employees.

41. DEFENDANT, as referenced in Count Three, structured payments in a no-bid contract to a political campaign consulting company. DEFENDANT performed this and other official functions in a way intended to obtain a personal benefit.

42. Paragraphs 1 through 41 are incorporated herein.

43. DEFENDANT, on or between the 1<sup>st</sup> day of January, 2019, and the 25<sup>th</sup> day of March, 2022, as an Delaware elected official and a public servant for all three counties, and when intending to obtain a personal benefit in her capacity as Auditor of Accounts, or to cause harm to another person, committed an act constituting an unauthorized exercise of official functions, knowing that the act was unauthorized, in violation of Title 11, Section 1211(1) of the Delaware Code, or when intending to obtain a personal benefit in her capacity as Auditor of Accounts, performed official functions in a way intended to benefit her own property or financial interests, under circumstances in which her actions would not have been reasonably justified in consideration of the factors which ought to have been taken into account in performing official functions, in violation of Title 11, Section 1211(3) of the Delaware Code – conduct which amounts to abuse of office, or Official Misconduct.

**ACT OF INTIMIDATION**, a felony, in violation of Title 11, Section 3532 of the Delaware Code.

44. Several whistleblowers expressed concerns about misconduct within OAOA, including but not limited to specific acts set forth in paragraphs 4 through 43, to the DEFENDANT, her staff, and the Delaware Department of Justice.

45. DEFENDANT engaged in a course of conduct designed to surveil the communications of potential whistleblowers and witnesses against her.

46. DEFENDANT submitted several dozen “e Records” requests to the Department of Technology and Information (“DTI”) for the contents of OAOA employees’ email accounts. This enabled DEFENDANT to monitor several employees’ email communications in real time. DEFENDANT monitored the email of at least one former employee who worked for a separate state agency.

47. DEFENDANT discriminated against employees who questioned her misconduct, and enacted office policies to limit the personal activity of employees who associated with former employees.

48. In 2022, by virtue of her criminal indictment and no-contact order, DEFENDANT knew that some OAOA employees were witnesses in this case. She and her most senior staff continued castigating employees—witnesses—they deemed disloyal.

49. On or about February 11, 2022, DEFENDANT called an all-staff meeting. DEFENDANT was displeased that, in her belief, information was leaking from the OAOA. She told them that she used to have the staff “yell out loud, ‘Confidentiality!’”

and that “‘confidentiality’ means ‘what happens in this office, stays in this office.’” Near the end of the meeting, DEFENDANT warned, “We are gonna have a zero tolerance for negativity.”

50. Approximately six days later, on or about February 17, 2022, OAOA issued a formal, written reprimand to one witness for, in part: “impl[ying] or directly stat[ing] that [someone at OAOA] was involved in illegal conduct in the workplace”; asking an employee “if the reason she was leaving the OAOA was because of Auditor McGuinness’ trial in May”; and saying “that the front office was shady and everything done in the front office is a cover-up for May.” The employee was told their speech was “dangerous to morale” and that they were “hereby notified that it is inappropriate to discuss certain topics, including but not limited to individuals’ court cases” and the employee’s “view on the legality of an individual’s employment[.]”

51. On or about March 2, 2022, DEFENDANT called an all-staff meeting to, among other items, chastise the staff for viewing the OAOA’s Joint Finance Committee meeting without express permission. During that meeting, DEFENDANT lamented that “somehow things are floating out of this office[.]” The meeting began with DEFENDANT and her senior staff initiating a call-and-response wherein the staff was to answer “what is our office motto” with “confidentiality!”

52. According to witnesses, the conduct demanding confidentiality and lamenting reports outside the office made employees/witnesses feel uncomfortable. They believed the exhortations regarded more than the office’s work and were warnings not to continue to report wrongdoing.

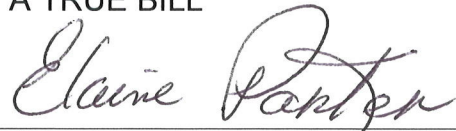
53. DEFENDANT, on or between the 1<sup>st</sup> day of March, 2019, and the 25<sup>th</sup> day of March, 2022, as a Delaware elected official and a public servant for all three counties, did knowingly and with malice attempt to prevent or dissuade any witness from attending or giving testimony at any proceeding or inquiry authorized by law.

Kathleen M. Jennings  
ATTORNEY GENERAL



MARK A. DENNEY, JR.  
Deputy Attorney General

A TRUE BILL



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(FOREPERSON)



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(SECRETARY)