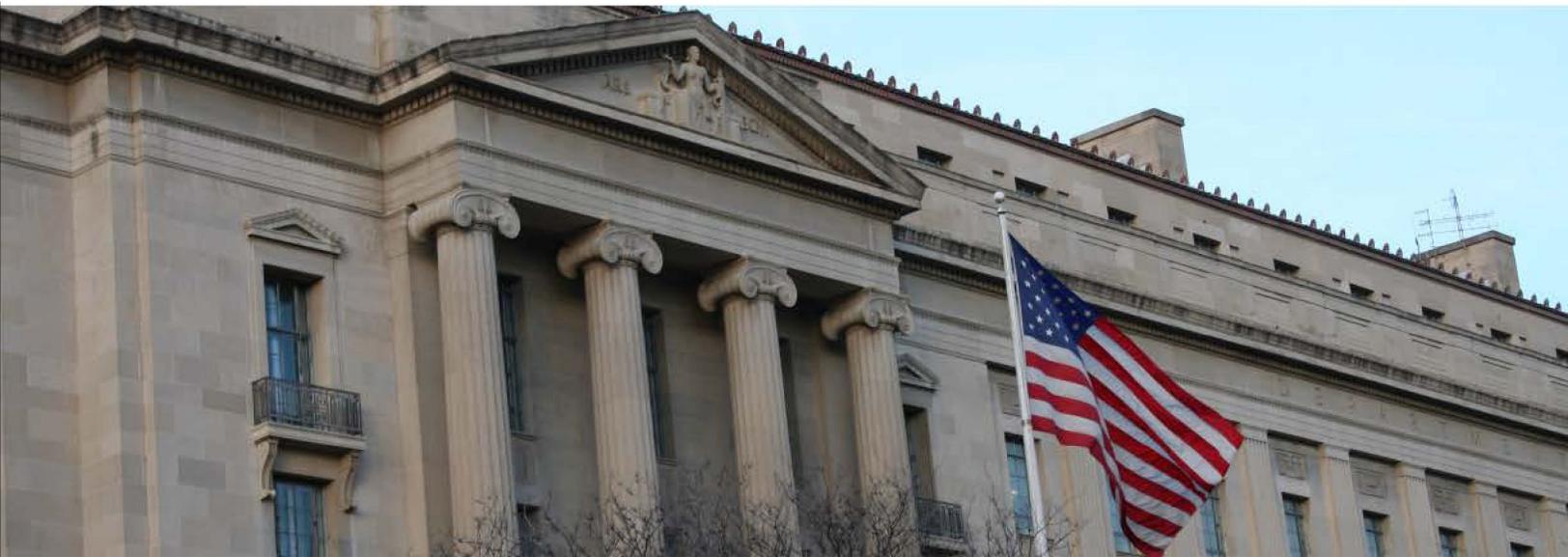




# Office of the Inspector General U.S. Department of Justice

**OVERSIGHT ★ INTEGRITY ★ GUIDANCE**



## **An Investigation of Alleged Misconduct by Former FBI [REDACTED]**

[REDACTED]

## I. Introduction

[REDACTED], the Office of the Inspector General (OIG) received a referral from the Federal Bureau of Investigation (FBI) [REDACTED] based on information that then [REDACTED] was in a romantic and intimate relationship with a subordinate, [REDACTED]. [REDACTED] is a [REDACTED] in [REDACTED] and was promoted to [REDACTED] returned to her position as a [REDACTED], after the [REDACTED] returned from a temporary duty assignment (TDY). According to documents provided to the OIG as part of this referral, [REDACTED] was one of two [REDACTED] officials who signed the electronic communication (EC) memorializing [REDACTED] temporary promotion.

The relationship between [REDACTED] and [REDACTED] came to the attention of management in late [REDACTED], when [REDACTED] became aware of rumors about them within [REDACTED]. [REDACTED] spoke to [REDACTED] to advise him of these rumors. The following day, [REDACTED], various [REDACTED] employees attended a pirate boat cruise [REDACTED], followed by a happy hour at a local bar.

According to contemporaneous emails, [REDACTED], [REDACTED] and [REDACTED] were informed that [REDACTED] and [REDACTED] were at the bar, and that [REDACTED] was intoxicated and was "all over" [REDACTED]. The next day, [REDACTED] held a previously scheduled meeting with [REDACTED] to discuss management issues, and told [REDACTED] that there were rumors that he [REDACTED] was involved in a relationship with [REDACTED]. [REDACTED] admitted to [REDACTED] that he and [REDACTED] had been involved in an intimate relationship since [REDACTED]. [REDACTED] denied [REDACTED] or that he had made any personnel decisions based on their relationship. [REDACTED] subsequently referred this information to the OIG for investigation.

This report summarizes the OIG's investigation into the circumstances of this relationship, including whether, by engaging in and failing to report this relationship, [REDACTED] and [REDACTED] violated FBI policy [REDACTED]. We also address whether the relationship impacted [REDACTED] acting promotion, or whether [REDACTED] extended other favorable treatment to her in the FBI workplace.

Our investigation included review of relevant documents, emails, text messages, and instant messages, including instant messages exchanged as early as [REDACTED] between [REDACTED] personnel via the FBI's Lync messaging system speculating about an apparent relationship between [REDACTED] and [REDACTED]. As part of our investigation, we also interviewed [REDACTED], and seven current or former [REDACTED] employees with knowledge relevant to the allegations.

As detailed below, we found that [REDACTED] and [REDACTED] began a romantic or intimate relationship in early [REDACTED], and that this relationship continued until sometime after [REDACTED]. As discussed in more detail below, we found that [REDACTED] failure to report this romantic or intimate relationship to FBI management violated the FBI Personal Relationships Policy. We found no evidence that [REDACTED] showed favoritism to [REDACTED] in the FBI workplace, or that their relationship played a role in her selection by other FBI personnel as [REDACTED]. Nonetheless, we found that [REDACTED] violated the FBI Personal Relationships Policy by approving [REDACTED] promotion to [REDACTED] and that he should have refrained from participating in that decision. Finally, we found that [REDACTED] behavior did not meet the heightened standard of conduct for supervisors set forth in the FBI Ethics Guide.

## **II. FBI Policies on Relationships**

### **A. Personal Relationships Policy, Policy Directive 0802(D)**

The FBI Personal Relationships Policy is set forth in Policy Directive (PD) 0802D, dated August 14, 2015. This policy defines two types of relationships that are covered by the policy, romantic relationships and intimate relationships. A “romantic relationship” is defined as one that “ranges from occasional dating to plans to be married, or other social engagements between two individuals, but which does not include attendance at group social events if the parties do not relate to each other as a couple,” while an “intimate relationship” is defined as one that involves sexual contact. PD 0802D, §§ 15.2.2, 15.2.4.

The Personal Relationships Policy does not prohibit romantic or intimate relationships in the workplace, with the exception of relationships between a student and instructor, mentor and mentee, counselor and client, or supervisor and intern. See PD 0802D, § 11.1.1.5. However, employees must report the development of romantic or intimate relationships “with an employee with whom a supervisory relationship exists, so that management may determine whether remedial action, such as reassignment, is necessary to prevent interference with the FBI’s mission.” PD 0802D, § 11.1.2.2. The policy does not specify the time period within which employees who have begun a romantic or intimate relationship must report it.

Several provisions of the Personal Relationships Policy address concerns about favoritism or preferential treatment that may arise from a romantic or intimate relationship between employees. In particular, Section 11.1.2.3 requires an employee to refrain—absent specific, advance management approval—from participating in a hiring or organizational decision involving an individual with whom he or she has a personal relationship and where a reasonable person would question the employee’s impartiality. While the policy defines “organizational decision” to include a decision involving a squad, a case, a shift, a vehicle assignment, or other working conditions, it does not define “hiring decision,” does not identify what circumstances would give rise to concerns about impartiality, and

does not provide examples of situations that would require recusal from participating in a hiring or organizational decision.<sup>1</sup>

Under Section 11.2.1.1, a manager or supervisor “must not engage in a romantic or intimate relationship with a subordinate FBI employee if the relationship negatively affects a professional and appropriate superior-subordinate relationship or otherwise adversely affects the FBI mission.” Similarly, under Section 11.2.1.2, a manager or supervisor must not disrupt workplace morale by pursuing or engaging in a romantic or intimate relationship with a subordinate by, for example, showing favoritism to the subordinate through vehicle or work assignments, promotions, advancements, appraisals, training opportunities, or travel opportunities. The policy states that such actions by managers or supervisors cause other employees to reasonably question the impartiality of those decisions. See PD 0802D, § 11.2.1.2.

The policy also prohibits employees who are involved in a romantic or intimate relationship from engaging in physical intimacies in government workspace or vehicles or while on duty. See PD 0802D, § 11.1.1.3.

Section 11.3.1 of the policy states that once a relationship has been reported, Division and Field Office heads must take proactive measures, such as reassignment of duties or employee transfer, that are necessary to mitigate any adverse consequences of a romantic or intimate relationship, and advise the concerned parties about the proactive measures. Division and Field Office heads also should consult with the Office of General Counsel to ensure that any restrictions placed on the parties are reasonable in time and scope. See PD 0802D, § 11.3.2.

When asked what the FBI Personal Relationship Policy requires, ██████ told the OIG that a personal relationship that involves a supervisor-subordinate relationship anywhere in the chain of command must be reported to superiors and documented. ██████ said that the FBI deals with this routinely, such as in instances where a Special Agent in Charge is married to another employee in the same field office. He explained that the purpose of this policy is to make FBI management aware of the relationship so that the supervisor can be removed from the chain of command and from involvement in the subordinate’s performance rating.

Despite the intended scope of this policy, the OIG cautions that romantic or intimate relationships between superiors and subordinates have the potential to create additional problems in the workplace beyond the concerns about favoritism and workplace morale described above. For example, the imbalance of power between superiors and subordinates could call into question the consensual nature of romantic or intimate relationships. In addition, a romantic or intimate relationship between a superior and subordinate that initially is or appears to be

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<sup>1</sup> While the FBI Personal Relationships Policy does not define hiring decision, OPM regulations include temporary promotions among the “covered personnel actions” that are potentially subject to competitive procedures for hiring. See 5 C.F.R. §§ 335.103(c)(i), (c)(3)(iii).

consensual could later result in a claim of sexual harassment if the relationship deteriorates. Harassment on the basis of sex violates Section 703 of Title VII of the Civil Rights Act, 29 C.F.R. § 1604.11.<sup>2</sup> The Department of Justice has a zero tolerance policy with respect to harassment, including sexual harassment.<sup>3</sup>

## **B. FBI Ethics Guide**

Similar to the FBI Personal Relationships Policy, the FBI Ethics and Integrity Program Policy Directive and Policy Guide (Ethics Guide) prohibits employees and their supervisors from engaging in “any relationship, financial or otherwise (romantic, business, or recreational)” that “negatively impacts their ability to maintain a professional and appropriate superior-subordinate relationship[,] or otherwise adversely impacts the completion of the FBI mission.” Ethics Guide § 4.7.7.1. The Ethics Guide provides examples of “inappropriate” interpersonal relationships between supervisors and subordinates, stating that FBI personnel in a superior-subordinate relationship “shall not...engage in interpersonal actions that amount to a violation of law or internal regulations.” *Id.* at 4.7.7.2. Where these provisions are violated, the Ethics Guide places heightened responsibility for the conduct on supervisors:

A superior has the greater authority and, hence, the greater responsibility to avoid creating appearances of preferential treatment or other improper conduct. As a result of this greater responsibility and the inequality inherent in the superior-subordinate relationship, a superior is held to a higher standard than a subordinate when improprieties are addressed in the disciplinary or administrative process.

*Id.* at 4.7.7.1(c).

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<sup>2</sup> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. See Deputy Attorney General Rod J. Rosenstein *Memorandum for Heads of Department Components, Sexual Harassment and Sexual Misconduct*, April 30, 2018, citing DOJ Order 1200.2 and <https://www.justice.gov/jmd/eeos/sexual-harassment>.

<sup>3</sup> Deputy Attorney General Rod J. Rosenstein *Memorandum for Heads of Department Components, Sexual Harassment and Sexual Misconduct*, April 30, 2018. In addition to the laws and policies discussed above, we note that most of the agencies and departments in the executive branch are governed by 14 merit system principles intended to create fairness in personnel management. See 5 U.S.C. §§ 2301-2302. The FBI implements these principles by issuing its own policies and guides, such as the Personal Relationships Policy and the Ethics Guide. See 5 U.S.C. §§ 2302(c)(ii)(I), 2301(c)(2).

### III. Factual Findings

#### A. Background

[REDACTED]

[REDACTED] joined the FBI [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED].<sup>6</sup> In this role, [REDACTED] supervised [REDACTED] employees and was responsible for the oversight [REDACTED]

Witnesses told the OIG that [REDACTED] was known for having a “very direct, very blunt management style,” and that he “was not very well liked for his style of leadership.” [REDACTED] described [REDACTED] as “very hard charging” and acknowledged that “some people do not like that,” but said that he did a “fantastic job” and came up with excellent suggestions to improve the [REDACTED] process.

[REDACTED] joined the FBI in [REDACTED]. In [REDACTED] and was promoted [REDACTED]. In her annual performance appraisal reports (PAR), she received an “Outstanding” rating for fiscal year (FY) [REDACTED], when she was [REDACTED], and an “Excellent” rating in [REDACTED] for her performance as [REDACTED], with “Outstanding” ratings in several elements.<sup>7</sup>

As [REDACTED] was involved in a long-term [REDACTED] project [REDACTED] told the OIG that [REDACTED] led most of the briefings on the [REDACTED] project and was extremely knowledgeable about it, but that the project was “stuck in the mud” for a long time for reasons unrelated to her. [REDACTED] said that in late [REDACTED] he volunteered to take over the project to ensure that it was completed. [REDACTED] said that he worked closely with [REDACTED] on the [REDACTED] project, and that she was his direct report for purposes of it. Contemporaneous emails confirm that [REDACTED] and [REDACTED] communicated directly about the project in late [REDACTED]

## **B. Romantic or Intimate Relationship**

[REDACTED] and [REDACTED] each told the OIG that they became involved in a romantic or intimate relationship in early [REDACTED]. Both explained that they

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<sup>6</sup> [REDACTED]

<sup>7</sup> [REDACTED] PAR was signed by [REDACTED] as the rating official, and then [REDACTED] as the reviewing official. [REDACTED] did not sign either document, and this PAR preceded the beginning of their personal relationship. As described in more detail below, [REDACTED] reviewed a draft of [REDACTED] mid-year PAR—along with the mid-year appraisals drafted by [REDACTED] for other [REDACTED] employees—but told the OIG that he did not recall making edits to it.

worked closely together and held frequent meetings about the [REDACTED] project, and became friends as a result.

[REDACTED] said that she and [REDACTED] did not have a relationship outside of work, even as friends, before early [REDACTED]. On the evening of [REDACTED], however, she and [REDACTED] exchanged emails and arranged to meet for dinner after work. [REDACTED] told the OIG that this dinner was the first time they met outside of work, and that it was the beginning of their personal relationship. When asked whether [REDACTED] role as her supervisor played a role in the relationship, or whether she felt pressured to enter into a relationship with him, she stated that she was the one who "pushed" the relationship. Referencing the [REDACTED] email exchanges with [REDACTED], she said that she reached out to him and extended the dinner invitation. [REDACTED] told the OIG that, on the night of [REDACTED], he and [REDACTED] were disappointed with developments in the [REDACTED] project. He said that although [REDACTED] was the one who reached out to him initially, he responded and "didn't say no."

Both [REDACTED] and [REDACTED] acknowledged that they did not report their relationship to FBI management. [REDACTED] told the OIG that even though he was [REDACTED] supervisor, he did not think of their relationship as work-related, so he did not consider its impact on his role as her supervisor. As described in more detail below, when confronted with rumors about the relationship by [REDACTED] in [REDACTED], [REDACTED] told [REDACTED] that he did not think there was a problem because his relationship with [REDACTED] was consensual. [REDACTED] said he did not review the FBI Personal Relationships Policy until after [REDACTED] mentioned it in early [REDACTED], and that after he read it he admitted to [REDACTED] that there was an issue. [REDACTED] told the OIG that he reported the relationship to [REDACTED] management when he realized that he was required to do so.

[REDACTED] told the OIG that she did not report the relationship because she knew it would not be looked on favorably by [REDACTED] management, and she was concerned about rumors. She said that she had never read the FBI Personal Relationships Policy, but that it was "generally accepted...that you do not have a relationship with anyone in your chain of command." [REDACTED] said that [REDACTED] did not report their personal relationship to anyone in his chain of command until he was confronted with it in [REDACTED]. When asked why [REDACTED] did not report their relationship, she suggested that [REDACTED] was concerned because he was engaged in a relationship with his subordinate, stating, "[H]e knew he wasn't doing the right thing [by engaging in the relationship]."

[REDACTED]

As described in more detail below, [REDACTED] and [REDACTED] are no longer involved in an intimate or romantic relationship. [REDACTED] stated that the relationship was "off and on" until [REDACTED]. [REDACTED] told

the OIG that the relationship ended sometime in or after [REDACTED] and that they had had limited contact since then.

**C. [REDACTED] Promotion to [REDACTED]**

*Temporary Promotion*

[REDACTED]

[REDACTED] began serving as [REDACTED] on the following Monday, [REDACTED]. An EC dated [REDACTED], memorialized this temporary promotion, and was signed by [REDACTED]. She remained in the position until [REDACTED], when [REDACTED] returned from her TDY.

[REDACTED] told the OIG that it was her decision to have [REDACTED] serve as [REDACTED], and that she discussed this with both [REDACTED] and [REDACTED] before her TDY began. According to [REDACTED], discussions about a potential TDY started before early [REDACTED]. She said that she met periodically with [REDACTED] to discuss her career, and that during a one-on-one meeting they discussed obtaining a possible TDY to gain field experience. [REDACTED] said that during this meeting [REDACTED] asked her who should serve as [REDACTED], and she recommended [REDACTED]. [REDACTED] said that she began supervising [REDACTED] in [REDACTED], had written her past performance evaluations, and "think[s] the world of her work wise." [REDACTED] also described [REDACTED] as a "rock star" who is very knowledgeable about [REDACTED] and a hard worker.

[REDACTED] confirmed in her testimony to the OIG that [REDACTED] was promoted to [REDACTED] based on her outstanding work performance and initiative. She said that several times over the past few years, she had discussed with others in [REDACTED] management having [REDACTED] serve as an [REDACTED], including [REDACTED], and that she was "in on" the decision to temporarily promote [REDACTED]. [REDACTED] characterized [REDACTED] as "very deserving" of promotion, telling the OIG that she would like to see [REDACTED] move up in the FBI. [REDACTED] told the OIG that she did not know about the relationship between [REDACTED] and [REDACTED] until after [REDACTED] when [REDACTED] informed her what had happened. [REDACTED] said that although she was disappointed when she learned that [REDACTED] had engaged in a relationship with [REDACTED], she had no concerns that [REDACTED] was serving in a position for which she was not qualified.

As described above, [REDACTED] was the only [REDACTED] the other [REDACTED] who worked [REDACTED] told the OIG that when [REDACTED] accepted her TDY, [REDACTED] "came to both of us [REDACTED] about serving as the

██████████. ██████████ said that she responded she was not interested in the position. ██████████ told the OIG that ██████████ was the only ██████████ and was a logical choice for the acting promotion.

██████████, however, told the OIG that he was never involved in any discussion about whether to promote ██████████, and that ██████████ instead let ██████████ know that he ██████████ was promoting her to ██████████. ██████████ said that his perception was that ██████████ wanted ██████████ promoted and was "going to get what he wanted." ██████████ said that the ██████████ EC was drafted by ██████████ administrative assistant and documented what ██████████ had decided, and ██████████ had to sign it because he was in the chain of command.

██████████ told the OIG that ██████████ posted a job announcement for the ██████████ position after ██████████ had served in it for 120 days.<sup>8</sup> ██████████ was the only one to apply for it. ██████████ stated that he expected that ██████████ would return to ██████████ after her TDY, and that ██████████ then would return to her ██████████ position. ██████████ said that ██████████ was very knowledgeable and motivated her employees to get work done, and that he had given her an "Excellent" rating for her ██████████ mid-year performance review. He also said that she needed development and growth in the areas of emotional maturity and navigating issues within the office environment.

We asked ██████████ about his role in approving ██████████ promotion given that it occurred after they had begun a personal relationship. ██████████ said that ██████████ was the most competent ██████████ and that she previously had served as ██████████ when ██████████ was out of the office. ██████████ told the OIG that there was no reason to advertise the ██████████ position because ██████████ was the "natural choice" and the "heir apparent" for it. He stated that ██████████ knew about and approved of the decision to promote ██████████, and that his relationship with ██████████ played no role in her promotion. ██████████ said that ██████████ was the best qualified for the position and had performed well in it.

#### *Pay Increase for ██████████ Temporary Promotion*

██████████ told the OIG that she began receiving a pay increase a few months after she started serving as ██████████, and that it was her understanding that ██████████ and ██████████ worked together to submit the paperwork for this and get it approved. Under FBI policy, professional staff who serve in details to higher graded supervisory positions for longer than 30 days, and who meet the position qualification requirements, are temporarily promoted effective the first full

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<sup>8</sup> FBI policy incorporates federal merit promotion procedures. See 0689DPG, Merit Promotion and Placement Plan Policy Directive and Policy Guide (Apr. 10, 2014) (citing 5 U.S.C. § 2301 *et seq.*, 28 U.S.C. § 536, and 5 C.F.R. § 302). With respect to FBI professional staff other than GS-1811 Special Agents, attorneys, and various senior officials, the FBI must use competitive procedures to fill time-limited promotions or details to higher graded positions for more than 120 calendar days, unless a waiver is granted by the FBI's Human Resources Officer. Time limited promotions or details to a higher graded position of 120 days or less may be filled using noncompetitive staffing actions. See *id.* at §§ 1.3, 4.1, 4.3(e).

pay period after the 30th day of the detail and proper completion and submission of the required personnel form (Form SF-52, Request for Personnel Action). The policy places responsibility for timely submission of the SF-52 on the supervisory or managerial officer over the position. See 0689DPG, Merit Promotion and Placement Plan Policy Directive and Policy Guide at § 4.3(e). Once the SF-52 is submitted and processed, the employee is paid at the higher grade during his or her temporary promotion. ██████ said she stopped receiving increased pay in ██████, when the FBI began providing awards to employees serving in acting roles.

██████ told the OIG that he had learned that ██████ contacted an employee in the FBI's Resource Planning Office to ensure that ██████ received a pay increase for her temporary promotion, suggesting that this intervention was in some way unusual or inappropriate.

We asked ██████ and ██████ about ██████ pay increase. ██████ told the OIG that there is usually a small delay in processing a temporary pay increase for employees in acting positions. ██████ explained that the Human Resources Division (HRD) liked to ensure that the employee being replaced would be on an extended TDY because it could take a while to process the pay increase through the system, but that ██████ experienced a "very extended" delay. According to a contemporaneous email provided to the OIG, this delay was 3.5 months. ██████ said that she contacted ██████ about the delay and learned that ██████ did not pass through the paperwork for ██████ pay increase, citing the lack of an EC memorializing ██████ TDY.

██████ similarly told the OIG that it was her understanding that ██████ was eligible for increased pay for her work as ██████, and that HRD has standard protocols in place to ensure that employees in acting roles receive an automatic pay increase. She said she became aware through ██████ that ██████ was not receiving increased pay, and that HRD was asking questions about when ██████ planned to return from her TDY. ██████ said that she spoke with HRD officials to ensure that ██████ received the pay increase to which she was entitled.

██████ told the OIG that he did make a call to ensure that the paperwork for ██████ pay increase was processed quickly in response to a question from ██████, and that it was not unusual for him to handle those issues directly. When asked whether he and ██████ had any sort of financial entanglements such that he benefitted from the pay increase—for example, whether they lived together or shared a bank account—he said that they did not.

#### *Involvement in ██████ Mid-Year PAR*

As described above, ██████ did not sign ██████ PAR, which preceded the beginning of their personal relationship, and her year-end ██████ PAR took place after ██████ left ██████. In addition, ██████ drafted and signed ██████ mid-year PAR.

However, [REDACTED] was involved in reviewing a draft of [REDACTED] mid-year PAR while she was [REDACTED], and while they were involved in a personal relationship. On [REDACTED], [REDACTED] sent an email to [REDACTED] containing a list of mid-year ratings for [REDACTED] personnel. [REDACTED] replied, "I don't see a rating or write-up for [REDACTED]." When asked about this email, [REDACTED] stated that [REDACTED] wanted to see all of the mid-year PARs that he [REDACTED] drafted. [REDACTED] said that he did not know if [REDACTED] read all of these PARs and did not think that [REDACTED] had any specific comments on [REDACTED] PAR.

[REDACTED] told the OIG that he received the written draft of the mid-year PAR from [REDACTED] and did not recall editing it. When asked if his involvement in reviewing [REDACTED] mid-year PAR was a problem, [REDACTED] said that he "always separated everything"—that is, that he walled off their personal relationship from his role as her supervisor. However, he acknowledged that his involvement in reviewing her mid-year PAR was an issue he should have recognized, because "there is a chain of command here."

The OIG reviewed [REDACTED] annual and mid-year PARs and determined that her FY [REDACTED] mid-year PAR was consistent with her ratings in previous years.

#### **D. Discovery of the Relationship by [REDACTED] Management**

According to instant messages reviewed by the OIG, rumors about a potential relationship between [REDACTED] and [REDACTED] began to circulate in or around [REDACTED]. For example, one employee sent an instant message on the FBI's Lync system on [REDACTED], stating, "[A]nd I'm telling you he [REDACTED] DEF has a MAJOR thing for [REDACTED] M A J O R." [REDACTED] told the OIG that he first heard rumors around [REDACTED] from a supervisor who had seen [REDACTED] and [REDACTED] together and had been told by subordinates that they were involved.

As described above, [REDACTED] became the [REDACTED] [REDACTED]. [REDACTED] told the OIG that he was made aware of various personnel issues when he arrived, including low morale caused by problems with [REDACTED] management style. He said that he met with [REDACTED] on [REDACTED] to discuss these issues, and was told at this meeting that there were rumors of an intimate relationship between [REDACTED] and [REDACTED].

The following day, [REDACTED], approximately 20 people, including various [REDACTED] employees, attended a pirate boat cruise [REDACTED]. Afterward, approximately 10 people went to the apartment [REDACTED] and then to a happy hour at [REDACTED], a nearby bar. Both [REDACTED] and [REDACTED] were at the happy hour, where witnesses reported that [REDACTED] was intoxicated and "all over" [REDACTED].

While we did not interview every [REDACTED] employee present at the happy hour, contemporaneous instant messages confirm that several employees observed physical contact between [REDACTED] and [REDACTED] and that [REDACTED] later

admitted to "groping" [REDACTED]. In instant messages sent the following [REDACTED] [REDACTED] one employee stated:

- [REDACTED] - and [REDACTED] admitted to groping [REDACTED]
- [REDACTED] - as for [REDACTED] and [REDACTED], NOTHING official
- [REDACTED] - that's all she'd 'fess' up to
- [REDACTED] - but the [REDACTED] confirmed it was SUPER awkward for them to watch

Another employee stated in instant messages sent the same day:

- [REDACTED] - annnndddd [REDACTED] def fessed up to groping [REDACTED] at the bar on Saturday
- [REDACTED] - I did NOT witness it, however; [REDACTED] verified that something DEF HAD to happen
- [REDACTED] - after the boat, many of us went to [REDACTED]
- [REDACTED] - [REDACTED] showed up
- [REDACTED] - was VERY friendly w/ [REDACTED] and drinking
- [REDACTED] - and we all ended up going to [REDACTED], their neighborhood watering hole
- [REDACTED] - where [REDACTED] sipped on [REDACTED]
- [REDACTED] - most of us were going to a concert at [REDACTED] club so we left
- [REDACTED] - leaving [REDACTED] his wife, [REDACTED]
- [REDACTED] - apparently everyone else left except for [REDACTED]

According to contemporaneous emails, on [REDACTED], [REDACTED] and [REDACTED] were made aware of what was observed between [REDACTED] and [REDACTED] at the happy hour.

On [REDACTED] [REDACTED] met with [REDACTED]. [REDACTED] told the OIG that this meeting was already on his calendar because [REDACTED] had spoken with [REDACTED] subordinates and had decided to "make a change" in the [REDACTED] position based on issues with [REDACTED] management style. [REDACTED] said that he informed [REDACTED] of the decision to "make a change" before mentioning [REDACTED], then said it had come to his attention that [REDACTED] might be in a personal relationship with [REDACTED] and asked him if that was the case. According to [REDACTED], the question seemed to catch [REDACTED] off guard, and [REDACTED] replied that he did not think it was an issue because the relationship was consensual.

[REDACTED] said that he mentioned the FBI Personal Relationships Policy to [REDACTED] and [REDACTED] left the room to pull the policy. [REDACTED] said that [REDACTED] returned after reading the policy and acknowledged that he had been in a relationship with [REDACTED]

██████████ since ██████████. ██████████ told the OIG that he did not press for details about the relationship at that time because he knew that there would be an investigation. However, ██████████ said that ██████████ ██████████, and that he had not made any personnel decisions based on his relationship with ██████████.

██████████ characterized his conversation with ██████████ on ██████████ as “self-report[ing].” He told the OIG that once he realized that the FBI Personal Relationships Policy required it, he reported the relationship with ██████████ to ██████████. ██████████ said that he stepped down from his role as ██████████ and subsequently accepted a position as ██████████ ██████████, where he previously had worked.

#### IV. Analysis and Conclusions

Both ██████████ and ██████████ admitted that they were involved in a romantic and intimate relationship as defined by the FBI Personal Relationships Policy. Because ██████████ was ██████████ supervisor, the FBI Personal Relationships Policy required them to report their relationship to allow FBI management to determine whether remedial action, such as reassignment, was necessary. We concluded that ██████████ failure to do so violated Section 11.1.2.2 of the Policy.<sup>9</sup> ██████████ ██████████

We also found that ██████████ violated Section 11.1.2.3 of the FBI Personal Relationships Policy by participating in decisions regarding ██████████ promotion to ██████████. As discussed above, Section 11.1.2.3 requires an employee to refrain from participating in a hiring or organizational decision involving an individual with whom he or she has a personal relationship and where a reasonable person would question the employee’s impartiality, absent specific, advance management approval. Although the policy does not define or provide examples of a “hiring decision,” OPM regulations include temporary promotions among the “covered personnel actions” that are potentially subject to competitive procedures for hiring.<sup>10</sup> Given this, we think it is reasonable to conclude that a temporary promotion constitutes a “hiring decision” within the meaning of the FBI Personal Relationships Policy.

As a result, given his romantic and intimate relationship with ██████████, ██████████ should have abstained from participating in any decisions relating to her

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<sup>9</sup> The OIG acknowledges that the FBI Personal Relationships Policy places an equal obligation to report a romantic or intimate relationship on both supervisors and subordinates. However, the OIG did not make findings of misconduct against ██████████. Moreover, going forward, the OIG does not intend to name subordinates as subjects in investigations of this nature, and we do not intend to make findings of misconduct against the subordinates solely for failure to report a romantic or intimate relationship. A Management Advisory Memorandum (MAM) to the Department regarding this issue is forthcoming.

<sup>10</sup> See 5 C.F.R. §§ 335.103(c)(i), (c)(3)(iii).

acting promotion, or should have sought and obtained management permission to participate in the process. Although other [REDACTED] witnesses knew about and approved of the acting promotion, and we did not find evidence that [REDACTED] acting promotion was based on her relationship with [REDACTED] rather than the merits of her work, [REDACTED] nonetheless violated Section 11.1.2.3.

In addition, as described above, Section 11.2.1.2 prohibits a manager or supervisor from disrupting workplace morale by pursuing or engaging in a romantic or intimate relationship with a subordinate by, for example, showing favoritism in various actions, including appraisals. According to the policy, such actions cause other employees to reasonably question the impartiality of those decisions. See PD 0802D, § 11.2.1.2. We concluded that [REDACTED] involvement in ensuring that [REDACTED] received increased pay during her acting promotion and his limited role in reviewing [REDACTED] mid-year PAR did not violate this provision. In reaching this decision, we noted that a violation of Section 11.2.1.2 would appear to require evidence of favoritism in taking those actions, which we did not find here. We determined that [REDACTED] was entitled to the pay raise given her promotion to the [REDACTED] position, and that she had earned the performance rating that she received based solely on the merits of her performance.

Finally, because Section 4.7.7.1(c) of the FBI Ethics Guide places a heightened responsibility on supervisors to avoid creating the appearance of preferential treatment or other improper conduct, we concluded that [REDACTED] conduct failed to meet this standard.

We are referring our findings to the FBI for potential disciplinary or administrative action.



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