

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints  
Pursuant to Section 44, subdivisions 1 and 2,  
of the Judiciary Law in Relation to

**BARRY KAMINS,**

**STIPULATION**

A Justice of the Supreme Court, 2<sup>nd</sup> Judicial  
District (Queens County).  
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THE FOLLOWING IS HEREBY STIPULATED AND AGREED by and between  
Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable  
Barry Kamins and his attorney, Paul Shechtman of Zuckerman Spaeder, LLP, as follows:

1. Barry Kamins has been a judge since 2008, when he was appointed to the New York City Criminal Court by Mayor Michael R. Bloomberg.
  - A. In 2009, he was appointed Administrative Judge for the Criminal Courts in Kings County.
  - B. In 2012, he was appointed Administrative Judge for the Criminal Courts of New York City.
  - C. In November 2012, Judge Kamins was elected to the Supreme Court (Kings County). A year later, upon reaching the retirement age of 70, he was certificated to serve two years, through December 2015. He would be eligible for two additional two-year certifications, which would permit him to serve through 2019, the year he turns 76, beyond which certifications are not permitted under the Constitution.

D. In 2013, Judge Kamins was named Chief of Policy and Planning for the New York State Courts.

2. On May 29, 2014, the Commission received a report of the New York City Department of Investigations (DOI), alleging *inter alia* that Judge Kamins had engaged in misconduct. A copy of the report is appended as Exhibit 1.

3. On May 30, 2014, the Commission, on its own motion, authorized an investigation of Judge Kamins's alleged misconduct, based upon the DOI report. A copy of the Administrator's Complaint, executed in furtherance of the Commission's action and dated May 30, 2014, is appended as Exhibit 2. The Commission interviewed witnesses, reviewed documents and heard from Judge Kamins.

4. On June 2, 2014, Chief Administrative Judge A. Gail Prudenti announced that Judge Kamins had been relieved of his duties as an administrative judge and as Chief of Policy and Planning. He was subsequently assigned to hear matters in Supreme Court, Civil Term, Queens County.

5. Judge Kamins avers that on October 1, 2014, he will submit the appropriate papers to the Office of Court Administration and the New York State and Local Retirement System, stating that he will relinquish his judicial position on December 1, 2014.

6. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

7. Judge Kamins affirms that, upon vacating his office pursuant to this Stipulation, he will neither seek nor accept judicial office at any time in the future.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded,

by the terms of this Stipulation, without further proceedings, pending verification that Judge Kamins filed the appropriate papers on October 1, 2014.

9. Judge Kamins understands that, should he abrogate the terms of this Stipulation by, for example, failing to submit the appropriate papers on October 1, 2014, or holding any judicial position at any time after December 1, 2014, the Commission's investigation of the complaint against him would be revived, he would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

10. Judge Kamins waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public on October 1, 2014, and (2) the Commission's Decision and Order regarding this Stipulation will become public on or after October 1, 2014.

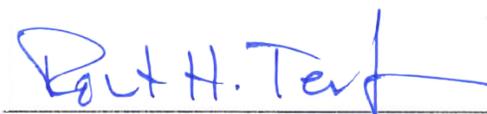
Dated: September 9, 2014

  
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Honorable **Barry Kamins**

Dated: September 9, 2014

  
\_\_\_\_\_  
**Paul Shechtman**  
Zuckerman Spaeder, LLP  
Attorney for Judge Kamins

Dated: September 9, 2014

  
\_\_\_\_\_  
**Robert H. Tembeckjian**  
Administrator and Counsel to the Commission  
(**Mark Levine and Mary Farrington,**  
Of Counsel)



The City of New York  
Department of Investigation

MARK G. PETERS  
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**THE NEW YORK CITY DEPARTMENT OF INVESTIGATION'S REPORT OF FINDINGS  
REGARDING MISCONDUCT BY FORMER KINGS COUNTY DISTRICT ATTORNEY  
CHARLES J. HYNES, JUSTICE BARRY KAMINS AND OTHERS**

**Executive Summary**

In November 2013, the New York City Department of Investigation ("DOI") received a referral from a government entity requesting that DOI investigate allegations concerning former Kings County District Attorney ("KCDA") Charles J. Hynes. DOI subsequently received a similar request from a second government entity. At least one of the government entities requesting the investigation was a mandatory reporter, meaning that DOI, upon receiving the request, was legally mandated to conduct the inquiry. DOI was specifically asked to review allegations that Hynes: misused his official KCDA e-mail account for campaign purposes; received political advice from Barry Kamins, a sitting New York State Supreme Court Justice; and improperly used KCDA's New York State asset forfeiture funds to pay for a consultant to provide him with personal political services.

In connection with DOI's investigation, among other things, DOI subpoenaed from KCDA all e-mails (approximately 6,000) sent to, or received by, Hynes, on his official KCDA e-mail account, for the 18-month period preceding the November 2013 General Election.

As a result of DOI's investigation, DOI has learned the following:

- Hynes used KCDA personnel and e-mail resources in connection with his ultimately unsuccessful 2013 reelection campaign, by exchanging several thousand campaign-related e-mails with individuals both within and outside the KCDA, and enlisting the help and support of KCDA personnel in connection with his campaign. Several high-level KCDA staff appeared to have assisted Hynes in his reelection campaign. As indicated by the dates and time-stamps associated with these e-mails, many of them were sent and received during regular KCDA business hours.
- Of the approximately 6,000 e-mails reviewed, Hynes received at least 300 e-mails from Hon. Barry Kamins, a sitting New York State Supreme Court justice, predominately from Judge Kamins' official judicial e-mail account. DOI found that Judge Kamins was the recipient of, or otherwise mentioned in, at least 800 of Hynes' e-mails that were reviewed. Many of these e-mails demonstrate that Judge Kamins engaged in

political activity as a sitting judge, *i.e.*, by advising Hynes regarding his campaign, and that he also engaged in communications with Hynes regarding matters actively being prosecuted by the KCDA and provided Hynes with legal advice.

- The KCDA had in its employ from 2003 to 2013 a consultant named Mortimer Matz, who ostensibly was hired by KCDA to provide public relations and communications services to the office. It appears that from at least January 4, 2011 to November 22, 2013, Matz's firm, Matz, Blancato & Associates, submitted approximately 80 invoices to KCDA, roughly half of which directed to the attention of Dino Amoroso, who was at the relevant time the KCDA Deputy District Attorney, and roughly half of which were directed to the attention of Amy Feinstein, who at the relevant time was the KCDA Chief Assistant District Attorney. The "description" section of each invoice states a per diem rate of \$536.40 for "Public Relations and Communications Services rendered." The invoices purport to bill KCDA the amount of \$2682 per week, based on five weekdays each week. Based on DOI's investigation to date, including based on information provided to DOI by the KCDA, it appears that Matz provided few if any actual public relations and communications services to the KCDA. Instead, as demonstrated by the Matz e-mails described herein, DOI's review suggests that Matz was serving primarily if not exclusively as a political consultant to Hynes personally, and that he had a major role in orchestrating Hynes' 2013 reelection campaign.
- Further, records obtained from KCDA reflect that from January 1, 2013 to November 26, 2013, the office typically issued on average two to three checks each month to Matz, Blancato & Associates, in varying amounts, from what appears to be a subaccount titled "ASSET FORFEITURE," in consideration of purported office consulting services. KCDA advised DOI that in calendar years 2012 and 2013, KCDA issued checks to Matz, Blancato & Associates in the total amount of \$219,924. For Matz's entire 2003-2013 tenure, KCDA advised DOI that KCDA paid Matz, Blancato & Associates approximately \$1.1 million out of state asset forfeiture funds.

## **DOI's Investigation**

### **I. Misconduct by Former Kings County District Attorney Charles J. Hynes and High-Ranking Members of His Staff**

In response to a complaint from a governmental entity, DOI began its investigation. DOI's investigation included, but was not limited to, a review of subpoenaed documentation from KCDA, consisting of: (1) the results of an e-mail search conducted by KCDA, based on terms specified by DOI,<sup>1</sup> for e-mails received by or sent from Hynes's official KCDA e-mail address (HYNESC@BrooklynDA.org) for the time period from June 1, 2012 to November 30, 2013 that appeared in any way related to Hynes's 2013 reelection campaign; and (2) e-mails and payment records relating to Mortimer Matz, a consultant hired by KCDA in or around 2003, who, DOI's investigation revealed, appeared to have been providing political consulting services to Hynes while ostensibly employed as a government consultant.

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<sup>1</sup> The search terms specified by DOI are listed in Appendix A to this report.

**A. E-Mails Sent to and from Hynes's Official KCDA Office E-Mail Account Relating to His 2013 Reelection Campaign**

During the 18-month time period preceding the November 2013 election, Hynes extensively used his official KCDA e-mail for purposes relating to his reelection campaign. KCDA, in response to DOI's subpoena, produced 6,067 of Hynes' e-mails generated by or sent to him on his KCDA e-mail account. Of these 6,067 e-mails, approximately 95% of them appear to relate in whole or in part to the reelection campaign. The individuals with whom Hynes primarily corresponded included, but were not limited to: (1) campaign managers and/or professional political consultants; (2) members of the KCDA executive, administrative, and managerial staff; and (3) Matz.<sup>2</sup> Hynes also periodically corresponded with family members, personal acquaintances, and political allies regarding his campaign.

Given the volume of e-mails that DOI has deemed relevant to the 2013 reelection campaign, for purposes of this report, we have selected and summarized e-mails addressed to or received from Hynes's official KCDA e-mail account that most unequivocally relate to that campaign. To supplement the following summaries of these e-mail exchanges, DOI includes the entire text of the selected e-mails, in the order in which they are discussed below, as Appendix B to this report.<sup>3</sup>

**1. Campaign-Related E-Mails Exchanged By Hynes with Campaign Managers, Consultants, and Volunteers**

- Monday, October 15, 2012 at 10:26 a.m.: Hynes sends an e-mail with the subject line "June Primary" to "Victory" (ucg718@aol.com, an e-mail address associated with Taharka Robinson, whom Hynes characterized as his Deputy Campaign Manager [see below, entry dated 9/6/2013]). The message reads:

"I was told that the Daily News reported that the 2013 Primary will be moved to June. Have you heard that this is a real possibility? That certainly would be a plus for us."

- Wednesday, November 7, 2012 at 9:27 a.m.: Hynes sends an e-mail with the subject line "A few things," to "Kdsjj" (kdsjj@aol.com, an e-mail address associated with Dennis Quirk, the president of the New York State Court Officers Association and Hynes' campaign manager). The message reads, in relevant part:

"I want to have a Communications Director soon perhaps later this week but not later than next week. Both Ken Thompson and [one-time DA candidate] Abe George were at Hakim [sic] Jeffries' victory party. We have to make it clear that our campaign is in gear."

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<sup>2</sup> As noted, DOI's investigation also revealed that Matz, a consultant hired by KCDA in or around 2003 ostensibly to render "public relations and communications" services to the office, also extensively performed consulting work and other services for Hynes' campaign (see Section I.B of this report, *infra*).

<sup>3</sup> Upon request, DOI will make available all of the e-mails provided to DOI by KCDA.

- Tuesday, December 4, 2012 at 10:55 a.m.: Hynes sends an e-mail with the subject line “Re: Going Forward” to dougschoen@aol.com, an e-mail address associated with Douglas E. Schoen of Schoen Consulting. The message reads, in relevant part:

“Thanks Doug. My Campaign Director Dennis Quirk will be in touch with you next week. Joe.”

- Sunday, January 20, 2013 at 12:59 p.m.: Hynes has an e-mail exchange with Judge Kamins (at bmkamins@gmail.com), who at the time was the Administrative Judge for Criminal Matters, Second Judicial District, and a Justice of the Supreme Court, (Kings County). Judge Kamins begins the exchange by describing a call he had received from George Farkas, the defense attorney for Nechemya Weberman, a member of the Brooklyn Orthodox community who had been convicted of repeated sexual abuse of a minor. Judge Kamins tells Hynes, in relevant part:

“George called.... Not to be repeated: he ... went into a tirade about the perception in the orthodox community that you (not me!!) picked [New York State Supreme Court Justice John] Ingram as the trial judge so that Weberman would not get a fair trial. He also said that he didn’t think that the community would vote for you on the election because of the Weberman and Yegotkin cases.<sup>4</sup> I get this nagging feeling that George is repeating a lot of this to everybody as a result of his loss in the case....”

Hynes replies: “He’s nuts!” Following another comment from Judge Kamins, Hynes e-mails Judge Kamins, stating “Sadly, it has always been about George and holding on to his client base. His threat about my not getting the Satmar vote is pathetic.”

- Wednesday, February 6, 2013 at 2:28 p.m.: Hynes receives an e-mail with no subject line from Robinson. The message reads:

“What Do You Think About Walking Over To The Announcement With Members Of The Campaign Team, Clergy And Community Leaders From The Front Of The Office To Borough Hall. Will Be The Best Footage And Photo Op. HYNES TEAM!!! VICTORY”.

- Monday, April 29, 2013 at 10:42 a.m.: Hynes sends an e-mail with the subject line “The websites” to Quirk. The message reads, in relevant part:

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<sup>4</sup> An apparent reference to the conviction of Emanuel Yegutkin, another member of the Brooklyn Orthodox Jewish community who was convicted of sexual abuse of minors. The exchange between Kamins and Hynes occurred two days before Weberman was sentenced by Justice Ingram to 103 years in prison, a sentence that was later reduced by the New York State Department of Correction to 50 years. See *The Daily News*, “Satmar Hasidic counselor Nechemya Weberman gets 103 years for sexually abusing teen girl” (January 22, 2013), available at: <http://www.nydailynews.com/new-york/satmar-counselor-weberman-103-years-molesting-girl-article-1.1244893>.

“Dennis when you get a chance review the charlesjhynesforda website and brooklynda.org and see if you have the same question I have: why didn't the campaign replicate the Office website which is considerably more informative than the campaign website?”

- Wednesday, July 17, 2013 at 9:47 a.m.: Hynes sends an e-mail with the subject line “Form from Susan Quirk” to Judge Kamins. The message body reads:

“Fyi.” The e-mail contains a campaign logo that reads “Re-elect Charles ‘Joe’ Hynes for District Attorney,” and text which reads, in relevant part: “As you are enjoying summer in our great borough of Brooklyn, I want to take a moment to thank you for all the support I have received during my tenure as your District Attorney. I am looking forward to continuing my legacy with your help in this upcoming election so that I can continue to serve Brooklyn for the next four years...Donate to the campaign or sign up to volunteer today! You can do so by visiting my website [www.charleshynesforda.com](http://www.charleshynesforda.com).”

- Tuesday, July 23, 2013 at 9:42 a.m.: Hynes sends an e-mail with the subject line “Fw: Canvass Report July 15-July 21” to Gerard Kassar (at [gerardkas@msn.com](mailto:gerardkas@msn.com)), Chairman of the Brooklyn Conservative Party. The message reads, in relevant part:

“Gerry this is completely confidential for you only. This is the canvas [sic] in White, Liberal, New York Times reading Brooklyn. I think you’ll find the numbers very interesting.”

- Wednesday, July 24, 2013 at 11:24 a.m.: Hynes sends an e-mail with the subject line “Re: Campaign” to Lisa Smith (at [lisa.smith@brooklaw.edu](mailto:lisa.smith@brooklaw.edu)), a professor at Brooklyn Law School and the former Executive Assistant District Attorney for Special Victims in the KCDA. The message reads:

“Great. Dennis Quirk is the Campaign Mgr so he's the best contact.”

- Monday, July 29, 2013 at 12:46 p.m.: Hynes sends an e-mail with the subject line “My campaign” to Mario Cuomo, at [mcuomo@willkie.com](mailto:mcuomo@willkie.com). The message reads:

“Thank you Governor for your most generous support for my campaign. I look forward to our lunch sometime in September after I beat this Turkey. Fondly, Joe.”

- Friday, August 2, 2013 at 4:26 p.m.: Hynes sends an e-mail with the subject line “Re: Debate” to Judge Kamins. The message reads:

“Can you think of issues that Thompson has to address about his qualifications?”

At 4:40 p.m., Judge Kamins responds, in relevant part: "1. Lack of experience in supervising a large number of attorneys...Unless, and until he puts forth a plan or set of goals, one must assume that he is not qualified to run the office (Try to think of some more)."

- Monday, August 5, 2013 at 9:17 a.m.: Hynes sends an e-mail with the subject line "Thompson's financial disclosures" to jyedin@gmail.com, an e-mail address associated with Jonathan Yedin, an employee of The Advance Group, a political consulting firm providing services to Hynes. The message reads:

"Thompson's campaign sold some trash to a blog called Failed Messiah. I will be asked about it today. Can you find out before 10:30 whether Thompson's [sic] has filed. Btw on what date should he have filed?"

- Tuesday, August 13, 2013 at 10:04 a.m.: Hynes sends an e-mail with the subject line "Nadler and Velasquez" to Robinson. The message reads, in relevant part:

"I'm told that they will endorse Thompson today...Since we are supported by a majority of Brooklyn's state and city legislators, and by the County organization particularly the Black and Latino District Leaders...these endorsements don't matter much. What matters is I continue my 'running scarred [sic] campaign' and an aggressive GOTV on primary day."

- Friday, September 6, 2013 at 3:55 p.m.: Hynes sends an e-mail with the subject line "Re: Hynes" to chief@gacnyc.com, an e-mail address associated with George Arzt, the principal of George Arzt Communications, Inc. The message reads, in relevant part:

"At the time my Campaign retained Reverend W. Taharka Robinson I was fully aware that he had a criminal conviction and spent a term in Prison...His criminal record and period of redemption is exactly what my programs have been all about...I am proud that he has been my Deputy Campaign Manager."

## **2. Campaign-Related E-mails Exchanged By Hynes With KCDA Staff Members**

- Friday, July 6, 2012 at 3:33 p.m.: Hynes sends an e-mail with the subject line "The 2013 Campaign" to KCDA employee Mary D. Hughes (at marydhughes@aol.com). The message, which appears to relate to DA candidate Abe George, reads, in relevant part:<sup>5</sup>

"[n]ow that we have the possibility of a campaign even though the guy is a nebish we have to take the potential challenge seriously. For your Tuesday scheduling committee's understanding I want to keep the rest of the Summer light but as I mentioned earlier I want to target selected venues for

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<sup>5</sup> Hughes also used the account "HUGHESM@BrooklynDA.org" to correspond with Hynes and other individuals working for the Hynes Campaign.

appearances...We have 12 months to win the Primary and I have no doubt about the outcome but I'll rely on your judgment to pick the right stops if any. Have a great weekend, Joe."

- Thursday, August 16, 2012 at 9:09 a.m.: Hynes sends an e-mail with the subject line "The campaign" to KDCA employee John A. Castelli (at CASTELLIJ@BrooklynDA.org). The message reads, in relevant part:

"[m]y re-election begins in earnest on Labor Day at the Carib American Day Parade. I'd like you to plan a strategy to present to me which includes Labor Leaders, the District Leaders, Community and Religious leaders...Please begin to set up for Thursdays after Labor Day...Let me know. Joe."

- Tuesday, February 5, 2013 at 3:44 p.m.: Hynes sends an e-mail with the subject line "Fw: Fwd: ANNOUCE[sic] DRAFT 1" to KCDA employee Joanna C. Zmijewski (at ZMIJEWSJ@BrooklynDA.org). The message reads: "Please print." The message also appears to include a forwarded e-mail sent from Jerry Schmetterer, KCDA's Director of Public Information at the relevant time (SCHMETTJ@BrooklynDA.org), to Robinson on the same date. The forwarded message reads, in relevant part:

"...that is why I am today, announcing my candidacy for re-election as Brooklyn District Attorney...I am Charles Joe Hynes, I and the people standing here with me today, am asking you the residents of Kings County to please support my Re Election in continuance of service to the neighborhoods of, Bedford Stuyvesant, Borough Park, Bushwhack[sic], Bergen Beach...."

- Thursday, July 18, 2013 at 5:56 p.m.: Hynes sends an e-mail with the subject line "The Campaign" to then-Deputy District Attorney Dino Amoroso (at AMOROSOD@BrooklynDA.org). The message reads, in relevant part:

"Hi Dino. Beginning next Thurs and for the remainder of the campaign I want you to attend the strategy meeting at DQ's [Dennis Quirk's] office. Check with Dennis for the meeting time. Thx."

- Monday, July 22, 2013 at 8:19 a.m.: Hynes sends an e-mail with the subject line "Carib News" to KCDA employee Lance P. Ogiste (at OGISTEL@BrooklynDA.org). The message reads:

"Hi Lance. Any idea when the Carib news will decide to publish an endorsement in my race?"

- Friday, August 16, 2013 at 8:01 a.m.: Hynes sends an e-mail with the subject line "2 questions" to Amoroso. The message reads:

"Has the campaign mailed to Brooklyn voters serving in the Military who will use absentee ballots? Can you figure out from the poll if Brooklyn voters from Pakistan, Bangladesh and Yemen were interviewed?"

- Friday, September 13, 2013 at 8:08 a.m.: Hynes sends an e-mail with the subject line “Statement” to Zmijewski (at ZMIJEWSKI@BrooklynDA.org). The message reads, in relevant part:

“After losing the Democratic Primary I said I would not actively run a campaign on the Republican or Conservative lines. Today nothing has changed although I am concerned that Clarence Norman, Jr. whom I convicted and sent to prison has had a much more pivotal role in Ken Thompson’s campaign that that campaign has acknowledged...I currently lack sufficient resources to run an effective campaign from the Republican and Conservative lines...Of course I am aware that there are people who are actively attempting to raise sufficient funds to convince me to run but I have taken no part in that effort.”

At 8:11 a.m., Hynes forwarded the above e-mail to Judge Kamins; the message reads, “Fyi.”

At 8:15 a.m., Judge Kamins responds to Hynes, “I think it’s fine except that instead of saying Norman ‘has had a much...’ I would say, ‘appears to have had a much...’”

At 8:24 a.m., Hynes forwards the above e-mail, including the message from Judge Kamins, to Zmijewski. The message reads: “Insert the word appears where Judge Kamins suggests.”

## **B. Mortimer Matz**

DOI’s investigation further revealed that Hynes, using his official KCDA e-mail address, and Matz, using primarily his personal e-mail address and occasionally his KCDA e-mail address, frequently corresponded throughout Hynes’ 2013 reelection campaign.<sup>6</sup>

### **1. KCDA’s Payments to Matz Using New York State Asset Forfeiture Funds**

From January 4, 2011 to November 22, 2013, Matz’s firm, Matz, Blancato & Associates, submitted approximately 80 invoices to KCDA, roughly half of which were directed to the attention of Dino Amoroso, who, as noted, was at the relevant time the KCDA Deputy District Attorney and roughly half of which were directed to Amy Feinstein, who at the relevant time was the KCDA Chief Assistant District Attorney. The “description” section of each invoice charges a per diem rate of \$536.40 for “Public Relations and Communications Services rendered.” The invoices purport to bill KCDA the amount of \$2682 per week, based on five weekdays each week. Records obtained from KCDA reflect that the office typically issued on average two to three checks each month to Matz, Blancato & Associates, from January 1, 2013 to November 26, 2013, in varying amounts, from what appears to be a subaccount titled “ASSET FORFEITURE.” For each check, the records appear to

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<sup>6</sup> DOI was advised by current KCDA staff that although Matz was hired as a consultant by KCDA in 2003, he did not begin using KCDA e-mail until 2007.

specify the following purpose for the expenditure: "OFFICE CONSULTANTS (NOT CASE RELATED)." In calendar years 2012 and 2013, KCDA issued checks to Matz, Blancato & Associates in the total amount of \$219,924. Current KCDA personnel have advised DOI that from 2003 to 2013, KCDA paid Matz's firm approximately \$1.1 million out of state asset forfeiture funds.

## 2. Matz's E-Mail Activity on his Official KCDA E-Mail Account

A review of e-mails sent or received by Matz on his official KCDA e-mail account ("MATZM@BrooklynDA.org"), during the period from January 1, 2013 to November 27, 2013 revealed approximately 70 messages. Most of these messages appear to have been sent from Matz to a group of five to six KCDA staff members in the executive and public relations departments containing a link to an on-line news article or otherwise referencing a news article published that day. On several occasions however, Matz used his official KCDA e-mail account to communicate with Hynes, KCDA staff, and non-KCDA staff members regarding Hynes's 2013 reelection campaign, as summarized below:

- Thursday, March 21, 2013, at 12:56 p.m.: Matz sends an e-mail with the subject line "Re: Passover ad in Jewish Post" to Yedin at The Advance Group. The message reads: "Do those ads please. M." Scott Levenson of The Advance Group and George Arzt were cc'd on Yedin's response to Matz.
- Saturday, June 29, 2013 at 7:40 p.m.: Hynes sends an e-mail with no subject line to Matz. The message reads:

"This was given to us confidentially. They are apparently speaking with the enemies. I'll sent you my final letter to Dorothy Samuels [a member of *The New York Times* editorial board]." The message attachment is a 10-page letter on KCDA letterhead addressed to "Ms. Samuels." The last few sentences read, in relevant part: "I believe that my record merits the endorsement of the New York Times...Please call me with any questions about the above-mentioned issues...Thank you for your interest in this campaign. Joe." The message also appears to contain a forwarded message from Arzt to Hynes.
- Tuesday, July 2, 2013 at 8:56 a.m.: Hynes sends an e-mail with the subject line "Fw: Week 1 Canvass Report" to Matz, and to four other non-KCDA recipients. The message appears to contain a forwarded message from Yedin to Hynes and cc'd to Dennis Quirk (at nyscoa@aol.com) and Levenson. At 10:26 a.m., Matz sends an e-mail only responding to Hynes, as follows:

"Great. I am on the way to a meeting at dennis."
- Monday, July 8, 2013 at 2:02 p.m.: Hynes sends an e-mail to Matz and several other non-KCDA recipients with the subject line "Fw: Petitions." The message reads: "Fyi;" and appears to contain a forwarded message that Hynes sent to Arzt, Quirk and Robinson, which reads:

“Per [Kings County Democratic Chairman] Frank Seddio, in 10 minutes the County will file on our behalf 58,000 signatures, the highest number in the borough.” At 2:49 p.m., Matz responds, “[t]hat is great.”

- Wednesday, August 14, 2013 at 5:34 p.m.: Matz sends an e-mail with the subject line “Re: 2 Lawyers Leave Thompson Widgor after Sanction” to Amoroso (at AMOROSOD@BrooklynDA.org). The message reads:

“Dino I told this to Hynes. Also I told the team months ago. Morty.”<sup>7</sup>

### 3. Matz’s E-Mail Activity on His Personal AOL Account

In the course of reviewing the e-mails sent to or received by Hynes’s official KCDA e-mail during the 18-months preceding the November 2013 election, DOI found roughly 1,200 to 1,300 e-mails that Hynes, using his official KCDA e-mail account, appears to have exchanged with Matz, using Matz’s personal e-mail account (jolisu@aol.com). (As noted above, this compares with around 70 e-mails sent or received by Matz using his KCDA e-mail account during this time period.) The vast majority of these e-mails related to Hynes’ reelection campaign, and services undertaken by Matz in support of Hynes’s campaign. The e-mails that most unequivocally establish the nature and extent of the campaign consulting services provided by Matz to Hynes, during the same time period that Matz purportedly rendered services as an “office consultant,” are summarized below:

- Wednesday, March 20, 2013 at 3:40 p.m.: Matz sends an e-mail with the subject line “Fw: Brooklyn DA Candidate Thompson Demands Hynes Explain Why He Failed to Correct Latest Miscarriage of Justice by His Office” to: Hynes, Arzt, Levenson, Yedin, Quirk, Robinson and Schmetterer. The message appears to contain the text of a press release by Ken Thompson’s campaign that KCDA employee Mia Goldberg (GOLDBERM@BrooklynDA.org) had obtained.

- Wednesday, April 3, 2013 at 5:50 p.m.: Matz sends an e-mail with the subject line “Re: Law Journal – Thompson press release on convictions” to Hynes. The message reads, in relevant part:

“We also need a positive political agenda beyond responding to attacks... We also need a positive flow and I will bring it up tomorrow morning at Quirks [sic] meeting.... Also can we or should we capitalize on the first CBS Brooklyn DA around May 21... If you agree it should be discussed I will bring it up tomorrow and speak to Scott and his fundraising expert Ben for ideas.” At 6:07 p.m., Hynes responds to Matz, “I leave the plans in your hands.”

- Tuesday, May 28, 2013 at 8:53 a.m.: Matz sends an e-mail with the subject line “Re: Shirley Chisolm Dem Club” to Hynes. The message reads, in relevant part:

“Its [sic] your voice that moves the Dream Team. Not mine. I am to them just another consultant.” At 8:58 a.m., Hynes responds to Matz, “[t]hat is a problem

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<sup>7</sup> Thompson Wigdor LLP is current KCDA Kenneth Thompson’s former law firm.

that you have to deal with. I am not running this campaign. My role is limited to campaigning.”

- Monday, July 15, 2013 at 8:53 a.m.: Matz sends an e-mail with the subject line “Editorials” to Hynes with a “cc” to Quirk. The message reads, in relevant part:  
  
“We should make up a packet of letters from the nonprofits that have partnered with us on the innovative programs. Not only for the Times...For the Post for Arzt to push. I will push Sam and Browne...The Boards have a problem. If not you-who. The other two have empty resumes compared to yours.” At 9:09 a.m., Hynes responds to Matz, “Morty take charge of this effort.”
- Thursday, August 1, 2013 at 1:34 p.m.: Matz sends an e-mail with the subject line “How are you” to Hynes. The message reads, in relevant part:  
  
“I was at the meeting at Quirk [sic] and in the office. Morty.”
- Monday, September 16, 2013 at 8:41 a.m.: Matz sends an e-mail with the subject line “Fw: Kenneth Ebie” to Hynes. The message reads, in relevant part:  
  
“I went over Thompson expenditures last night and shared names with Robbins because he spent nearly 900000 a lot on consultants... We need a research team. Maybe Hilly and me as starters.” At 8:42 a.m., Hynes responds to Matz, “[a]sk Hilly. I’m sure he will help out.”
- Friday, October 4, 2013 at 12:10 p.m.: Matz sends an e-mail with the subject line “Re: Hynes campaign question” to Hynes, apparently in reference to scheduling a “NY1” appearance for Hynes and a debate. At 12:10 p.m., Hynes responds to Matz, in relevant part as follows:  
  
“Book me Fri solo and I will know by Wed if Thompson will accept the B’kln Bar Association offer to hold a debate.”

### **C. Campaign-related E-Mails Sent by Other KCDA Staff Members Using Their Office E-mail Accounts**

In addition to Hynes, several KCDA staff members engaged in political activity related to Hynes’ reelection campaign, using City resources on City time. We have summarized below representative e-mails (copies of which are included in Appendix C to this report) sent by the each of the following senior KCDA staff members, who, using their official KCDA e-mail accounts, were frequently involved in e-mail discussions relating to Hynes’ 2013 reelection campaign: Jerry Schmetterer, Dino Amoroso, Amy Feinstein, Anne Swern, and Henna White.<sup>8</sup>

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<sup>8</sup> In addition to sending the e-mails summarized in this section, the KCDA staff members listed above received numerous campaign-related e-mails on their KCDA e-mail accounts during the 18-months preceding the election, including messages sent by Hynes, Matz, and campaign consultants during non-work hours. At the relevant time, Swern was the KCDA First Assistant District Attorney and White was KCDA’s liaison to the Jewish community.

- Wednesday, February 13, 2013 at 10:04 a.m.: White sends an e-mail with the subject line “Ben Barber” to Hynes. The message reads, in relevant part:

“Mr. Hynes: Ben called and asked if we can put off the fund-raiser for Thursday night as he believes he needs some more time to get more people on board with meeting like we had last weekend.”

- Monday, June 3, 2013 at 3:32 p.m.: Swern sends an e-mail from her KCDA e-mail account with the subject line “RE: DL21C’s June 3 Brooklyn DA Town Hall – details attached” to Hynes. Swern appears to respond to a request from Hynes for responses to pre-screened audience questions he would be asked during a Brooklyn DA Candidate debate, sponsored by the political organization DL21C (“Democrat Leadership for the 21<sup>st</sup> Century”). Swern’s message to Hynes reads, in relevant part:

“3. Do you feel comfortable saying: Hindsight produces 20 20 vision and of course looking back over cases we could have done things better, but given what we knew at the time-there are no specific examples.”

- Tuesday, June 4, 2013 at 1:28 p.m.: Schmetterer sends an e-mail from his KCDA e-mail account with the subject line “Re: hynes campaign” to Hynes. Schmetterer appears to respond to an inquiry by *The Village Voice* regarding allegations raised by the Thompson campaign, which was forwarded to Schmetterer by George Arzt to prepare a response. Schmetterer’s message to Hynes reads,

“Ok I will work it out.”

- Wednesday, July 10, 2013 at 3:26 p.m.: Amoroso sends an e-mail with the subject line “RE: Fwd: REMINDER---Conflicts of Interest Board Form-VERY VERY IMPORTANT” to Hynes. Amoroso appears to respond to an inquiry from Hynes as to whether his Candidate Annual Disclosure Report had been filed. Amoroso’s message reads,

“Yes. Yours was submitted May 3.”

- Tuesday, July 23, 2013 at 10:15 a.m.: Amoroso sends an e-mail with the subject line “Labor, County and GOTV” to Hynes. Amoroso appears to respond to a message sent to him from Hynes, in which Hynes writes, in relevant part: “On Thursday I want you to do a lot of listening and offer advice only when you’re asked...Dennis respects your political acumen but I want him to begin to see the managerial, administrative and organization skills you developed at OTB. If my long shot option is viable this will be particularly important. Joe.” Amoroso’s message reads,

“Understood, loud and clear.”

- Monday, August 5, 2013 at 2:43 p.m.: Schmetterer sends an e-mail with the subject line “FW: Seeking interview with DA Hynes for local Jewish media” to Hynes. Schmetterer appears to respond to an invitation from Jerry Lippman, a publisher of the *Long Island Jewish World* and the *Manhattan Jewish Sentinel*, to interview “key political candidates,” including Hynes, in advance of the Primary Election. Schmetterer’s message to Hynes reads,

“Should we set this up?”

- Friday, August 9, 2013 at 11:49 a.m.: Feinstein sends an e-mail from her KCDA e-mail account with the subject line “FW: DRAFT QUESTIONS” to Hynes, and KCDA employees Swern, Amoroso, and Lance Ogiste (all at their KCDA e-mail accounts). The message reads, in relevant part:

“From your snarky group. The answers to the other series of questions to follow... You’ve accepted campaign contributions from family members of people who work for you while having a policy of no contributions from employees—isn’t that hypocritical? – I have not and do not solicit campaign contributions from [sic] staff or their family members...also, I did not get rich off the backs of victims of wrongful conduct like my opponent did I’ve been a public servant for almost all of my professional life supporting my five kids—would have loved to self-finance my campaign.”

- Monday, October 7, 2013 at 9:47 a.m.: Feinstein sends an e-mail with the subject line “Re: Sound System” to Hynes. The message reads:

“Donna DiPaola is lending the campaign the speakers and the microphone. they got the permit which allows access to electricity from Boro Hall and the Marty Golden[sic] is lending the campaign the lectern. So – no cost associated.”

#### **D. Conclusion for Part I**

The above findings implicate City Charter Section 2604(b)(2) and Conflict of Interest Board Rules § 1-13(b). These sections provide, respectively, in relevant part that:

- No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.
- [I]t shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

DOI notes that violations of the ethical provisions contained in Chapter 68 of the New York City Charter, the City’s code of ethics, are chargeable as unclassified misdemeanors. *See* Chapter 68, Sec. 2606(c).

DOI further notes that the conduct described above may also implicate Section 195.00 of the New York State Penal Code, which states that:

- A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit: (1) He commits and act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or (2) He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Finally, the payments to Matz described above may implicate the larceny provisions contained in Article 55 of the Penal Code.

## **II. Misconduct By Justice Barry Kamins**

DOI has also uncovered information, as detailed herein, substantiating apparent violations of the Code of Judicial Conduct by the Honorable Barry Kamins (Chief of Policy and Planning for the New York State Courts and Kings County Supreme Court Justice). In connection with DOI's review of Hynes' KCDA e-mails, as discussed above, DOI found that Hynes received at least 300 e-mails from Judge Kamins, predominately from Judge Kamins' official account (BKAMINS@courts.state.ny.us) and occasionally from Judge Kamins' personal account (bmkamins@gmail.com). DOI found that Judge Kamins was the recipient of, or otherwise mentioned in, at least 800 of Hynes' e-mails that we reviewed. Many of these e-mails demonstrate that Judge Kamins engaged in political activity as a sitting judge, *i.e.*, by advising Hynes regarding his campaign, and engaged in *ex parte* communications with Hynes regarding matters actively being prosecuted by the KCDA.

Given the volume of e-mails reviewed that involve Judge Kamins, DOI has selected and summarized the e-mails we believe would be most relevant to any potential investigation of Judge Kamins' conduct. To supplement the summaries of the e-mail exchanges, we have included the entire text of the selected e-mails, in the order in which they are discussed below, as Appendix D to this letter.

### **A. Judge Kamins' Participation in Hynes' 2013 reelection campaign.**

Judge Kamins was appointed on September 11, 2008 by Mayor Bloomberg as a Justice of the Criminal Court of the City of New York. Since 2012, Judge Kamins has been the Administrative Judge of the Criminal Court of the City of New York; from 2009 to 2013, he was the Administrative Judge for Criminal Matters, Second Judicial District. He was most recently elected on November 6, 2012 as a Kings County Supreme Court Justice, and his current term expires in 2015. In 2014, the Hon. Jonathan Lippman, Chief Judge of the New York State Court of Appeals, appointed Judge Kamins as the Chief of Policy and Planning for the New York State Courts. In that role, Judge Kamins is responsible for working with judges throughout the state to study and develop polices and strategies to improve the delivery of justice in New York; he also oversees the New York City Criminal Court.

The vast majority of e-mails exchanged between Judge Kamins and Hynes related, in some manner, to Hynes' 2013 reelection campaign for District Attorney. The e-mails demonstrate that Kamins, while a sitting judge, (1) engaged in political activity; and (2) used his office to advance Hynes' political career.

## 1. Judge Kamins Was Among Hynes' Top Political Advisors

The two e-mails described below provide a general preview of the advisory role that Judge Kamins would assume during Hynes' campaign.<sup>9</sup> The first exchange occurred shortly before Abe George, a New York County Assistant District Attorney, formally announced his intention to challenge Hynes in the 2013 Primary Election:<sup>10</sup>

- Sunday, June 3, 2012 at 5:04 p.m.: Judge Kamins sends an e-mail to Hynes with the subject line "Re: "An Opponent." The message reads, in relevant part:

"Btw, [New York County Chief Assistant District Attorney Daniel] Alonso told me that as a trial assistant, George was about average."

Judge Kamins sends a subsequent e-mail to Hynes regarding the same subject which reads, in relevant part: "It would be good at some point to get his record of trials...this will be important to know—not for negative campaigning but to present an incredibly stark comparison for voters." The following e-mail dialogue between Judge Kamins and Hynes ensues:

HYNES: You are the new David Garth.<sup>11</sup> I'm sure that Brigett can give us the record at [Special Narcotics Prosecutions] and Dan can give fill [sic] us in about the last 3 years in [Trial Bureau] 80.

JUDGE KAMINS: Yes. I charge very little to be a consultant. My only request: standing next to you and Pat at the victory speech.

HYNES: The next time you will give me the honor of swearing me in as a Justice of the State Supreme Court.

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<sup>9</sup> DOI found a few instances where Hynes either sent campaign-related e-mails to multiple recipients, including Judge Kamins, or otherwise forwarded e-mails exchanged between himself and Judge Kamins to other recipients. Consequently, it appears that various individuals were aware of Judge Kamins' participation in the campaign. Those individuals include KCDA employees Dino Amoroso, Anne Swern, Amy Feinstein, Mary Hughes, Lance Ogiste, and Maureen Kravitz; and the following others: Dennis Quirk (president of the New York State Court Officers Association and Hynes' official campaign Manager); Mortimer Matz (paid consultant for KCDA); Taharka Robinson (community activist whom Hynes characterized in one e-mail as his "Deputy Campaign Manager"); Sol Wachtler (former New York State Court of Appeals Chief Judge) and Joseph Bellacosa (former New York State Court of Appeals Judge).

<sup>10</sup> See *New York Times*, "For Hynes, District Attorney Since 1990, Publicity and Campaign Rivals" (June 11, 2013), available at: <http://www.nytimes.com/2013/06/12/nyregion/for-hynes-da-since-1990-publicity-and-rivals.html?pagewanted=all>.

<sup>11</sup> Hynes appears to be referring to a high-profile professional political strategist/media consultant whom the *New York Times* has referred to as a "grandfather of modern political advertising." See *New York Times*, "A Strategist Sees if His Hand is Still Hot" (July 25, 1989), available at: <http://www.nytimes.com/1989/07/25/nyregion/a-strategist-sees-if-his-hand-is-still-hot.html>.

JUDGE KAMINS: My fondest wish!

HYNES: Deal.

- Sunday, July 8, 2012 at 4:36 p.m. Judge Kamins sends to Hynes an e-mail with the subject line “Re: Letter to the NY Post.” The message reads, in relevant part:

“Have you thought who will be your war time consigliere once the campaign starts? Dennis?” Hynes responds, “Dennis makes sense but with a high degree of secrecy I will turn to you frequently for judgment calls.”<sup>12</sup>

Further, throughout the campaign period, as demonstrated by the e-mails discussed below (as well as in Section I.A.1, *supra*, regarding Hynes’ conduct), Judge Kamins appears to have, among other things, regularly advised Hynes regarding advantageous political endorsements, provided feedback on Hynes’ public statements, assisted Hynes in his preparation for televised debates, and communicated with other individuals on Hynes’ behalf regarding campaign-related activity:

- Friday, March 15, 2013 at 7:34 a.m.: Judge Kamins sends an e-mail with the subject line “Misc” to Hynes. The message reads, in relevant part:

“George called me about two meetings he said he is setting up involving you. First, he said he is setting up a meeting for you to meet with Empire Bail Bonding Company. They are upset with Judge Lippman’s proposal to try to get judges to use alternative forms of bail...Second, George will be calling to have you meet a member of the Satmar community who has told George that...you have done some ‘bad things’ and that he will not vote in the election and that he will be advising others to do the same.”<sup>13</sup>

- Tuesday, April 2, 2013 at 8:21 a.m.: Judge Kamins receives an e-mail with the subject line “Re: Crooked Pols” from Hynes. The message reads, in relevant part:

“Btw given Adams’ incendiary charge and Kelly’s response I’m inclined to delay the endorsement for a few weeks. What do you think? At 8:57 a.m., Kamins sends an e-mail in response to Hynes, in relevant part: “If the brouhaha continues between Kelly and Adams I would put it off. But if it dies down quickly I would go ahead—it’s an endorsement that you want to nail down.”<sup>14</sup>

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<sup>12</sup> “Dennis” appears to refer to Dennis Quirk.

<sup>13</sup> It is not clear who the “George” being referred to is, but from the context it does not appear to be Abe George.

<sup>14</sup> Hynes appears to refer to the media coverage of testimony by then New York State Senator Eric Adams in the class-action federal lawsuit against the NYPD’s “stop-and-frisk” tactics (*Floyd, et al. v. City of New York, et al.*). Adams reportedly testified that NYPD Commissioner Ray Kelly admitted during a private meeting with lawmakers that, among other things, “[c]ops targeted blacks and Latinos as part of their ‘stop-

- Tuesday, June 4, 2013 at 6:48 a.m.: Judge Kamins sends an e-mail with the subject line “Last night” to Hynes. The message reads, in relevant part:

“The good news is that George overshadowed Thompson who is the stronger candidate of the two.” Following a response from Hynes, Judge Kamins writes, “I think George would act the same way even on NY1 because Errol will let him. We need to plan a strategy for that.”<sup>15</sup> Hynes in turn responds, “For one I’m going to learn about his actual experience in the Manhattan DA’s Office and at SNP.” Judge Kamins further responds, “Speak to Bridgett and Dan.”

- Saturday, July 20, 2013 at 12:46 p.m.: Hynes sends Judge Kamins an e-mail with the subject line “Debate Questions.” The message reads, in relevant part:

“How does this look as an Opening Statement?” Judge Kamins responds, “Very good except do you want to go negative [sic] right away? Or should you save those remarks only after the other two raise negatives and then it looks like you are responding rather than beginning the program on the attack.”

- Friday, August 2, 2013 at 2:33 p.m.: Judge Kamins (from bkamins@gmail.com) sends an e-mail with the subject line “Debate” to Hynes. The message contains “a list of issues that may be raised by Thompson or Errol Louis....”

- Wednesday, August 14, 2013 at 4:03 p.m.: Judge Kamins receives an e-mail with the subject line “Tonight’s Talking Points” from Hynes. The message reads, in relevant part:

“Mr. Thompson’s only connection to corruption investigations that we [sic] aware of is when he was hired by former Senator and now convicted felon Pedro Esparra to block a corruption investigation by the State’s Inspector General.” Judge Kamins responds to Hynes, “Wow. You will have him on the ropes. (One correction- Its Pedro Espada, not Esparra). Remember- you are the senior statesman and he is...who he is. You’ll be great. Good luck!”

## 2. Judge Kamins Used the Prestige of His Judicial Office As Well As His Personal Network to Advance Hynes’ Political Interests

In addition to acting as Hynes’ campaign advisor, Judge Kamins lent the prestige of his position to secure positive media coverage and endorsements for the Hynes campaign. The e-mails summarized below suggest that Judge Kamins used his apparent connection to *New York Times* Editorial Board Member Dorothy Samuels to further Hynes’ political interests.

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and-frisk’ policy to ‘instill fear in them.’” See *The Daily News*, “NYPD Commish Ray Kelly said ‘stop and frisk’ intended to ‘instill fear’ in blacks and Latinos: State Sen. Eric Adams” (April 2, 2013), available at: <http://www.nydailynews.com/new-york/senator-kelly-stop-frisk-instill-fear-blacks-latinos-article-1.1304763>.

<sup>15</sup> “Errol” appears to refer to Errol Louis, the political anchor and host of NY1’s news program “Inside City Hall.”

- Thursday, January 10, 2013 at 8:49 a.m.: Hynes sends an e-mail to Judge Kamins that reads, in relevant part:

“I should get the Times endorsement which is really the only opinion page that matters.” Judge Kamins responds, “Has Dorothy confirmed for our lunch?” Hynes further responds, “She hasn’t returned Joanna’s call. I’m sure it will happen.” Judge Kamins in turn states, “Tell her she can have two entrees.”

- Wednesday, June 26, 2013 at 5:31 p.m.: Judge Kamins receives an e-mail with the subject line “Fw: Samuels” from Hynes. The message reads:

“Please review and see what you think,” and contains a forwarded message which appears to be a draft letter to Samuels, which summarizes some of Hynes’ accomplishments as District Attorney.

Judge Kamins responds, in relevant part:

“Very compelling and impressive. Just a couple of points: In the first paragraph and in the very last paragraph, you mention 158,000 serious felonies in Brooklyn. Since there are only about 10,000 indictments each year, is this figure the number of crimes committed, whether or not any arrests were made? ...I would add a sentence at the end of the description of the Brownsville project...In the third large paragraph from the end, the first sentence doesn't read well. In addition, I'm not sure you want to say 'Vecchione's Racket Division' for several reasons...This is compelling stuff--will go a long way to turning things around.”

It appears that Judge Kamins also used his prestige and connection to *New York Law Journal* Editor-In-Chief Kris Fischer to obtain positive media coverage for the Hynes campaign:

- Wednesday, February 6, 2013 at 6:57 a.m.: Judge Kamins sends an e-mail with the subject line “Misc” to Hynes. The message reads, in relevant part:

“I am having lunch with Kris Fischer on Friday-anything you want me to raise? I will be attending Bloomberg’s swearing-in of judges at 4:30—won’t be able to have our coffee klatch at the cafeteria.” Hynes responds, in relevant part: “[i]f the election comes up can you mention my 7 year education campaign about my programs which have locked down central Brooklyn.” Judge Kamins in turn responds, in relevant part, “[a]s to Kris, wasn't there a reporter doing a story about the race in Brooklyn? I think we wanted to make sure that he spoke to Legal Aid, BDS, etc?”

- March 5, 2013 at 10:28 a.m.: Judge Kamins sends an e-mail with the subject line “Re: Fw: Law Journal” to Hynes. The message reads:

“Spoke to Jay Schwitzman- he will be able to write that letter—any word on the article from the Touro person?”<sup>16</sup>

It appears that Judge Kamins, as jurist and former president of the Kings County Criminal Bar Association (KCCBA), also assumed primary responsibility for arranging a debate between Hynes and his opponent Kenneth Thompson at the KCCBA:

- Tuesday, July 16, 2013 at 4:56 p.m.: Judge Kamins sends an e-mail with the subject line “Re: Possible debate at Brooklyn Bar” to Hynes. The message reads:

“Book Aug 27<sup>th</sup> in the evening. Thompson and George agreed to do it.”

Judge Kamins responding to Hynes (Hynes had inquired about the “time and format”), states, in relevant part: “I’m going to speak to the Pres tomorrow...I told him to make sure that whoever moderates is apolitical and not a contributor to any of the campaigns. I told the Pres that he should moderate and he is thinking about it.”

- Friday, August 23, 2013 at 7:55 a.m.: Judge Kamins (from “bmkamins@gmail.com”) sends an e-mail with the subject line “Re: NYLJ” to Hynes. The message reads, in relevant part:

“Btw, I tried to pump the Brooklyn Bar Pres for info about the debate. He said that the questions will focus on more specific things relating to the DA’s office than have been discussed in other debates.” Judge Kamins further e-mails Hynes, in relevant part: “I think the President’s approach will work to your advantage because he wants to focus on the nitty gritty of what the DA does each day to run the office-of course Thompson has no clue and that will come out. He may focus on budget issues as well. Will try to get more info.” Judge Kamins further tells Hynes, “Pres just told me that he will ask a question about open file discovery.”

Even after the debate ultimately did not materialize, Judge Kamins apparently sought to use it as a means to obtain positive press coverage for Hynes from *New York Law Journal* staff writer Andrew Keshner:

- Friday, August 30, 2013 at 5:51 p.m.: Judge Kamins (from “bmkamins@gmail.com”) sends an e-mail with the subject line “NYLJ” to Hynes. The message reads:

“Spent some time on the phone with Andy Keshner of the Law Journal. He will be doing a story next week on any issues that have not yet been covered in the campaign. I suggested he look at the negative literature being sent by Thompson. [sic] and his mediocre record as an AUSA. I also told him that the

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<sup>16</sup> According to the Kings County Criminal Bar Association website, Jay Schwitzman was the 2013 President. See Kings County Bar Association Website, About KCCBA, available at: <http://www.kccba.org/aboutus.htm>.

BBA debate would have fleshed out issues not previously discussed, eg double blind lineups, health care fraud and coming prosecutions, etc. I told him that Thompson's no show at the debate may have had something to do with the substantive nature of these issues but that there was no hard evidence of that. Expect a call from him on Tuesday."

## **B. Judge Kamins' Extra-Judicial Remarks to Hynes**

DOI found numerous e-mails in which Judge Kamins and Hynes had *ex parte* discussions regarding pending criminal matters and investigations – many of them controversial – being handled by the KCDA. Many of the conversations between Judge Kamins and Hynes regarding these controversial cases occurred within the context of Hynes' political campaign (*i.e.*, the manner in which the positive/negative publicity generated would affect Hynes' image with voters). In addition to potentially interfering with the proper performance of his judicial duties, these e-mails suggest the extent to which Judge Kamins advised Hynes on high profile and sensitive matters pertaining to Hynes' official duties as Kings County District Attorney:

- Sunday, June 3, 2012 at 6:39 a.m.: Judge Kamins sends Hynes an e-mail with the subject line "Re:...and another who may walk, too -m.NYPOST.com." The message contains a link to an article published on June 3, 2012, which criticizes Hynes for failing to take sufficient efforts to have alleged rapist Gershon Kranczer extradited from Israel. Judge Kamins' message to Hynes reads:

"Why couldn't you release copies of letters to the State Department seeking extradition [sic]? Is it because the indictment is sealed?"

- Monday, June 4, 2012 at 8:39 a.m.: Judge Kamins receives from Hynes an e-mail with the subject line "The News Editorial." The message reads, in relevant part:

"It is a new low for dishonesty...They know that in both the Zimmer and Kolko cases the parents of the 4 victims refused to allow their children to testify...They know that Henna's husband Asher represented Zimmer and that Henna recused herself...They know that White knew that the children's [sic] parents would not let them testify before a GJ but nevertheless he took an SCI D felony pleas with sex registration...They absolutely refuse to accept that Kol Tzedek's enormous success is due to my policy of refusing to identify defendants which protects the identity of our victims...In sum it is mean spirited and gratuitous. I can only hope our circle of victim advocates will mount a letter writing campaign on my behalf to respond to this dishonesty."

Judge Kamins responds to Hynes, and cc's KCDA employee Anne Swern, as follows:

"Is it time to have the press conference that Morty suggested—with victim advocates at your side---announcing the 3<sup>rd</sup> year anniversary of Kol Tzedek and

explaining that these cases would never have been prosecuted but for the creation of Kol Tzedek?"<sup>17</sup>

- Sunday, January 20, 2013 at 10:29 a.m.: Judge Kamins receives an e-mail with the subject line "Re: Michael Powell" from Hynes.<sup>18</sup> The message reads:

"Powell insists on seeing me before Lenny's argument before [United States District Judge] Garaufis detailing reasons for our conclusions that the Judge is wrong on the facts and the law. Instead he said he will rely on Garaufis 80 page decision and will add that we are appealing without giving our reasons which as you know can only be discussed in Court. Since it is clear this column will not be particularly fair I decided to let me [sic] prepare the attack on my schedule and not alienate voters."

Judge Kamins responds, "Under the circumstances, it makes sense.

- Sunday, January 20, 2013 at 12:59 p.m.: As noted in Section I.A.1, *supra*, at p. 4, Judge Kamins (bmkamins@gmail.com) sends an e-mail with no subject line to Hynes regarding a conversation he had with George Farkas, counsel for Nechemya Weberman, who, two days after this e-mail exchange, was sentenced to 103 years in prison following his December 2012 conviction on 59 counts of sex abuse-related charges. In the e-mail exchange, Kamins and Hynes discuss Farkas' contention that Hynes, rather than Kamins, selected New York State Supreme Court Justice John Ingram as Weberman's trial judge so that Weberman would not get a fair trial.
- Monday, January 28, 2013 at 7:00 a.m.: Judge Kamins receives an e-mail message with the subject line "Errol Louis" from Hynes. The message reads, in relevant part:

"If I don't find a succinct way of responding to the criticism there'll be no opportunity to talk about my record...Any ideas?"

Judge Kamins responds:

"Time is very limited. I would not get into the details of the Collins case—recantations, etc. No one is going to understand the facts any way. I would say that your office looked into the allegations and found no misconduct. Period. I would also point out that all this does not come from "federal judges"—it

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<sup>17</sup> "Morty" appears to refer to Mortimer Matz. "Kol Tzedek" ("Voice of Justice" in Hebrew) is a reference to a program Hynes created in 2009 to combat sexual abuse among ultra-Orthodox Jews. *See New York Times*, "Brooklyn Prosecutor Defends Record on Sex Abuse Cases" (May 16, 2012), available at: <http://www.nytimes.com/2012/05/17/nyregion/brooklyn-prosecutor-charles-hynes-defends-record-on-sex-abuse-cases.html>.

<sup>18</sup> Michael Powell is a columnist for the *New York Times*.

comes from one Judge, Judge Irizzary and that Block adopted her misguided opinion and never looked into the case himself. And I would say, politely, that federal judges can be wrong just as any judge can be wrong.”<sup>19</sup>

- Wednesday, May 29, 2013 at 7:54 p.m.: Judge Kamins receives from Hynes an e-mail with the subject line “Re: NYDN: Brooklyn District Attorney Charles Hynes office ‘running a private jail system’: Jabbar Collins’ lawyer”. The message reads:

“Fyi.” The same e-mail contains a forwarded message sent from Hynes at 5:38 p.m. to George Arzt (at chief@ganyc.com); the forwarded message reads, in relevant part: “Jerry referred it to Corp Counsel because of the civil suit. Jerry will add that ‘it is not nor has it ever been the practice of using material witness orders to hold witnesses against their will without judicial intervention.” The forwarded message also contains an excerpt of the on-line version of a *Daily News* article, the headline which reads: “Witnesses were illegally interrogated and forcibly detained indefinitely,’ Collins’ lawyer Joel Rudin charges in explosive court documents in the \$150 million wrongful conviction lawsuit.”<sup>20</sup>

Judge Kamins responds, “Good. Rudin is out of control.”

- Wednesday, July 17, 2013 at 3:20 p.m.: Judge Kamins receives an e-mail with the subject line "FW: NY POST QUESTIONS" from Hynes. The message reads:

"Jerry's response." The forwarded messages concern an inquiry by New York Post journalist (Algar Selim) regarding the fact that the daughter of former NYPD Detective Louis Scarcella, whose work was currently being investigated by KCDA, was employed as an ADA at the Office. The following dialogue ensues between Judge Kamins and Hynes regarding "Jerry's response:"

JUDGE KAMINS: Short and to the point--which is all the attention it deserves. I guess it must be a slow day at the Post for them to be working on this stuff.

HYNES: Everybody has an agenda none of them make an impact. It must be difficult to go through life being irrelevant!

JUDGE KAMINS: Indeed.

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<sup>19</sup> “Collins” appears to refer to Jabbar Collins, who currently has a \$150 million dollar federal wrongful conviction lawsuit pending against the KCDA, the NYPD, and several individuals defendants. Collins was convicted in 1995 for the murder of Abraham Pollack in Williamsburg, and served 16 years in prison before a federal judge ordered his release. See *New York Times*, “Lawsuit Against Prosecutor to Proceed” (February 15, 2013), available at: [http://www.nytimes.com/2013/02/16/nyregion/lawsuit-against-charles-j-hynes-brooklyn-district-attorney-is-allowed-to-proceed.html?\\_r=0&pagewanted=print](http://www.nytimes.com/2013/02/16/nyregion/lawsuit-against-charles-j-hynes-brooklyn-district-attorney-is-allowed-to-proceed.html?_r=0&pagewanted=print).

<sup>20</sup> “Jerry” is an apparent reference to Jerry Schmetterer, KCDA’s Director of Public Information at the relevant time.

- September 8, 2013 at 9:35 a.m.: In the context of the Jabbar Collins, case, Judge Kamins receives from Hynes an e-mail with the subject line “Arthur Browne and the Truth.”<sup>21</sup> Hynes analyzes and criticizes, paragraph-by-paragraph, a *Daily News* Op-Editorial, titled “Dump Hynes,” that was published on September 8, 2013.<sup>22</sup> In attacking the accuracy of the article, Hynes relays to Judge Kamins various details about the activities of his office and members of his staff and criticizes the adverse rulings made against his office by federal judges Irizarry and Block.

Upon Judge Kamins’ response, the following dialogue ensues:

JUDGE KAMINS: There's no way that anyone who reads objectively this [sic] can view this as an endorsement...except Thompson.

HYNES: Precisely but lying is his thing.

JUDGE KAMINS: With him it's pathological.

The e-mails discussed below reveal the extent to which Judge Kamins helped the KCDA come up with a concrete strategy to curb criticism of Hynes in the wake of mounting claims of wrongful convictions of persons prosecuted by KCDA:

- Thursday, May 16, 2013 at 2:45 p.m.: Judge Kamins receives an e-mail with the subject line “Re: Fw: Ken Thompson” from Hynes. The message reads, in relevant part:

“Btw George suggests that I identify a panel of three people to review our findings. My concern is that it will look reactive and will lead to another Robles attack. If you think it’s workable my preference would be to wait a few weeks before making an announcement. Any suggestions?”<sup>23</sup>

Judge Kamins responds:

“I don’t agree with a board to ‘review’ findings. If this group should find fault with the work of the office that puts you in a worse situation. What do you do

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<sup>21</sup> “Arthur Browne” appears to refer to the *Daily News* editorial page editor.

<sup>22</sup> See *Daily News*, “Dump Hynes” (September 8, 2013), available at: <http://www.nydailynews.com/opinion/dump-hynes-article-1.1448245>.

<sup>23</sup> Frances Robles is a *New York Times* Journalist. The “panel” referenced in the e-mails discussed in this section relates to a plan to review convictions of individuals who had been investigated by Scarcella. See, e.g., *New York Times* “Panel to Review Up to 50 Trial Convictions Involving a Discredited Detective” (July 1, 2013), available at [http://www.nytimes.com/2013/07/02/nyregion/panel-to-review-up-to-50-trial-convictions-involving-a-discredited-brooklyn-detective.html?\\_r=0](http://www.nytimes.com/2013/07/02/nyregion/panel-to-review-up-to-50-trial-convictions-involving-a-discredited-brooklyn-detective.html?_r=0).

then? Go back and start over? It could be a disaster. I think my original idea of having some outside people join in the work is better—that way, the final product will not be subject to a further review and will have the appearance of independent judgment.”

Following further exchanges, Judge Kamins responds:

“What about a group of 4 to 5 people—academics and former judges: Ellen Yaraschefsky, Bruce Green, John Walsh, Robert Keating, Joseph Bellacosa.”

Hynes forwards the entire foregoing exchange with Judge Kamins to KCDA employee Dino Amoroso. The message reads: “Please read all the way down to discuss.”

- Friday, May 24, 2013 at 6:22 a.m.: Judge Kamins sends Hynes an e-mail with the subject line “Re: Logistics Complicate Review of Murder Cases – NYTimes.com”. The message reads, in relevant part:

“As to Robles, if you didn’t reexamine the cases you would be criticized. And now that you are doing it, it is a[sic] ‘election stunt.’ I think at some point, you should include some of the people we discussed from outside the office.”

Following further exchanges, in which Judge Kamins inquires what Hynes expects to discuss during his “Times campaign curtain raiser interview with Joe Berger on Thursday,” Judge Kamins e-mails Hynes: “Don’t forget to mention the plans for Brownsville—they love to hear about things like that.”

- Wednesday, June 12, 2013 at 7:19 a.m.: Judge Kamins receives an e-mail with the subject line “Re: NYT” from Hynes. The message reads, in relevant part:

“Bellacosa, Willie Thompson, Susan Herman, John Walsh, Barbara Jones, Hugh Month and others will serve as a review Panel for our inquiry.”

Following an exchange in which Hynes asks Judge Kamins whether Hynes should “announce it,” Judge Kamins responds:

“I think you should announce, since enough time has passed since the articles on Scarcella first came out. If you wait much longer, something else will appear and the announcement would look like a reaction to that. You can say that in reviewing the matter it seemed appropriate to have respected individuals from outside the office work together with your staff to review the cases. You could divide the cases into groups and have each one of these people work on a group.”

Hynes forwards the preceding messages with Judge Kamins to KCDA employees Amy Feinstein, Anne Swern, Dino Amoroso, Lance Ogiste and John O’Mara. The forwarded message, which is sent “cc” to Kamins, reads:

“I agree with Barry. The announcement would make it clear that we are committed to transparency. If we have a consensus on this Amy when you notify the panel members the date ask each to fax their CV.”

**C. Judge Kamins Provided Legal Advice to Hynes**

DOI found two e-mail exchanges, summarized below, in which Judge Kamins engages in a substantive legal discussion with Hynes and offers his interpretation of the law. The first e-mail exchange concerns a lawsuit filed by Abe George, who was at the relevant time a candidate challenging Hynes in the 2013 race for District Attorney. George sought to enjoin CBS from airing a documentary about the KCDA:

- May 14, 2013 at 7:35 a.m.: Judge Kamins receives from Hynes an e-mail with the subject line “Re: Candidate sues to stop CBS’s ‘Brooklyn D.A.’ series.” The message reads:

“Fyi.” The following e-mail dialogue between Judge Kamins and Hynes ensues:

JUDGE KAMINS: Has it been assigned to a judge?

HYNES: Paul Wooten-and therein lies a tale I’ll tell when I see you at Fordham.

JUDGE KAMINS: Ok...Great decision by Second Circuit reversing Garafuis[sic] re Fire Dept. (sent on May 15, 2013 at 6:42 a.m.).

During further exchanges regarding the Abe George lawsuit, on May 14, 2013 at 7:59 a.m., Judge Kamins sends to Hynes an e-mail with the subject line “Re: Who is going to represent you in Manhattan Supreme Court Against Abe George:”

“I’m not even sure the issue will generate much sympathy for George. I am wondering how it will play out in Supreme Court NY County---you never know how a judge will react—could order a hearing—could ask that the segments be played in order to make a decision. Since this all takes time it could push the date back.”

Hynes responds, in relevant part: “In order to breach[sic] the shield against prior restraint doesn’t he have to show irreversible damage to his campaign and how does he show that this goes beyond speculation?”

Judge Kamins responds, “He would have to quote from segments in order to go beyond speculation. Not sure how he would have access to that.”

The second instance in which Judge Kamins offered legal insight to Hynes concerned negative media coverage about KCDA:

- August 12, 2013 at 7:19 a.m.: Judge Kamins receives an e-mail with the subject line “Re: law dept quote for Post” from Hynes. The message reads:

“As you recall this is the quote Saul was given by the Law Department which Saul intentionally omitted. Do you think that it reaches the malicious intention standard as an exception to Times v. Sullivan?”

Judge Kamins responds, “No because of the way he wrote the story. He reports that Mike ‘oversaw’ the training session in which someone instructed the ADAs. He doesn’t say that Mike directed her to say anything in particular. This gives him some wiggle room although the inference is that Mike supported what she said.”

#### **D. Conclusion for Part II**

The above findings implicate various provisions of the Code of Judicial Conduct (the “Code,” contained within the Rules of the Chief Administrative Judge, 22 NYCRR, §§ 100.1-100.5)

- Section 100.5 of the Code provides, in relevant part:

(A)(1) Neither a sitting judge nor a candidate for public election shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve the law, the legal system or the administration of justice. Prohibited activity shall include...

(c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non-judge holder of public office in the exercise of the functions of that office...

(d) participating in any political campaign for an office or permitting his or her name be used in connection with any activity of a political organization...

(g) attending political gatherings.

- Section 100.2 of the Code provides, in relevant part:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

(A) A judge shall...act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary...

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others....

- Section 100.4 of the Code provides:
  - (A) Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:
    - (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
    - (2) detract from the dignity of judicial office; or
    - (3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.<sup>24</sup>

### **III. Conclusion**

As described herein, DOI's investigation has SUBSTANTIATED: (1) possible violations of Chapter 68 of the New York City Charter by Hynes and other senior members of his KCDA staff, including Jerry Schmetterer, Dino Amoroso, Amy Feinstein, Anne Swern and Henna White; (2) possible violations of the Code of Judicial Conduct by Judge Kamins. DOI's investigation also describes possible criminal conduct with respect to the personal services Matz provided to Hynes, which services appear to have been paid for, at least in part, from KCDA state forfeiture funds.

DOI will refer these findings to the appropriate civil and criminal authorities.

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<sup>24</sup> Section 100.4 of the Code provides that a judge shall conduct extra-judicial activities as to minimize the risk of conflict with judicial obligations, and ensure that the judge's activities do not interfere with the proper performance of judicial duties. *See* Section 100.4(A)(3). Section 100.3 of the Code recognizes three types of judicial obligations: adjudicative, administrative, and disciplinary. *See* Section 100.3(B), (C), (D). To the extent that Kamins was, at the relevant times, not presiding over cases but rather an acting Judge in purely an administrative capacity, he nevertheless had an obligation under Section 100.4 to ensure that his extra-judicial activities (including his relationships with Hynes and other KCDA staff members) are not "incompatible with judicial office." *See* Code Section 100.4(3).

**ADMINISTRATOR'S COMPLAINT**

**EXHIBIT 2**

**In the Matter of:** Barry Kamins  
Justice of the Supreme Court  
Second Judicial District (Kings County)

**Complaint # 2014/N-0384**

**Statutory Authorization**

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

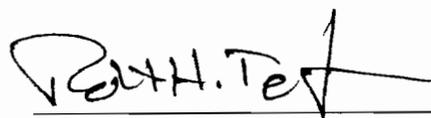
This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

**Complaint**

Based upon information provided to the Commission by the New York City Department of Investigation, it is alleged (1) that Judge Kamins advised, assisted and otherwise participated in Charles J. Hynes's 2013 campaign for District Attorney of Kings County, (2) that Judge Kamins engaged in improper *ex parte* communications with Mr. Hynes, individuals employed by the office of the District Attorney and others regarding pending matters, including a lawsuit by the defendant in *People v. Jabbar Collins* and a lawsuit challenging the televising of activities in the office of the District Attorney and (3) that Judge Kamins advised and assisted Mr. Hynes with respect to managing the office of the District Attorney, including developing strategies on how to respond to criticism of prosecutions that purportedly resulted in wrongful convictions.

New York, New York

Date Signed: May 30, 2014



**Robert H. Tembeckjian, Administrator**

Authorized on May 30, 2014