OIG | OFFICE of the INSPECTOR GENERAL

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The Department Entered Into a Settlement Agreement Allowing a Correctional Administrator to Return to Work Despite Strong Evidence the Administrator Engaged in Serious Misconduct, Including Sexual Harassment, Racism, and Intimidation

The Office of the Inspector General (the OIG) is responsible for, among other things, monitoring the California Department of Corrections and Rehabilitation's (the department) staff complaint process, internal investigations, and employee disciplinary process. Under California Penal Code sections 6126 and 6133, the OIG reports annually on the staff complaint process and semiannually on its monitoring of internal investigations and the employee disciplinary process. However, in some cases, when there are compelling reasons, the OIG may issue a *Sentinel Case* when it has determined that the department's handling of a case was unusually poor and involved serious errors, even after the department had an opportunity to address the harm.

This Sentinel Case, Nº 24–01, involves a correctional administrator (administrator) who allegedly made multiple derogatory and obscene comments and engaged in behaviors that violated the department's Equal Employment Opportunity (EEO) and sexual harassment policies. The administrator also attempted to solicit information that concerned EEO complaints filed against him and intimidated a manager whom he supervised after the manager's colleague had reported the administrator's alleged misconduct. The hiring authority dismissed the administrator. However, the department then entered into a settlement agreement with the administrator demoting him to a correctional officer position and suspending him for 11 months without sufficient justification.

The Department Determined That the Correctional Administrator Made Multiple Sexist and Racist Comments to Subordinates and Attempted to Intimidate Them Even After the Department Reassigned Him

The modern workplace should be a safe environment in which employees can labor without fear of harassment, bigotry, or retaliation. Unfortunately, this was not the case for a situation that prevailed within a particular area of the department. An administrator's subordinates found little if any respite from his disturbing behavior. Between April 2022 and April 2023, this administrator held a chief position in a specialized unit within the department, where he directly supervised a manager, who was serving a probationary period. During this time, the administrator engaged in a pattern of egregious harassment. The administrator directed many inappropriate comments toward the manager.[1] He also directed inappropriate comments toward a Staff Services Analyst. The administrator made some of the comments using his State-issued mobile phone and did so outside normal business hours. The misconduct included sexual harassment and racism and, perhaps worst of all, the administrator attempted to intimidate the manager into silence.

The administrator made numerous abhorrent sexual comments to the manager while he supervised her and even after he no longer supervised her.

1. The following description of the administrator's misconduct includes a summary of allegations the department sustained or alleged in the dismissal actions served on the administrator.

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For example, on one occasion, the administrator commented that he was able to see the manager's underwear through her pants. On another occasion, he called the manager on her personal phone and told her to save the phone number he was calling from in the event that he asked her for a photograph of her vagina, reminding her that he could fail her on probation. On yet another occasion, he sent her a text message and told her to save the phone number under "Daddy." At one point, he made a reference to his penis by telling the manager that he was "peeing" and that because his physician had told him that he "can't lift heavy things," he would require her assistance next time.

One night at 8:00 p.m., the administrator again called the manager on her personal phone. The manager had been traveling in a vehicle with a female friend, who could also hear the comments. The administrator stated that he had been drinking and questioned why the manager was working on a Friday night. He told the manager that he "owned" her because she was still on probation and warned that she had "better do what [he said]." While still on the phone, the manager stated that she was trying to park the vehicle, but that the parking spaces were too tight. The administrator made moaning sounds and responded, "I bet that's what your boyfriend says" in a crude reference to sexual relations. On other occasions, the administrator made racial comments about the manager's boyfriend, including telling her that she "loves Black guys." He told her he saw a "homeless Black guy" and asked whether that was her "boyfriend." The administrator also referred to the manager's boyfriend as a "thug" and a "deadbeat." In March 2023, the manager told the administrator that she was suffering from a kidney stone. The administrator responded that the manager should advise her boyfriend to stop "being so dirty so he doesn't give [her] all kinds of nasty bladder and kidney infections."

Over dinner one night, the manager confided in a colleague and the colleague's husband, and related that her administrator had been harassing her. The colleague requested that the State of California's Office of Civil Rights open an EEO case. However, on February 24, 2023, the manager requested that the complaint be withdrawn. Therefore, no action was taken at that time. In fact, on May 1, 2023, the administrator was assigned out of class as the acting chief of another unit. Nevertheless, the harassment continued. On May 24, 2023, the administrator called the manager and told her he was "not [her] boss anymore" and that if she "thought it was bad before," his behavior toward her would intensify because he was "not in [her] chain of command." He also told her to tell her boyfriend to "hurry up and come so that she could come," meaning to have an orgasm.

The administrator's inappropriate behavior was not directed at only the manager. According to the Office of Internal Affairs' investigative report, the administrator had also made a joke to a Staff Services Analyst implying that her former workplace had a sexually explicit name. On another occasion, he asked this analyst to lift up her shirt to show him a tattoo. He also texted her that he needed someone loyal, a "ride or die," and asked whether she wanted a "ride to the top," implying that he would reward her loyalty with career advancement. He also asked, "Do you know who I am?" and asked her for her "soul." Another employee reported that the administrator had played music with explicit lyrics that referred to "pimps" and "hoes" and that he referred to himself as the manager's "dad" or "daddy." Moreover, the administrator loudly referred to noncustody staff as "worthless," which he did not deny when later questioned by the Office of Internal Affairs.

Finally, on May 26, 2023, the department advised the administrator that he could no longer remain in his new position as the acting chief of the unit to which he had been reassigned because of "allegations from staff about his language," and he would be reassigned again. Thereafter, the administrator began to solicit information about the cause of his reassignment. He called a captain and asked whether anyone was "acting weird." He

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also continued to contact the manager. At first, he apologized for offending her, but in subsequent calls and texts, he informed her that he knew many people in the department who were willing to tell him, "everything." He also reminded her that she owed her position as a manager to him and asked whether she lived in a certain city and whether she drove a certain make and model of car. The implication was clear. The administrator had sought information from the captain, and he was attempting to intimidate the manager to silence her.

The department investigated the matter, and the administrator claimed he did not remember almost the entirety of his inappropriate behavior and blamed it on excessive alcohol consumption. The hiring authority reviewed the investigation, sustained the above-described allegations, and determined dismissal was the appropriate penalty. The department attorneys and the OIG agreed unequivocally. However, the administrator appealed his dismissal to the State Personnel Board.

The Department Should Not Have Settled a Dismissal Case Supported by Overwhelming Evidence Against a Correctional Administrator Accused of Serious Misconduct That Included Sexual Harassment, Racism, and Intimidation

After a prehearing settlement conference to discuss a possible settlement, the department entered into a settlement agreement with the administrator through which the administrator agreed to withdraw his appeal. In exchange, the department agreed to demote the administrator to the position of correctional officer and suspend him for 11 months. The administrator agreed to not have any measurable amount of alcohol in his system while on duty, to submit to alcohol testing, and to participate in an alcohol dependence recovery program. The administrator also agreed that he would refrain from acting as a mentor to other departmental employees and would participate in harassment, discrimination, and retaliation training. The department reserved the right to dismiss the administrator if he tested positive for alcohol, failed to complete the recovery program, or engaged in similar harassment or retaliation behaviors. The department also reserved the right to assign the administrator to a specific prison.

The OIG disagreed with the settlement. Irrefutable evidence existed to support the allegations cited against the administrator, which constituted egregious misconduct—not specifically for a high-ranking administrator, but for any departmental employee. The department could have put forth a variety of evidence—multiple witnesses, text messages, emails, and memoranda—to support the allegations. Moreover, the department's decision to settle the matter undermined the department's zero-tolerance policy regarding sexual harassment and even suggested the administrator's behavior was tolerable enough for the department to continue to employ him as a peace officer.

If these decisions were intended to eliminate any future harm or liability to the department through the settlement, then the settlement was deeply flawed. First, it is dangerous to assume that a manager who engaged in sexual harassment, racism, and intimidation could be trusted to work in a prison environment as a peace officer where disrespectful remarks could easily lead to violence. By demoting the administrator to the position of officer, the department had perhaps, unwittingly, implied twin conceptualizations of the problem: Although the risk the administrator might have again directed this type of adverse behavior toward subordinates remained unacceptable, the risk that he might now direct this same type of behavior toward fellow officers, as well as medical staff and incarcerated people, was somehow acceptable. In effect, the settlement exposed staff and incarcerated people to a person with a demonstrated history of sexual harassment. The term of the settlement that placed the administrator in a prison environment is equally troubling. Although the prison the department ultimately selected was one in which officers wear body-worn cameras, which would presumably document and, therefore, deter any future misconduct, much of the administrator's

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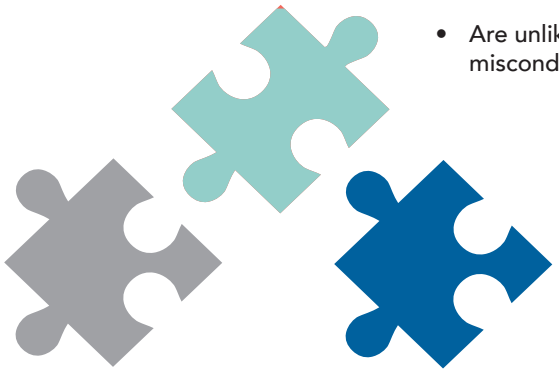
Key Reasons Why the Department Should Not Have Entered Into a Settlement With the Administrator



THE DECISION

- Undermines the department's zero-tolerance policy for sexual harassment.
- Poses the risk of the misconduct continuing.

THE TERMS

- Are unlikely to prevent misconduct from continuing.

THE BASIS

- Is a greeting card message that the department failed to either authenticate or examine for significance.
- Is the erroneous notion that attorney–client privilege exists between the department and a witness.
- Is the unsurprising possibility that the witness might pursue a separate legal action.

Source: The Office of the Inspector General.

misconduct had occurred after hours using a mobile phone. Therefore, the reassignment does nothing to preclude the administrator from continuing such behavior in his new role as an officer.

In addition, the other settlement terms do not sufficiently shield the department from liability. First, the term requiring the administrator to report to duty without alcohol in his system, to regularly be tested for alcohol in his bloodstream, and to complete a treatment program ultimately does not preclude the administrator from continuing to consume alcohol, or to harass and intimidate people. Again, because much of his misconduct occurred over the phone and while off duty, nothing in these terms prevents the administrator from contacting employees at the prison and continuing these adverse behaviors, unbeknown to the department. Furthermore, although the settlement requires the administrator to participate in harassment, discrimination, and retaliation training, the administrator had already received such training, and the training clearly did not deter him from engaging in serious misconduct. As previously noted in this report, at one point, the department had assigned the administrator as an acting chief over a unit. Any employee who has been promoted to such a position would certainly understand the importance of maintaining the highest ethical standards. Finally, although the settlement indicates that the administrator would have been dismissed had he engaged in harassment again, the department had already dismissed him, only to then withdraw the dismissal. The settlement does not guarantee that the department would not withdraw a dismissal again, nor does it prevent the administrator from being promoted to a supervisory role in the future.

The Department Failed to Exercise Due Diligence Before Settling the Case

Soon after the prehearing settlement conference, the administrator provided the department with a photocopy of what his representative purported to be a greeting card signed by the manager, as well as several other employees. It appeared to be a going away card, commonly passed around and exchanged among office mates when a fellow employee leaves, because the other signatories expressed such

sentiments as "good luck" and "I hope you enjoy your new post," and, "I'm sad that you are leaving." The greeting card, which had not been previously mentioned, included a message congratulating the administrator on his new assignment and thanking him for helping to make her a better manager. The greeting card was not dated, and it did not retract, deny, or disprove any of the allegations. As such, nothing conveyed in the greeting card contradicted existing evidence that concerned the administrator's misconduct.

One reason the department supported settling the case was that its staff believed the card somehow jeopardized the manager's credibility or indicated that the manager's testimony might undermine the department's case against the administrator. This was speculative because the department neither examined the authenticity of the card nor considered the manager's possible motives for writing those sentiments, especially given that the manager had already shown reluctance to report or make statements that could lead to punishment for the administrator. For example, the manager had told departmental investigators that she was afraid to file a complaint against the administrator because he was well-connected and had family working in the department. According to the manager, the administrator had also told her that if she ever "went against" him, he would "blackball" her so that she could "never get a job" again with the department. The manager also requested that her complaints be submitted anonymously. It is unsurprising that someone in the manager's position would wish to maintain the appearance of friendly relations.

Nevertheless, the OIG recommended that the department seek to authenticate and have the manager explain what she had written in the greeting card before settling the matter. For example, the department could ask the manager why she wrote the message. Was it because she harbored no ill will toward the administrator? If so, did that mean that what she, or her colleague, had previously reported was untrue? Did the manager thank the administrator and wish him luck because she was afraid that he would retaliate against her if she did not? Did the manager even write the message at all or recognize the writing? Unfortunately, the department did not act on this basic and simple recommendation to examine either the significance or the authenticity of the message conveyed in the greeting card.

The Department Incorrectly Determined That an Attorney–Client Relationship Existed Between Itself and the Manager

After the OIG elevated the department's decision to settle the matter, but before the final decision to settle was made, the department attorney advised the OIG that the manager had retained counsel and that she sought her counsel's representation at the evidentiary hearing. The department attorney expressed concern that the presence of the manager's retained counsel would "destroy" any attorney–client privilege between the department attorney and the manager during the process of preparing her for the evidentiary hearing. Furthermore, the department attorney claimed that the presence of the manager's retained counsel could undermine the department's case by suggesting that the manager may have a financial incentive in testifying against the administrator.

The OIG does not believe that the manager's decision to retain private counsel should have affected the department's decision to settle the matter. The department does not, and did not, have an attorney–client relationship with the manager because she is only a witness. Moreover, the department did not indicate that it had established an attorney–client relationship with the manager for the purpose of the evidentiary hearing. Because the department attorney represented the department in defending its decision to dismiss the administrator, the department attorney's client was the department—not the manager. In fact, the manager was listed as only a witness in the department's prehearing settlement conference statement submitted to the State Personnel Board.

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In addition, the department failed to support its position that there even was an attorney–client relationship between the department attorney and the manager in the first place, let alone why there should be any concern about jeopardizing it. During the witness-preparation process, the department attorney should guide the witness through the hearing process and encourage the witness to testify truthfully. The presence of retained counsel during the witness-preparation process would not undermine the department's case because the interests of the department and the manager are essentially aligned in a disciplinary hearing. A reasonable person would assume that both the department and the manager would seek accountability for the administrator's actions. Furthermore, the manager would be free to discuss the witness-preparation process with her retained counsel, regardless of whether the counsel was present during the process. Finally, the OIG is unconvinced that the presence of retained counsel at the evidentiary hearing would prejudice a fact finder against the department due to potential financial incentives she may have in connection with the outcome of the evidentiary hearing. Because it is unsurprising that someone in the manager's position might pursue a separate legal action regarding the administrator's misconduct, doing so would not likely jeopardize the department's case.

Conclusion

The settlement agreement is completely unwarranted considering the gravity of the misconduct and the harm to the public service. The department had already determined that the administrator's wrongdoing was egregious enough that he should be dismissed. Having worked at the department long enough to reach the high position of an administrator, the dismissed employee had already received all the training and instruction to impress upon him that the kind of behavior he engaged in was unacceptable and intolerable in the modern workplace. In other words, he knew better. And yet the department reinstated him to a job at a prison based on flawed reasoning without exercising even minimal due diligence to determine the authenticity of the evidence offered by the administrator or its significance. The likelihood of recurrence of this unacceptable behavior is very high considering his well-established pattern of sexual misconduct and his repeated attempts to threaten witnesses to conceal his misdeeds. This settlement has exposed the department to significant liability not only for these acts but for likely future incidents.

The OIG recommends that the department avoid settling dismissal cases involving sexual harassment and racist remarks when the evidence to support the dismissal is incontrovertible. We further recommend that the department also consider the evidence, weigh the risks, and conduct due diligence before entering into such agreements. California's taxpayers, departmental employees, and the incarcerated population deserve no less.

On October 2, 2024, prior to publication, the OIG provided the department with a draft copy of this report and an opportunity to respond with proposed corrections, concerns, and feedback. On October 14, 2024, the department notified the OIG that it "has reviewed and does not have any comments to the draft report, however, may release a formal response once the final report is issued and made public." OIG

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