

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE:           SHELLY SHEVLIN           )           OEIG Case #15-00238

OEIG FINAL REPORT (REDACTED)

Below is an amended final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General, and to Shelly Shevlin at her last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

**FINAL REPORT**

**I. INTRODUCTION**

On January 29, 2015, the OEIG received a complaint alleging that hiring improprieties may have occurred when Illinois Department of Transportation (IDOT) employee Kenneth Sharkey interviewed for a *Rutan*<sup>1</sup>-covered Operations Supervisor position. Specifically, the complaint alleged that *Rutan* interviewers, Shelly Shevlin and [Employee 1], were not free of conflicts of interest when conducting Mr. Sharkey’s interview because they were IDOT employees subordinate to Mr. Sharkey.

IDOT also forwarded this hiring issue to Noelle Brennan, who was appointed as Special Master, on October 24, 2014, by the U.S. District Court for the Northern District of Illinois to investigate and report on employment practices within IDOT. The Special Master is tasked with

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<sup>1</sup> *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 72 (1990).

investigating whether or not IDOT's employment practices violate *Rutan* procedures and guidelines. In a letter dated February 9, 2015, to IDOT [Employee 2], the Special Master concluded that the "subordinate relationship" between Mr. Sharkey and the *Rutan* interviewers who conducted his interview for the Operations Supervisor position, "created an actual and inherent conflict of interest in violation of Administrative Order No. 2 (2009)." The Special Master requested that "IDOT halt [Mr. Sharkey's] hire." Because this issue has been addressed by the Special Master, and Mr. Sharkey did not ultimately retain the Operations Supervisor position, the OEIG will not be addressing this issue.

The OEIG discovered another issue, beyond the subordinate relationship between the interviewees and interviewer, during the course of its investigation. The OEIG discovered that Ms. Shevlin had engaged in political activity in support of Mr. Sharkey's campaign for St. Clair County Board before his Operations Supervisor interview.

The OEIG concludes that Ms. Shevlin's political involvement with Kenneth Sharkey created a conflict of interest when she participated in the *Rutan* interview of Mr. Sharkey, thereby violating Administrative Order No. 2 (2009) and IDOT policy.

## II. INVESTIGATION

### A. Review of Documents Related To Kenneth Sharkey's Interview For The Operations Supervisor Position

The OEIG reviewed the Employment Decision Form for the Operations Supervisor position, which shows that Mr. Sharkey was the number one ranked candidate of seven candidates interviewed. Mr. Sharkey accepted an offer for the Operations Supervisor position in December 2014, but was later transferred back to his Assistant to the Regional Engineer position in March 2015.

Additionally, the OEIG reviewed IDOT's Affidavit of Disclosure for Interviewers (Affidavit of Disclosure) forms related to the interviews for the Operations Supervisor position that occurred on October 8 and 9, 2015. After *Rutan* interviews are conducted, these Affidavits of Disclosure are sent to IDOT's Bureau of Personnel Management along with the other documents related to the interviews. Ms. Shevlin completed an Affidavit of Disclosure prior to conducting the interviews for the Operations Supervisor position and identified all of the candidates, including Mr. Sharkey, as co-workers on the forms and affirmed that she would "remain free of bias" for the interviews.<sup>2</sup>

The OEIG reviewed the District 8 Organizational Chart which reflected that Mr. Sharkey's Assistant to the Regional Engineer position reported to the Regional Engineer and that no positions reported to Mr. Sharkey.

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<sup>2</sup> As the position was only posted internally, all of the candidates were Ms. Shevlin's co-workers.

## **B. Interview of IDOT [Employee 3]**

On May 29, 2015, the OEIG interviewed [Employee 3]. [Employee 3] said that as part of her duties, she oversaw the Interview and Selection Unit within IDOT's Bureau of Personnel Management.

[Employee 3] stated that, as of August 15, 2014, IDOT uses an Affidavit of Disclosure form that all *Rutan* interviewers are required to sign at the start of *Rutan* interviews. According to [Employee 3], the Affidavit of Disclosure requires all *Rutan* interviewers to review the list of candidates before an interview, identify anyone they know, and describe the nature of their relationship to the candidate. The *Rutan* interviewers also certify that they can be impartial and remain free of bias during the interviews. [Employee 3] said that the Affidavits of Disclosure completed and signed by the *Rutan* interviewers were not reviewed by anyone prior to the *Rutan* interviews being conducted, and she had no way to verify that the *Rutan* interviewers were truthful when they completed the forms.

## **C. Interview of IDOT Human Resources Manager and *Rutan* Interviewer Shelly Shevlin**

On August 7, 2015, the OEIG interviewed IDOT Human Resources Manager Shelly Shevlin. Ms. Shevlin said she reported to [Employee 4].

Ms. Shevlin said that, as part of her duties, she provided recommendations to [Employee 4] and the IDOT Bureau of Personnel Management staff in Springfield on whether vacancies should be posted internally or externally when there is no bargaining agreement language dictating how the position is to be posted. Ms. Shevlin said that she recommends posting a position internally when she felt there are qualified IDOT candidates who could apply. Ms. Shevlin said that it is detrimental to employee morale to post a position externally when there are qualified IDOT candidates.

According to Ms. Shevlin, IDOT's Bureau of Personnel Management has to approve *Rutan* interview panels before the interviews occur. Ms. Shevlin said she volunteered to be a *Rutan* interviewer for the October 2014 Operations Supervisor position interviews and that Kenneth Sharkey interviewed for that position. Ms. Shevlin said that she felt it was part of her job duties as Human Resources Manager to conduct the interviews.

Ms. Shevlin said she did not know Mr. Sharkey prior to him working at IDOT. After he began working at IDOT, Ms. Shevlin said that she walked in political parades and distributed literature in support of Mr. Sharkey's campaign for St. Clair County Board. Ms. Shevlin also said that she walked with Mr. Sharkey in parades in support of former Governor Pat Quinn's re-election campaign. Ms. Shevlin said that she could not remember if Mr. Sharkey directly asked her to help with his campaign, but said that he probably asked people generally if they were available to help. Ms. Shevlin said the political activities she and Mr. Sharkey participated in occurred prior to Mr. Sharkey's October 2014 interview for the Operations Supervisor position. Ms. Shevlin said that she believed her supervisor [Employee 4] was aware that she campaigned

for Mr. Sharkey because [Employee 4] walked in the parades as well. Ms. Shevlin said she “didn’t hide” the fact that she supported Mr. Sharkey’s candidacy and campaigned for him. Ms. Shevlin said that on the day of the interviews she signed IDOT’s Affidavit of Disclosure and listed Mr. Sharkey as a co-worker and that if she hadn’t listed him as a co-worker, she would have listed him as a friend.

Ms. Shevlin said she did not feel she had a conflict of interest in connection with evaluating any of the candidates. Ms. Shevlin added that the interview process “has nothing to do with if I know you or not, it’s one hundred percent your response.” Ms. Shevlin said she does not think her political connections to Mr. Sharkey have anything to do with where he placed on the list of the Operations Supervisor candidates. Ms. Shevlin said she had interviewed friends for other IDOT positions before interviewing Mr. Sharkey, and those friends did not get the job.

#### **D. Interview of Former IDOT [Employee 4]**

On October 7, 2015, the OEIG interviewed former IDOT [Employee 4]. [Employee 4] said he directly supervised Human Resources Manager Shelly Shevlin.

[Employee 4] said that Ms. Shevlin conducted interviews for positions such as the Operations Supervisor because it was part of her job duties and because she had years of experience conducting *Rutan* interviews. [Employee 4] described his relationship with Ms. Shevlin as “all professional,” and he never socialized with Ms. Shevlin outside of work. Additionally, [Employee 4] said he does not recall being at the same political events or parades as Ms. Shevlin, but it is possible that they may have walked in the same parades and he did not see her. [Employee 4] said he believes Ms. Shevlin was politically active, although anything he knew about Ms. Shevlin’s political involvement came from hearsay and not directly from anything Ms. Shevlin told him. [Employee 4] said he was not aware of Ms. Shevlin participating in any political events in support of Mr. Sharkey as a political candidate.

#### **E. Interview of Bureau Chief of IDOT’s Bureau of Investigations and Compliance Bruce Harmening**

On March 10, 2016, the OEIG interviewed Bureau Chief of IDOT’s Bureau of Investigations and Compliance Bruce Harmening. Mr. Harmening said that he has known for some time that Mr. Sharkey is active in the Democratic Party and holds an elected position, as it was general knowledge around IDOT. Mr. Harmening said that he did not know that Ms. Shevlin had participated in campaign activities for Mr. Sharkey. Mr. Harmening said that Ms. Shevlin should not have been involved with the interview of Mr. Sharkey because actively working for a campaign would rise to the level of a conflict of interest in violation of Administrative Order No. 2 (2009), and he would consider an interviewer who had campaigned for Mr. Sharkey prior to his interviewing for the Operations Supervisor position to have “an obvious conflict of interest.”

Mr. Harmening stated that, prior to April 13, 2016, *Rutan* interviewers completed an Affidavit of Disclosure which required the *Rutan* interviewer, on the day of the interviews, to self-disclose any knowledge of the candidates and sign the form attesting that he or she could

remain free of bias. Mr. Harmening said that *Rutan* interviewers should fully disclose their relationships with the candidates on the Affidavit of Disclosure. Specific to Ms. Shevlin's Affidavit of Disclosure, Mr. Harmening said that, in his opinion, Ms. Shevlin did not adequately disclose her relationship to Mr. Sharkey by only describing him as a co-worker.

Mr. Harmening noted that this self-disclosure process was flawed because it allowed the person with the potential conflict of interest to determine whether or not a conflict of interest actually existed and did not allow time for that determination to be reviewed by a third party. The OEIG interviewed Mr. Harmening again on April 27, 2016, at which time he identified changes that IDOT has recently implemented to address this issue. Under the new procedure, the Affidavit of Disclosure directs *Rutan* interviewers to disclose any relationship to a candidate that is of a "family, political, financial, or social nature." In addition, the Affidavit of Disclosure is now provided to *Rutan* interviewers five days before the interviews are conducted, along with the list of candidates to be interviewed to allow additional time for the forms to be reviewed within the Bureau of Personnel. According to Mr. Harmening, any forms indicating an interviewer has a familial, political, financial, or social relationship with a candidate will be forwarded to IDOT's Ethics Officer and Chief Counsel.

### III. ANALYSIS

#### A. Shelly Shevlin Violated Administrative Order No. 2 (2009) Based On A Conflict Of Interest When She Conducted The Operations Supervisor Interviews

In *Rutan v. Republican Party of Illinois*, the Supreme Court held that "promotions, transfers, and recalls after layoffs based on political affiliation are an impermissible infringement on the First Amendment rights of public employees [who do not occupy policymaking or confidential positions]."<sup>3</sup> Following the *Rutan* decision, the Office of the Governor issued several Administrative Orders outlining policies and procedures for *Rutan*-covered interviews and hiring. Administrative Order No. 2 (2009) provides that no "interview panel should include, either as interviewers or as technical advisors, any person who is related to, or otherwise would have a conflict of interest in connection with evaluating, any of the applicants for the position."<sup>4</sup>

Ms. Shevlin actively campaigned for Mr. Sharkey to win an elective office. After she campaigned for him, Ms. Shevlin participated in a *Rutan* interview where Mr. Sharkey was a candidate for the position. Ms. Shevlin's disclosure that she knew Mr. Sharkey as a co-worker and assertion that she would "remain free of bias for [the] interview," does little to neutralize the conflict presented by her political connections to Mr. Sharkey. As an initial matter, at the time, the Affidavit of Disclosure was not reviewed by anyone prior to the interviews being conducted. Even if it was, Ms. Shevlin identified Mr. Sharkey merely as a co-worker. It should be noted that the Affidavit of Disclosure did not require any detail to be filled out regarding the type of relationship or give any instruction as to how it should be filled out. Although Ms. Shevlin said that her supervisor was aware of her political connection to Mr. Sharkey, this statement was contradicted by [Employee 4] and, in any event, does not absolve her of her duty to completely

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<sup>3</sup> *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 72 (1990).

<sup>4</sup> Administrative Order No. 2 (2009). B. Interview Panels. Administrative Order No. 2 (2009), does not define a conflict of interest.

disclose the extent of her relationship to Mr. Sharkey on the form that is designed for that purpose.

Ms. Shevlin told the OEIG that her political connection to Mr. Sharkey did not influence how she scored Mr. Sharkey in relation to the other candidates during the interviews. Despite Ms. Shevlin's assurances that she could "remain free of bias" while conducting the interview, the OEIG finds that there was a conflict of interest in Ms. Shevlin evaluating Mr. Sharkey for the Operations Supervisor position after she had actively campaigned on his behalf.

The core purpose of the *Rutan* interview rules is to avoid political considerations in the hiring process. Having a *Rutan* interviewer who has actively campaigned on behalf of one of the candidates for the position strikes at the very heart of the *Rutan* process. It is the very thing the *Rutan* process was designed to avoid. As a *Rutan* certified Human Resources professional who has extensive experience performing *Rutan* interviews, Ms. Shevlin should have recognized that her political connections to Mr. Sharkey would disqualify her from serving on the interview panel. Whether or not those political connections actually influenced Ms. Shevlin's scoring of the candidates is beside the point. She should not have allowed herself to be put into that position. Therefore, the allegation that Ms. Shevlin violated Administrative Order No. 2 (2009) by participating in the *Rutan* interview panel that evaluated Mr. Sharkey for the position of Operations Supervisor is **FOUNDED**.<sup>5</sup>

#### **B. Shelly Shevlin Violated IDOT Policy Based On A Conflict Of Interest When She Conducted The Operations Supervisor Interviews**

Additionally, IDOT employees have a responsibility to "avoid situations involving conflict of interest and the appearance of conflict of interest."<sup>6</sup> IDOT's personnel manual defines a conflict of interest as occurring "when an employee's private interest, usually of a personal, financial or beneficial nature, conflicts with public duties or responsibilities."<sup>7</sup>

Upon learning that Mr. Sharkey was a candidate for the Operations Supervisor position for which she was conducting *Rutan* interviews, Ms. Shevlin should have recused herself from the interviews so as to avoid a conflict of interest. Although Ms. Shevlin told the OEIG she did not see the same concerns the OEIG did with her interviewing someone she had campaigned for in the past, Mr. Harmening described the situation as an "obvious conflict of interest," which Ms. Shevlin had a responsibility to avoid it. Therefore, the allegation that by interviewing Mr. Sharkey for the Operations Supervisor position, Ms. Shevlin failed in her responsibility to avoid situations involving a conflict of interest in violation of IDOT policy is **FOUNDED**.

### **V. RECOMMENDATIONS**

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<sup>5</sup> The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

<sup>6</sup> IDOT Personnel Manual Chapter 15, 15-2.

<sup>7</sup> *Id.*

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

- **FOUNDED** – Ms. Shevlin’s political relationship with Mr. Sharkey and her inclusion on the *Rutan* interview panel that evaluated him for the position of Operations Supervisor created a conflict of interest in violation of Administrative Order No. 2 (2009).
- **FOUNDED** - Ms. Shevlin’s political relationship with Mr. Sharkey and her inclusion on the *Rutan* interview panel that evaluated him for the position of Operations Supervisor created a situation involving a conflict of interest, which Ms. Shevlin failed to avoid in violation of IDOT Policy.

Based upon the evidence, the OEIG recommends that:

IDOT take what action it deems necessary with regard to Shelly Shevlin for her violation of Administrative Order No. 2 (2009) and IDOT Policy.

The OEIG has been informed that IDOT has created a new Affidavit of Disclosure form. The OEIG recommends that IDOT ensure that this new Affidavit of Disclosure form is being used throughout all of the IDOT districts. Furthermore, the OEIG recommends that IDOT review, update and implement new policies and procedures to reflect the proper use of the new Affidavit of Disclosure to ensure that conflicts of interests are appropriately raised and vetted prior to interviews.

No further investigative action is warranted and this case is considered closed.

Date: June 3, 2016

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
607 East Adams, 14<sup>th</sup> Floor  
Springfield, IL 62701

Salome Kiwara-Wilson  
Assistant Inspector General

Melissa Schaefer  
Investigator #162



**Office of Executive Inspector General**  
 for the Agencies of the Illinois Governor  
 www.inspectorgeneral.illinois.gov

**AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY  
 RESPONSE FORM**

Case Number: 15-00238

Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

We will implement some or all of the OEIG recommendations but will require additional time to do so.  
 We will report to OEIG within \*  days from the original return date.  
*See attached letter.*

We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

*[Handwritten Signature]*  
 Signature

BUREAU CHIEF, IDOT  
 Print Agency and Job Title

BRUCE ARMENING  
 Print Name

8-4-16  
 Date





# Illinois Department of Transportation

Office of Finance and Administration / Bureau of Investigations and Compliance  
2300 South Dirksen Parkway / Springfield, Illinois 62764

CONFIDENTIAL

September 2, 2016

Ms. Margaret A. Hickey  
Acting Executive Inspector General  
Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
69 West Washington Street, Suite 3400  
Chicago, Illinois 60602

Re: OEIG Case No. 15-00238

Dear Ms. Hickey:

This letter responds to the Final Report for complaint number 15-00238 which contains a Founded allegation against IDOT employee Shelly Shevlin. The OEIG concluded that Ms. Shevlin's political involvement with Kenneth Sharkey created a conflict of interest when she participated in a *Rutan* interview of Mr. Sharkey, thereby violating Administrative Order No. 2 (2009) and IDOT policy. Your office recommended that IDOT take what action it deems necessary with regard to Ms. Shevlin.

On August 17, 2016, a Pre-Disciplinary Meeting was held and Ms. Shevlin was presented with a Statement of Charges which included the infractions of Failure to Follow Procedures, Unprofessionalism, Conflict of Interest, and Ethics Violations. Ms. Shevlin has submitted a rebuttal to the charges and it is being reviewed to determine whether discipline is appropriate.

Thank you for your assistance concerning this matter. If you have any questions, or if I can be of assistance to you or your staff, please do not hesitate to contact me at 217-558-4617.

Respectfully,

A handwritten signature in black ink, appearing to read 'Bruce Harmening', with a long horizontal line extending to the right.

Bruce Harmening  
Bureau Chief



# Illinois Department of Transportation

Office of Finance and Administration / Bureau of Investigations and Compliance  
2300 South Dirksen Parkway / Springfield, Illinois 62764

CONFIDENTIAL

September 28, 2016

Ms. Margaret A. Hickey  
Acting Executive Inspector General  
Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
69 West Washington Street, Suite 3400  
Chicago, Illinois 60602

Re: OEIG Case No. 15-00238

Dear Ms. Hickey:

This letter responds to the Final Report for complaint number 15-00238 which contains a Founded allegation against IDOT employee Shelly Shevlin. The OEIG concluded that Ms. Shevlin's political involvement with Kenneth Sharkey created a conflict of interest when she participated in a *Rutan* interview of Mr. Sharkey, thereby violating Administrative Order No. 2 (2009) and IDOT policy. Your office recommended that IDOT take what action it deems necessary with regard to Ms. Shevlin.

Ms. Shevlin was discharged effective September 16, 2016.

Thank you for your assistance concerning this matter. If you have any questions, or if I can be of assistance to you or your staff, please do not hesitate to contact me at 217-558-4617.

Respectfully,

A handwritten signature in black ink, appearing to read "Bruce Harmening".

Bruce Harmening  
Bureau Chief

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF  
ILLINIOS

In Re: Shelly Shevlin

)  
) #15-00238  
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Now comes respondent, Shelly Shevlin, and for her public response states as follows:

1. **Ms. Shevlin did not act in a capacity that created a conflict of interest with Mr. Sharkey in violation of Administrative Order No. 2 (2009).**

The OEIG assumed that a political relationship existed prior to her inclusion on a Rutan interview panel. This is not factually accurate. At no point had Ms. Shevlin campaigned for, worked for, or otherwise supported Mr. Sharkey outside of her capacity as a democrat. Any cursory investigation would have revealed this information. However, the OEIG appears to have substantiated their conclusions based on incorrect evidence, suggesting a thorough investigation was not conducted.

Ms. Shevlin concurs with the finding that Mr. Sharkey and Ms. Shevlin knew each other prior to the interview, and an affidavit was submitted prior to interview stating the same. The new Affidavit of Disclosure, as described in the June 3rd finding, would have mandated additional disclosures, however the new Affidavit of Disclosure had not yet been published for use.

Ms. Shevlin conducted over 100 Rutan interviews. Mr. Sharkey's was simply another in a long line of interviews conducted appropriately and without bias by Ms. Shevlin. No conflict of interest existed, nor was created. As such, Ms. Shevlin should be rehired with back pay.

2. **Any dismissal of Ms. Shevlin is a violation of the various holdings in Rutan.**

Unless the State or its agencies concur that a throughout investigation did not take place, Ms. Shevlin's termination appears to be politically motivated. As Ms. Shevlin's conduct did not create a conflict of interest, and therefore did not necessitate avoidance by Ms. Shevlin,

one can only conclude her termination was advanced because of political motivation. Ms. Shevlin's years of excellent and unbiased work have been smeared because she is an active democrat, a direct violation of Rutan.

WHEREFORE, respondent, Shelly Shevlin, humbly requests this response be published in accordance with statute and policy.