

16 August 2018

No reply as of 20 May 2019

Secretary-General
United Nations
New York, NY 10017

Dear Sir,

Attached is a report of possible misconduct against a staff member in the Administrative Law Section, and relates to his conduct in ostensibly representing you in the UN Dispute Tribunal, which has involved breaching the UNDT Code of Conduct.

If legally qualified professional staff of the Administrative Law Section are not held accountable for failing to comply with the standards expected of them under the Code of Conduct, compliance must be considered optional and the Code of Conduct becomes completely pointless.

This has been reported to OIOS through the reporting portal, but both OIOS and the Department of Management are conflicted out of investigating the complaint.

Sincerely



Report of Possible Misconduct

Subject: Mr. Alan Michael Gutman (Administrative Law Section, OHRM.)

Complainant: Mr. Peter A Gallo, Attorney. (Counsel for the Applicant, *Nadeau -v- Secretary-General*)

Date: 16 August 2018

Failure to comply with Staff Regulations & other relevant administrative issuances

Mr. Alan Michael Gutman is a UN staff member employed in the Administrative Law Section, Office of Human Resources Management.

In that capacity, he was appointed Counsel for Respondent in two cases; UNDT/NY/2015/063 and UNDT/NY/2018/007 both brought by UN staff member Yves Nadeau, an investigator in the Office of Internal Oversight Services.

In the course of those cases, and in an attempt to facilitate informal resolution, the presiding Judge, Ebrahim-Carstens J. issued Order 147 (NY/2018) on 19 July 2018. [*Annex 1 attached.*]

This complaint of possible misconduct (or unsatisfactory conduct) is predicated upon a suggestion in an e-mail sent by Mr. Gutman to Counsel for the Applicant on 3 August 2018 at 5:07pm (e-mail #5 on Annex 2 attached) following that Order.

This was not the first time the parties have been encouraged to pursue alternative dispute resolution. The Tribunal has now made the suggestion on no fewer than ten occasions; prior to Order 147 (NY/2018) the Tribunal encouraged the parties to reach a negotiated settlement on 25 April 2018 in the interlocutory judgement *Nadeau* (UNDT/2018/052); and before that on 23 March 2018, in Order 63 (NY/2018); and before that on 14 March 2018 in Order 56(NY/2018); and before that on 13 March 2018 in Order 55(NY/2018); and before that on 8 March 2018 in Order 122 (NY/2018); and before that on 3 March 2018 in Order 48 (NY/2018); and before that on 6 June 2017 in Order 103 (NY/2017); and before that on 13 February 2017 in Order 26(NY/2017) and before that on 2 March 2016 in Order 64 (NY/2016).

If Counsel for the Respondent suffers no sanction or disadvantage for making no effort to enter into any discussions when a case is suspended to allow them to do so - the entire UNDT ‘Code of Conduct for Legal Representatives and litigants in person’ (“the UNDT Code of Conduct”) is optional and completely pointless.

The **UNDT Code of Conduct** states at **Article 4(3)**: “*Legal representatives should encourage and facilitate dialogue between the parties with a view to settling disputes in appropriate cases.*” The Respondent has not, at any time, demonstrated any willingness to discuss or even consider settlement with the Applicant.

The Respondent has had a further ten days since the reporting date in Order 147 (NY/2018), but the Applicant has received no further communication or indications of any willingness to discuss settlement.

There is a demonstrable pattern of managerial behaviour in OIOS/ID to indicate that the Applicant is simply the most recent in a series of OIOS staff members whose careers have been harmed by the malicious actions of senior officials in OIOS/ID and that the Administrative Law Section is complicit in the pursuit of such unethical objectives.

This is evidence of the continuation of a well documented history of a hostile working environment in OIOS/ID, the beneficiaries of which are a clique of individuals who have repeatedly been protected against complaints of misconduct, and have been promoted despite having been responsible for a series of investigative failures, all of which were defended by ALS and settled by the Organization at considerable financial cost.

Motion for Recusal of Counsel for the Respondent

On 21 May 2018, a Motion was filed by the Applicant in *Nadeau -v- Secretary-General* (UNDT case number UNDT/NY/2018/007) for recusal of Mr. Gutman as Counsel for the Respondent for breaches of the UN Staff Regulations and Rules and the UNDT Code of Conduct for colluding with OIOS in knowingly perpetrating a hostile working environment therein. [Annex 3 attached] From that date forward, Mr. Gutman has had a conflict of interests.

Breaches of pertinent legal issuances

Staff Regulation 1.2(b) states: “*Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.*”

Mr. Gutman’s suggestion in his e-mail to Counsel for the Applicant on 3 August 2018 at 5:07pm (e-mail #5 on Annex 2 attached) is an attempt to mislead the Tribunal. It demonstrates a manifest failure to uphold the highest standards of *honesty* and *truthfulness* towards the Tribunal.

The UNDT ‘**Code of Conduct** states at **Article 4 (1)**: “*Legal representatives and litigants in person shall maintain the highest standards of integrity and shall at all times act honestly, candidly, fairly, courteously, in good faith and without regard to external pressures or extraneous considerations.*”

Mr. Gutman’s complicity in OIOS’s refusal to negotiate a settlement with Mr. Nadeau casts doubt on whether he is acting *candidly*, or representing the Secretary-General *in good faith and without regard to external pressures or extraneous considerations.*”

Mr. Gutman previously appeared for the Secretary-General in another case involving another OIOS/ID staff member, Ms. Fatimazohra Nouinou, in which matter the judgement is now in the public domain. [Annex 4 attached] There are significant parallels in the facts – and a common motive – between that cases and the case of *Nadeau*.

Mr. Gutman's actions in the *Nadeau* case cannot be considered in isolation. It is significant that in *Nouinou*, Mr. Gutman was complicit in withholding evidence from the Tribunal, in direct contravention of an Order. (See Annex 4 attached at para 163)

The judgement in that cases also indicates how the current Investigations Director, Mr. Ben Swanson, acted in bad faith by deliberately withholding information from Ms. Nouinou that he was abolishing her post, and the explanation offered for this decision was clearly not credible.

Mr. Gutman was therefore aware of OIOS having acted in bad faith, and should recognise that assurances from Mr. Swanson that there is no longer a hostile working environment in OIOS/ID simply lack credibility following the Tribunal's findings in *Nouinou*. Moreover, it is apparent that OIOS's action towards Mr. Nadeau are yet another iteration of the manner in which individuals in OIOS/ID are treated being a reflection of patronage rather than professionalism.

The **UNDT Code of Conduct** states at **Article 4 (4)**: "*Legal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, subject always to upholding the interests of justice and ethical standards.*"

The interests of OIOS do not appear to be synonymous with the interests of the Secretary-General in *Nadeau*, and Mr. Gutman's obligation – even without the additional factor of allegations of his own wrongdoing – is to act in the best interests of the Secretary-General, not the personal and vindictive interests of specific individuals in OIOS.

Moreover, misrepresenting facts to the Tribunal is not compatible with the *highest standards of professionalism* and is indicative of contempt for *the interests of justice and ethical standards* - particularly in the context of another case involving another OIOS/ID staff member where the parallels to the very recent *Nouinou* judgement are very clear.

Staff Regulation 1.2(m) defines a "conflict of interest" thus:

"A conflict of interest occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization."

Mr. Gutman cannot represent the Secretary-General "with the integrity, independence and impartiality required by (his) status" when his own personal conduct has been called into question. His personal interests, in not being held accountable evading sanction for misconduct or for breaches of the Code of Conduct are such that those *personal interests interfere with the performance of his or her official duties*.

On being made aware of the Motion of 21 May, whether the conflict was *actual or possible*, Ms. Christine Graham, who is Mr. Gutman's Unit Chief was obligated to mitigate that conflict and resolve it "*in favour of the interests of the Organization.*"

It is clear that Ms. Graham took no action; Mr. Gutman has been left in the position of representing the Secretary-General. The Secretary-General's position could have been represented quite satisfactorily (at least at that time) by Ms. Graham simply reassigning the Nadeau case to another ALS staff member.

Witnesses

The evidence of Mr. Gutman's e-mail to Counsel for the Applicant on 3 August 2018 at 5:07pm is attached. (e-mail #5 on Annex 2 attached)

Evidence of Mr. Gutman's complicity in withholding evidence in other cases can be provided from witnesses in other UNDT cases if required.

Attachments

- 1) Order 147 (NY/2018)
- 2) e-mail chain, 3 & 6 Aug 18
- 3) Motion for Recusal of Counsel for the Respondent dated 21 May 2018
- 4) Nouinou UNDT/2018/070

Investigative Restrictions

- **Please note that both OIOS and the Department of Management are conflicted out of involvement in the investigation of this complaint.**