

*State of New Jersey*  
*Office of the Inspector General*

Mary Jane Cooper, Inspector General



**Report of Investigation**

**Professional Services Provider  
Enrollment in PERS**

**December 15, 2009**



State of New Jersey  
OFFICE OF THE INSPECTOR GENERAL  
PO Box 208  
TRENTON NJ 08625-0208

JON S. CORZINE  
Governor

MARY JANE COOPER  
Inspector General

December 15, 2009

Hand delivery

Governor Jon S. Corzine  
Statehouse  
125 W. State Street  
Trenton, New Jersey 08625

Re: Report of Investigation of Professional Service Provider Enrollment in PERS

Dear Governor Corzine:

Enclosed is a copy of the report the Office of the Inspector General (OIG) has prepared concerning its investigation of a professional service provider's potentially inappropriate enrollment in the State Public Employees' Retirement System.

As required by OIG statute, a copy of this report has been sent to Senate President Richard J. Codey, Assembly Speaker Joseph J. Roberts, Michael A. Angelini, Esq., and the Division of Pensions. A confidential draft of this report was provided to your Chief Counsel on December 8, 2009.

I am available to discuss this report with you at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Jane Cooper".

Mary Jane Cooper  
Inspector General of New Jersey

cc: Governor-Elect Christopher J. Christie  
Lieutenant Governor-Elect Kim Guadagno  
Senate President Richard J. Codey  
Assembly Speaker Joseph J. Roberts  
Senator Stephen M. Sweeney  
Assemblywoman Sheila Y. Oliver  
Frederick Beaver, Director, Division of Pensions  
William J. Castner, Jr., Chief Counsel  
Michael A. Angelini, Esq.

# Table of Contents

I. INTRODUCTION.....	1
A. Scope of Investigation.....	1
B. Investigative Process.....	2
C. Standards.....	3
1. Pension and Public Employees Retirement System.....	3
2. Independent Contractor and Employee status.....	5
II. ENTITIES REPORTING ANGELINI’S PAYMENTS TO PENSIONS.....	11
A. East Greenwich Township and Monroe Township Public Defender 1981 - 1983 .....	14
B. Borough of Clayton Municipal Prosecutor .....	15
1. 1983 - 1986 and 1988 - 1991 .....	15
2. 1997 - 2003.....	16
C. Gloucester County Assistant County Counsel 1983-1984.....	18
D. Borough of Oaklyn Solicitor 1989-1990 .....	18
E. Township of West Deptford Solicitor 1986; 1989 – 2008.....	19
F. Borough of Paulsboro Prosecutor 1986; Solicitor 1987 – 2007 .....	23
G. Gloucester County Board of Social Services Assistant Counsel 1987-1997; Chief Counsel 1997 - 2006.....	28
H. South Jersey Transportation Authority Counsel .....	33
1. 1991-1994.....	33
2. 2002 - 2006.....	34
I. Township of Mantua Solicitor 2001 to 2007 .....	42
J. South Jersey Port Corporation Counsel 2003 - 2006.....	47
K. Gloucester County Improvement Authority Solicitor January 2007 - March 2008 .....	52
III. CONCLUSION AND REFERRALS .....	57
IV. RECOMMENDATIONS TO ENHANCE THE DIVISION OF PENSIONS’ REVIEW....	58

## **I. INTRODUCTION**

### **A. Scope of Investigation**

The Office of the Inspector General (OIG) is charged with investigating fraud, waste, abuse, and mismanagement of State funds, and pursuant to Executive Order No. 41 (Governor Richard J. Codey 2005), is further charged with performing assessments of the internal controls at the State Authorities and making recommendations concerning uniform practices and procedures that should be established. In response to E.O. No. 41, OIG reviewed the internal controls in place at the South Jersey Transportation Authority (SJTA). During this review, OIG identified issues concerning SJTA's agreements with outside legal counsel, Michael A. Angelini, Esq., of Angelini, Viniar & Freedman, L.L.P., and his resultant enrollment in the State pension system based on his work for the Authority. In particular, a question arose concerning whether Angelini was, in fact, an employee of the Authority, and thus eligible to enroll in the State pension system, or whether he should instead be considered an independent contractor.

Having identified this issue in conjunction with its review of SJTA, OIG became aware that Angelini had similar payment and pension enrollment arrangements with other government entities. Information supplied by the Division of Pensions and Benefits (Pensions) within the Department of Treasury revealed that at various times since 1981, the following twelve government entities retained Angelini to provide legal services and reported the payments they made to Angelini to the State pension system as salary thereby enabling him to earn pension credits for the work he performed for them: East Greenwich Township; Monroe Township; Clayton Borough; the County of Gloucester; Oaklyn Borough; West Deptford Township; Borough of Paulsboro Township; Gloucester County Board of Social Services; South Jersey

Transportation Authority; Mantua Township; South Jersey Port Corporation; and Gloucester County Improvement Authority.<sup>1</sup> Moreover, Pension records revealed that Angelini was simultaneously retained by more than one of these government entities – as many as seven at once in 2003 – with a total maximum “salary” in one year from multiple entities of just over \$213,000 in 2005.

Since OIG’s review of Angelini’s relationship with SJTA raised questions about the validity of the resulting pension credits awarded to him, OIG undertook a review of Angelini’s relationships with the other entities to determine whether in fact the relationships had the characteristics of employee-employer relationships or independent consultant relationships. OIG found that while these government entities reported his compensation to the State pension system as salaries, evidence indicates a substantial question as to whether he was eligible for those pension credits as well. That evidence is discussed in this report. OIG refers this report to the appropriate government agencies for their review to determine what actions are warranted.

## **B. Investigative Process**

In conducting its review, OIG analyzed documents concerning the governmental entities’ procurement of outside legal services, including but not limited to requests for proposals, professional service contracts, board and committee resolutions, employment records, monthly invoices, meeting agendas and minutes, various memoranda, internal reports, and human resource files. OIG also interviewed in excess of twenty individuals representing the state, county and municipal government entities, including numerous current and former management

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<sup>1</sup> See “Michael Angelini Pension Credit History” attached as Exhibit A.

and staff members. OIG also interviewed Angelini on more than one occasion about his positions with the various entities.

OIG has reviewed the evidence gathered during this investigation and the apparent implications of the evidence with Angelini. Angelini's comments on the evidence are included in this report.

### **C. Standards**

In gathering and analyzing evidence during its investigation, OIG was guided by the law governing enrollment in the State pension system and regulations, both State and federal, which establish the analysis to be used to determine whether a worker is an employee or independent contractor. These are summarized below.

#### **1. Pension and Public Employees Retirement System**

The Public Employee Retirement System (PERS) is a defined benefit plan administered by Pensions. It provides retirement benefits to employees of the State, State authorities, counties, and municipalities.<sup>2</sup> The funds used to pay benefits come from three sources: employer contributions, employee contributions and investment income from those contributions. Pensions is assigned all administrative functions of the retirement system except for investment matters.

During the period of time relevant to this report, a person employed on a "regular basis"<sup>3</sup> in a position covered by Social Security with an annual salary of \$1,500 or more<sup>4</sup> was required to

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<sup>2</sup> Public school teachers, law enforcement, and fire safety personnel are not in this system.

<sup>3</sup> As opposed to a provisional or temporary employee who works less than 12 months of continuous service.

enroll in PERS. Enrollment is generally required as a condition of employment. A representative of the employing government entity must submit to Pensions a certified enrollment application providing the employee's title and annual base salary. Pensions relies upon this certified application when determining whether an application will be approved. Due to the vast number of enrollees, absent a third party question or an anomaly, Pensions does not typically undertake an investigation of the assertions in the application if all of the Pension eligibility requirements have been satisfied. Upon approval by Pensions, the employer and employee are notified of the date that payroll deductions for pension contributions are to commence, the rate and amount of contribution, and any prior deductions that are due if the date of enrollment is retroactive to a date prior to the date of the notice of approval of enrollment.

An approved employee's contribution rate for PERS is currently established by statute at 5.5% of the employee's base salary and thus, the amount of the employee's contribution changes as the base salary changes. Base salary does not include overtime, bonuses, or money an employee receives as an adjustment before retirement. Employees' pension contributions are deducted from their salaries each pay period and reported to Pensions.

Pension rules contemplate that an individual may work for more than one government entity prior to retirement and may hold positions simultaneously. These individuals are deemed "multiple PERS members". An individual who has been or is enrolled in a position that is covered by PERS is required to immediately enroll any additional positions also covered by PERS. Multiple members cannot withdraw or begin to collect retirement benefits until they have retired from or have been terminated from every position covered by PERS.

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<sup>4</sup> N.J.S.A. 43:15A-7(d), effective November 2, 2008, increased the annual salary requirement to \$7,500 or more.

An employee receives pension credit based on the amount of time he works: one month of service for each month a full pension contribution is made. To become vested in PERS, an individual must attain ten years of service credit.<sup>5</sup> Once an individual is vested in PERS, his contributions can remain in the system even if the employee leaves public employment. If the individual continues to work in public service, the employee continues to contribute to the system and gains years of service credit. An employee who is vested, absent some extraordinary circumstances, is generally guaranteed the right to receive a retirement benefit upon reaching 60 years of age. To calculate the employee's pension benefit, the current formula is: years of service divided by 55, multiplied by the final average salary (the average of the employee's three highest paid years). Upon retirement, the Division again relies upon the certifying officer's representation concerning the employee's final salary. Pursuant to Division regulations, if the employee's salary increased by more than a reasonable amount as determined by industry standards, Pensions will automatically refer the matter to external audit for review.

## **2. Independent Contractor and Employee status**

As noted above, an individual is only entitled to enroll in PERS if he is an employee of a covered government entity as opposed to an independent contractor. The Internal Revenue Service (IRS) regulations and guidelines<sup>6</sup> provide that, generally, an employment relationship exists when the person or persons for whom the services are performed have the right to control and direct the individual who performs the services, both with respect to the work to be

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<sup>5</sup> If an individual has a break in service before being vested, Pensions will hold an individual's contribution for a limited amount of time, after which it will return the contributions. If an individual who has taken his contributions returns to public employment, the years of past service can be "re-purchased". The cost is calculated using a formula including the employee's current salary.

<sup>6</sup> See e.g., Internal Revenue Service Revenue Ruling 87-41, attached as Exhibit B.



accomplished as well as the means for achieving this goal. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. Conversely, the IRS regulations and guidelines provide that individuals such as lawyers, physicians and dentists, who are engaged in an independent trade, business or profession and who offer their services to the public, are generally not employees. Moreover, if the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such a relationship exists, it is of no consequence that the employee is designated as a partner, agent, contractor, or the like. Of course, the same is true of an independent contractor relationship.

IRS regulations provide twenty factors to be considered in evaluating whether there is sufficient control present to establish the employer-employee relationship. The degree of importance of each factor varies depending on the occupation and the factual circumstances. Control by an employer over an employee is indicated by, among others, the following factors:

- If the worker is required to comply with other persons' instructions about when, where, and how he is to work.
- If the worker is required to work set hours.
- If the worker must devote substantially full time to the business of the person or persons for whom the services are performed.
- If the work is performed on the premises of the person or persons for whom the services are performed, especially if the work could be done elsewhere.
- Payment by the hour, week, or month, as long as the payment is not just a method to provide an agreed upon lump sum payment.
- If the person for whom the services are performed ordinarily pays the worker's business and/or traveling expenses.

- If the person for whom the services are performed furnishes significant tools, materials, and other equipment.
- If the person for whom the work is performed has the right to discharge the worker.
- If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he wishes without incurring liability.

The following are some of the relevant factors provided by IRS regulations that tend to indicate independent contractor status:

- If the worker can realize a profit or suffer a loss as a result of his services (in addition to the profit or loss ordinarily realized by employees).
- If the worker is free to work when and for whom he chooses.
- If a worker performs more than *de minimus* services for multiple unrelated persons or firms at the same time.
- If the worker makes his or her services available to the general public on a regular and consistent basis.
- If the worker invests in facilities that he uses in performing services that are not typically maintained by employees.

New Jersey Circular Letter no. 97-18-OMB entitled “Worker Status – Employee versus Independent Contractor” also provides guidance concerning the determination of employee or independent contractor status. It provides that the primary criteria to be used in determining whether an individual is to be considered an employee or an independent contractor is “whether the party for whom work is performed has the right to direct and control the way in which the person works, both as to final results and as to the detail of when, where, and how the work is to be done.” It further provides that a person is an independent contractor if self-employed or an employee of a firm, corporation or business. Individuals engaged in the pursuit of an independent trade, business, or profession in which they offer their services to the public are generally considered independent contractors rather than employees.

OIG examined the positions that Angelini held with the government entities that maintained a record of his work for them. The evidence indicates that the positions Angelini held did not have the indicia of a government employee, and instead, the positions appeared to be independent contractor positions. In particular, Angelini did not have the same obligations as employees, was not supervised, and was not provided with the benefits that employees routinely received.

Further, Angelini did not consistently perform all of the duties that were specifically required of the position. Often, attorneys from his law firm handled the work in his stead and also performed other legal work for the government entities suggesting that the entities hired a law firm not an employee.<sup>7</sup> OIG examined the evidence provided to it by the government entities for which Angelini worked and found that in several instances, his associates and partners performed a substantial portion of the functions that he was required to perform. Angelini's failure to perform the work himself and his handing it off to associates in his firm suggests that he did not consider himself an employee but rather an independent contractor – an employer himself – who had the ability to assign functions to his employees and associates and to request that his partners stand in for him.<sup>8</sup> Indeed, Angelini told OIG that while it was important for him as the named town solicitor to attend town meetings, it was not essential that he attend so long as he had a qualified associate that he could send in his place and the town

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<sup>7</sup> The firm's attorneys handling these other matters for the government entities billed the entities thousands of dollars at the firm's hourly rate in addition to the "salaries" the entities paid to Angelini.

<sup>8</sup> Often Angelini had contracts with the governmental entities specifically allowing the firm's attorneys to perform the work assigned to Angelini. For example, the contracts provided that "the professional services as defined herein may be rendered by any qualified attorney-at-law who is a partner or associate of the Law Firm of Angelini, Viniar & Freedman, of which Solicitor [Angelini] is a partner[.]" OIG asked Angelini why the clause was added to his contracts with entities. He claimed that it was to protect the client entity by assuring that he could call upon his associates who could have legal knowledge and skills superior to his own about certain matters. He acknowledged that this clause was likely unnecessary. The clause allowed Angelini to substitute associates and bill the clients at the same rates that the contracts provided for his time. It also allowed the possibility that the associates were doing the work for which Angelini was accumulating pension credits. Angelini told OIG, however, that even if he did not appear at proceedings, such as meetings or hearings, that were required as a condition of his payments, he still may have performed work in preparation for or in response to those proceedings.

officials did not object. Notwithstanding the evidence of Angelini's status as an independent contractor, the evidence that he failed to personally perform the work and sent another attorney to stand in for him also suggests that he is not deserving of pension credits associated with the work.

While the specific conditions of each of Angelini's positions differed in some respects – the details of each position are discussed below – the great weight of the evidence gathered during OIG's investigation suggests that Angelini served as an independent contractor rather than an employee. In an effort to dispute this evidence, Angelini pointed out that an entity could indicate that it did not want a particular associate from his firm working on its matter, and he attempted to use that as evidence that he, therefore, was an entity's employee and his firm's attorneys were entity employees as well. He acknowledged, however, that this was the case in every attorney-client relationship and that the client's ability to indicate dissatisfaction with a particular associate did not make the law firm an employee of the client instead of an independent contractor.

Further indication that Angelini was not a government employee but an independent consultant is that he simultaneously held multiple positions, ranging from three to seven government entities at the same time. While doing so, Angelini's primary occupation was as a partner in his own law firm where he had an office, engaged in the firm's business, solicited clients for the firm, invoiced hours worked for the firm, directed staff, and was responsible for the firm's operations and management. The firm made his and its services available to the general public at the same time Angelini purported to be an employee of multiple government entities. Through its website, the firm advertised its and Angelini's availability to handle

numerous legal matters, including but not limited to estate and trust matters, real estate transactions, family law, criminal defense, and business formations, for individual, corporate, and government clients. Angelini's specific areas of concentration were advertised as including government law and personal injury, civil, and commercial litigation.

Another factor that tends to indicate that Angelini was not a government employee is that, while holding positions with government entities, he did not comply with outside employment reporting requirements for State employees. Individuals who are *employed* by the State and who also have outside employment are required to report their outside employment to the entity's Ethics Liaison Officer to determine whether the outside employment is permissible, including whether it would conflict with the mission or activities of the State entity. Angelini never requested approval from the State Authorities' Ethics Liaison Officers for the other work that he performed for or through his law firm or for any of the other government entities for whom he was simultaneously working. Similarly, with respect to the local government entities for which Angelini worked, OIG was not provided with evidence that indicated he sought or was required to obtain permission from these entities to represent other clients.

Applying these facts to federal and State standards raises a substantial question concerning the propriety of Angelini's enrollment in the Pension system. OIG refers these facts and the following facts particular to each relationship Angelini had with a governmental entity that enrolled him in PERS to Pensions for its determination of whether the pension credits reported were appropriate. OIG also refers these facts herein to other State entities for their review and determination if an action is warranted by them. Finally OIG makes recommendations to enhance Pensions review in the future.

## II. ENTITIES REPORTING ANGELINI'S PAYMENTS TO PENSIONS

Angelini told OIG, and Pension records indicate, that at various times for more than 27 years, Angelini held multiple positions with twelve government entities at State, county and municipal levels of government. During these years, he worked for several government entities at the same time. Each entity certified to Pensions that Angelini was their employee, submitted to PERS an enrollment application on his behalf, and reported his payments to Pensions as salary as if he were an employee. The evidence suggests that some of the government entities agreed to pay a portion of Angelini's firm's legal fees to Angelini through the entities' payroll and report those payments to Pensions at least in part so that Angelini could receive pension credits.

Angelini explained to OIG that soon after graduating from law school<sup>9</sup>, he went into private practice as a sole practitioner and was also hired for a while as an associate in a law firm. A friend began to educate him on the retirement benefits associated with the State pension system that he could earn as the result of working part-time positions for public entities and becoming enrolled in PERS. Angelini told OIG that he learned that in order to "vest" in the system, he was required to have ten years of service in pension eligible jobs in either full-time or part-time positions. He also learned that his retirement benefit would be based on his number of years of service and the average of the three highest years' salary he was paid while he was a contributing member in the system regardless of when those years, the "final average years," occurred. A final year's salary could be a total of salaries earned from more than one PERS eligible job in a given year.

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<sup>9</sup> Angelini told OIG that after graduating from law school, he was hired for a one year law clerkship position working for a Superior Court judge. He was enrolled in PERS for the year, and he paid pension contributions. However, when the year clerkship was completed, Angelini left public employment, was no longer enrolled in PERS, and his pension contributions were returned to him.

Angelini told OIG that the public positions to which he was appointed were often tied to the controlling political party. This and other factors meant that there was no guarantee that he would be reappointed to a position year after year. Angelini told OIG that because of the uncertainty, he sought appointment to more than one public pension eligible position simultaneously to assure that he would accumulate years of service. He said that he also sought multiple appointments because he never knew which years of service would end up being his highest paid and his final average years.

Angelini told OIG that he relied on his employers' willingness to enroll him in the pension system and the annual statement that he received from Pensions to assure him that his pension credits were accumulating. He also told OIG that some of the positions to which he was appointed and from which he received Pension credits treated the position as an employee position before he was appointed to it. His predecessor's salary was also reported to Pensions.

On the other hand, several of the governmental entities for which Angelini worked did not consider his position an employee position when he or his firm was first retained. Angelini explained to OIG that he suggested to those entities that they might be interested in an arrangement similar to the one he had with other entities that paid a portion of his or his firm's legal fees through the entity's payroll and reported it to Pensions as Angelini's salary. He would therefore receive pension credits for the position. When OIG asked what the benefit to the governmental entity was in entering this arrangement, Angelini said that the entity received low-cost legal work. In effect, Angelini told OIG that he offered the entity a reduced rate in return for pension credits.

Angelini believes that many other attorneys<sup>10</sup> and other service providers have engaged in similar fee payment arrangements, that these arrangements were well known and not kept secret, and that he was not aware of any regulation against them. He believes that neither he nor others should lose pension credits or benefits because some or all of their legal fees were paid as salary and they therefore received pension credits as a result of providing professional services to public entities.

Angelini has worked for public entities as an attorney – public defender, prosecutor, counsel, solicitor – from 1981 to the present. On January 1, 2008, N.J.S.A. 43:15A-7.2 became effective making it clear that a person who provides services under a professional services contract is ineligible for membership in PERS. Angelini told OIG that in his view, rather than clarifying prior law, this statute changed prior law, suggesting that the Legislature had previously intended that professional services providers were eligible for PERS membership regardless of the true nature of the relationship between the providers and the entity – employee or independent contractor.

Notwithstanding what the new law may have meant to his past positions, it was clear to Angelini that going forward, he was ineligible for pension credits for the professional services he was providing to government entities. At that point, he decided that it made sense for him to apply for retirement benefits and he did.<sup>11</sup> Based on his years of service and his three final years

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<sup>10</sup> Angelini provided names of individuals whom he believes provided legal services to government entities under arrangements similar to the arrangements he used to obtain pension credits. OIG has provided those names to Pensions for its review.

<sup>11</sup> Angelini told OIG that at that point, some of his relationships with governmental entities ended. He said that those that continued to use his services continued to pay him through their payrolls but without pension contributions. He said that he continued this arrangement because of the other benefits of this form of payment: a W-2 with tax payments made regularly and regular paychecks and not having to wait for payments from a partnership capital account. OIG did not verify his statements in this regard.



of service, his retirement benefits are currently estimated at over \$100,000 per year.<sup>12</sup> This estimate assumes that all credits are allowed but could change if some of credits are disallowed.<sup>13</sup>

Below are details that OIG has been able to ascertain about Angelini's positions with the government entities that reported their payments to him as salary to Pensions.

#### **A. East Greenwich Township and Monroe Township Public Defender 1981 - 1983**

Information supplied by Pensions indicates that Angelini was enrolled in PERS for three years – 1981, 1982, and 1983 – as a result of his work for East Greenwich Township. That entity reported that it paid him a salary of \$1,600, \$1,600 and \$1,596 respectively for each of those years. He was enrolled in PERS for one year – 1983 – by Monroe Township, and Monroe reported to Pensions that Angelini was paid a salary of \$2,004 for that year. (See Appendix A.) Angelini was employed by both municipalities as a Public Defender.

OIG contacted these two municipalities to obtain records of Angelini's service there, but both reported to OIG that because of the amount of time that has elapsed since Angelini worked for them, they were not able to provide OIG with attendance logs or time sheets for court proceedings that Angelini would have been required to attend in his capacity as Public Defender. OIG was advised that, in accord with their record retention policies, the municipalities no longer had the requested documentation.

Therefore, OIG is unable to provide an accounting of Angelini's attendance at court hearings as the Public Defender for East Greenwich or Monroe. OIG is not able to supply

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<sup>12</sup> Angelini told OIG that he chose one of three retirement options that would reduce this payment during his lifetime but would continue it during the lifetime, of his surviving spouse.

<sup>13</sup> OIG understands that if credits are disallowed, Angelini's contributions would be returned to him.

information other than Angelini's own statements that the positions were part-time employment, he was paid a salary, and he did the work himself unless he was on vacation or otherwise unavailable. In that case, he would ask another public defender to stand in for him. Angelini told OIG that he recalled that he was an associate in a law firm in those years, but believes he left the firm in 1983.

## **B. Borough of Clayton Municipal Prosecutor**

### **1. 1983 - 1986 and 1988 - 1991**

Angelini told OIG that he obtained a position as the Municipal Prosecutor for the Borough of Clayton from 1983 through 1986. The Borough reported to PERS that it paid him a salary of \$4,800; \$4,800; \$5,728; and \$4,432, respectively, for those four those years. (See Appendix A.) Angelini told OIG that there was a change of political leadership, and he was not reappointed to the position in 1987. Angelini was reappointed Clayton Municipal Prosecutor from 1988 through 1991. The Borough reported to PERS that it paid him a salary of \$2,214; \$4,602; \$4,932; and \$5,228, respectively, for those four years. (See Appendix A.)

Borough representatives told OIG that because of the passage of time, they had not maintained attendance logs that would reveal whether Angelini had personally attended the court proceedings. The only evidence OIG is able to supply in that regard is Angelini's statement that he attended the proceedings and only relied on others to fill in for him if he was on vacation or had a scheduling conflict. In 1987, Angelini formed his law firm, and in 1989, the firm

expanded. In these early years and going forward, Angelini could have relied on members of his firm to stand in for him as the record shows he did in later years.<sup>14</sup>

## **2. 1997 - 2003**

Pension records indicate that Angelini was again appointed Clayton Borough Prosecutor for the years 1997 through 2003. For these years, the Borough reported to Pensions that Angelini was paid a “salary” starting at \$6,576 and increasing to \$7,964 by 2003.

Angelini told OIG that he took the position in Clayton not only because of the pension benefits but also because he liked being a prosecutor. Records supplied to OIG by Clayton Borough indicate, however, that from 1999 through 2003, Angelini did not regularly attend court sessions. Clayton Borough maintained “Logs of Proceedings” and electronic transcripts of proceedings that identify the prosecutor who attended 92 of the 114 municipal court proceedings between 1999 and 2003.<sup>15</sup> Based on these records, Angelini appeared in court as the prosecutor only two times during those years, and the bulk of the proceedings were attended by associates from his firm.<sup>16</sup> A prosecutor could not be identified from Clayton Borough records for 22 proceedings (13 in 1999; 6 in 2000; 2 in 2002; and 1 in 2003). Even assuming that Angelini was the prosecutor at all 22 of those proceedings, he would have appeared in municipal court only 24 of the 114 times. Moreover, as is demonstrated in the following list, even if Angelini is assumed to have attended those 22 proceedings, because of when those proceedings occurred, it would have only boosted his attendance to over 50% in one year and 25% in another:

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<sup>14</sup> Angelini told OIG that it was not necessary for an attorney to be sworn as a municipal prosecutor, and he could ask any licensed attorney to stand in him.

<sup>15</sup> The Borough was unable to provide OIG with copies of attendance logs or other documentation of attendance for 1983 through 1986, 1988 through 1991, 1997, and 1998.

<sup>16</sup> In seven cases, coverage was provided by attorneys who were not members of Angelini’s firm.

- 1999: 23 hearings - Angelini prosecutor at 2, associates named at 8, attendance records inconclusive for 13;
- 2000: 23 hearings - Angelini prosecutor at 0, associates named at 17, attendance records inconclusive for 6;
- 2001: 21 hearings - Angelini prosecutor at 0, associates named at 19, attendance records inconclusive at 2;
- 2002: 23 hearings - Angelini prosecutor at 0, associates named at 23, attendance records inconclusive for 0;
- 2003: 24 hearings - Angelini prosecutor at 0, associates named at 23, attendance records inconclusive for 1.

Thus, this evidence suggests that Angelini did not perform a substantial amount of the work of the Clayton Municipal Prosecutor during the years from 1999 through 2003, and a great deal of the work was performed by his associates.

Angelini acknowledged to OIG that particularly in the later years, he did not attend Clayton Municipal Court proceedings frequently and said that the Clayton attendance records were probably correct. He said that he had wanted to give his associates court experience and the entity, Clayton Borough, did not object to his sending his associates to court in his stead.

When asked whether his failure to appear in court should indicate that he should not receive pension credits if Pensions should determine that in this position he was otherwise eligible for them, Angelini gave several reasons why he believed he should still receive the credits. He said that although not documented and difficult to prove, since it was several years in the past, he may have done case preparation such as talking to defense attorneys and preparing witnesses, even when he was not the one who would attend the municipal court proceedings and question the witnesses. He disagreed that this should have any bearing on whether he was considered an

independent contractor or an employee. Angelini told OIG that, in any event, he did not believe that PERS regulations required that he personally do the work in order for him to obtain the pension credits associated with work. He believed that since his name was on the contract and he was the one receiving payment, he was the one who should have received the pension credits regardless of who actually did the work.

### **C. Gloucester County Assistant County Counsel 1983-1984**

In 1983 and 1984, Angelini was appointed Assistant County Counsel for Gloucester County. The County reported that he was paid \$17,496 and \$21,000, respectively, for this position. A Gloucester County representative reported to OIG that the County was unable to supply records of whether Angelini met the attendance requirements of the position. Therefore, OIG's only evidence of Angelini's conformance with attendance requirements for the position is Angelini's statement to OIG that he performed the requirements for the position himself. The evidence gathered during OIG's investigation indicates that at the time Angelini was Gloucester County Assistant County Counsel, he was a sole practitioner.

### **D. Borough of Oaklyn Solicitor 1989-1990**

Angelini also served for two years as the Borough Solicitor for the Borough of Oaklyn. The Borough reported to Pensions that it paid Angelini a salary of \$2,002 for 1989 and \$2,000 for 1990. By this time, Angelini had formed and expanded his private law partnership. The Borough was unable to provide OIG with relevant records of Angelini's requirements for the position and his performance of those requirements. Therefore, OIG's only evidence in this

regard is Angelini's general statement that he performed the position requirements himself. Angelini told OIG that he was able to invoice Oaklyn for work beyond the "salary" requirement.

#### **E. Township of West Deptford Solicitor 1986; 1989 – 2008**

Angelini told OIG that the Township of West Deptford is where he has resided for many years. Angelini was initially retained to provide legal services to the Township of West Deptford as its Solicitor in 1986. Angelini held the position for one year, and he was not reappointed until 1989. The Township has retained him as Township Solicitor continuously from 1989 until the present.

Each of the years that Angelini served as Township Solicitor to West Deptford Township, he had a contract with the Township.<sup>17</sup> The contracts supplied by West Deptford Township were essentially the same (with material changes noted below) providing that Angelini was to be paid an annual retainer, "in lieu of any salary". The contracts further noted that Angelini would be paid "for services rendered by him based upon a fee schedule entitled 'Solicitor's Fee Schedule ...' a copy of which is attached ...." The fee schedules spelled out the work covered by the retainer as "general correspondence, telephone calls, letters, and consultations in the course of the year which are not specifically related to any of the matters described in this fee schedule." The fee schedule also provided the various types of work that Angelini was expected to cover and the amounts – either flat rates or hourly rates – that he could charge for the other work not covered by the retainer. The other work included attendance at meetings, drafting resolutions and ordinances, appearances and preparation therefore, other municipal matters, and some

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<sup>17</sup> OIG requested all of the Solicitor contracts going back to 1986, but was told by West Deptford Township officials that they had not retained and could not supply contracts for the years 1993 through 1998. West Deptford Township did supply the Solicitor contracts for the years 1986 through 1992 and 1999 through 2007.

secretarial work. Thus, the contract indicated that the Township Solicitor was not a Township employee but an independent contractor, and the contracts resembled retainer agreements.

For several years, the only changes to the contracts were increases in the amounts of the retainers and fees. Despite the language in the contract that the retainer amounts were “in lieu of salary”, each year Deptford Township reported to Pensions that Angelini was a Township employee and that his retainer amounts *were* “salary.” Angelini’s retainer payments under the contracts as reported to Pensions for these years were as follows:

- \$9,996 in 1986;
- \$10,000 in 1989;
- \$12,000 in 1990 through 1994;
- \$12,480 in 1995;
- \$12,816 in 1996;
- \$36,000 in 1997;
- \$48,000 in 1998;
- \$54,000 in 1999;
- \$60,000 in 2000 and 2001;
- \$65,000 in 2002;
- \$70,000 in 2003;
- \$72,000 in 2004 through 2006; and
- \$84,000 in 2007. (See Appendix A.)

Angelini told OIG that this was his first experience where his retainer was paid to him through the entity’s payroll as salary, and he received pension credits for part of his legal fees.

Angelini said that this arrangement had been in place for his predecessor and was offered to Angelini when first appointed.

Although all of the contracts provided that Angelini would “perform all duties required of a municipal attorney for the Township”, at least as of 1999, the contracts explicitly permitted other attorneys from Angelini’s law firm to also provide all of these services to the Township.<sup>18</sup> More particularly, from at least 1999 and continuing thereafter, the contracts provided, the “professional services as defined herein may be rendered by any qualified attorney-at-law who is a partner or associate of the Law Firm of Angelini, Viniar, & Freedman, of which Solicitor [Angelini] is a partner[.]”

OIG reviewed the law firm’s invoices to West Deptford Township for the years 2003 through 2007<sup>19</sup> and found that the members of the firm had provided the Township with thousands of dollars of legal services. On each invoice, the firm deducted a *pro rata* monthly portion of Angelini’s annual “retainer” and requested payment for the remainder of the invoiced amount. The firm billed the Township the following amounts after deducting Angelini’s “retainer”:

- 2003 - \$106,853.57
- 2004 - \$90,745.85
- 2005 - \$78,275.19
- 2006 - \$100,681.35

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<sup>18</sup> This phrase may have first appeared in one of the contracts not supplied to OIG by West Deptford Township, and thus, may have been in effect as early as 1992. This contract also contained new clauses indicating that the Township Solicitor would comply with certain requirements of State law, and these clauses also may have first appeared in the contracts not supplied by West Deptford.

<sup>19</sup> In response to OIG request for invoices, West Deptford Township told OIG that in accord with its records retention policy, it only maintained invoices going back to 2003.



- 2007 - \$138,257.06

The firm received its payment directly from the Township's general reimbursement account while Angelini was paid separately through the Township's payroll system. This evidence tends to indicate that the Township retained a law firm to represent it rather than hiring an employee attorney and the billing method was an accommodation to Angelini so that he could obtain pension credits.

The West Deptford contracts allowed and the invoices indicate that Angelini's associates may have performed many of the services for which the retainer was paid and for which he obtained pension credit. Although the invoices detailed the legal services performed by the firm, the attorneys providing the services, and the time the attorneys spent on each task, the invoices do not break down the dollar amount of each attorney's services. According to the contracts, Angelini and his associates charged West Deptford Township the same hourly rate for each task. The deduction of the retainer amount is not allotted to any particular services or assigned to services associated with the retainer as required by the contract. It is merely deducted from the final invoiced amount for attorney services. The work for which Angelini was paid a retainer – the amount reported to Pensions as his "salary" – may actually have been performed by other lawyers at Angelini's firm. It would be extremely difficult for Angelini to prove that he did the work for which he received pension credits. Further, it would have been difficult for him to justify the retainer payments and thus the attendant pension credits.

In addition to the contract arrangement and the invoicing arrangement, other evidence gathered during OIG's investigation indicates that Angelini was not an employee of West Deptford Township and that he was an independent contractor. For instance, OIG's

investigation revealed that many conditions of Angelini's work were inconsistent with an employer/employee relationship. Angelini was free from supervision or regular involvement with the Township as it did not assign him an office; provide him with office equipment (e.g., computer, telephone, etc.); conduct performance evaluations; provide him with business cards or municipal identification credentials; or require him to prepare periodic time sheets or work a set number of hours. Also, Angelini did not receive the benefits ordinarily received by employees as he was not allowed to accrue leave time (vacation, sick or holiday) and was not provided health benefits.

OIG found additional evidence of Angelini's independent contractor status in his contracts with the Township of West Deptford. In addition to specific provisions found in the contracts, each of these contracts was for professional services and was awarded pursuant to the Local Public Contracts Law. This further calls into question Angelini's status as a pension-eligible employee as individuals hired to provide professional services are typically considered independent contractors.

#### **F. Borough of Paulsboro Prosecutor 1986; Solicitor 1987 – 2007**

In 1986, the Borough of Paulsboro hired Angelini to serve as its Municipal Prosecutor. He was paid \$4,848 and this payment was reported to Pensions. Beginning in 1987, the same year Angelini formed a law partnership, Angelini was hired to serve as Paulsboro's Borough Solicitor.<sup>20</sup> He served as Paulsboro's Solicitor from 1987 until the present. However, the

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<sup>20</sup> Contracts and resolutions refer to Angelini's position as "Borough Attorney." Other documents, including the Borough's solicitation of bids for this position and the municipal salary ordinances refer to the position as "Borough Solicitor."

Borough did not make payments to him as an employee, and he was not enrolled in PERS by Paulsboro for this position until 1995.

There is some indication in Paulsboro's records that the Solicitor's position was added to the Borough's salary ordinance in 1995, but Paulsboro's records do not provide the reason for the change in status. However, some indication about the reason for the change can be found in statements Angelini made to OIG about an arrangement he initiated with some entities. This arrangement was similar to arrangements that Angelini already had in place with other entities at the time.<sup>21</sup> Angelini said that either Paulsboro officials approached him at the time about cost savings and he offered this arrangement – paying his firm's retainer to Angelini through Paulsboro's payroll – as a solution, or he brought it up to them unsolicited as a cost saving measure Paulsboro might want to consider. He explained that it benefitted him because he obtained pension credits and it benefitted Paulsboro because under the retainer, he would provide Paulsboro low cost legal work.

A contract memorialized the Paulsboro payment arrangement that changed in 1995. In exchange for the retainer/"salary"<sup>22</sup>, the contract required Angelini to attend two Borough Council meetings per month and provide legal advice as necessary at these meetings. Just as in the retainer/"salary" arrangements that Angelini had with other entities, the firm's "retainer" was to be paid as salary directly to Angelini rather than to the law firm and reported to Pensions as Angelini's salary.

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<sup>21</sup> At the time Angelini entered into this arrangement with the Borough of Paulsboro, he had a similar arrangements with West Deptford Township and the South Jersey Transportation Authority, discussed *infra*.

<sup>22</sup> From 2004 through 2007, Angelini's retainer was approximately between \$6,000 and \$7,000 per year. As explained *infra*, in 2007, Angelini received only \$1,748, for the period ending March 31, 2007, because the Borough altered its compensation arrangement with Angelini and no longer paid him as an employee. Instead, commencing April 1, 2007, the Borough paid him an hourly rate, as a vendor/independent contractor.

OIG was told by Borough personnel, however, that Angelini had not attended the two required monthly council meetings in recent years and had instead sent associates from his firm in his place. OIG reviewed attendance records for those Borough meetings that Angelini was required to attend for those years Angelini's salary was reported to Pensions as salary: 1995 through 2006. According to Borough records, there were 325 meetings that Angelini was required to have attended; Angelini attended 68 of those meetings; his associates attended 71 of those meetings; and Borough records do not indicate whether there was a Solicitor present at the remainder of the meetings.

The evidence indicates that Paulsboro reported to Pensions that Angelini received his full "salary"/retainer from Paulsboro throughout the years of this agreement notwithstanding the fact that other attorneys from his firm performed a substantial portion of his required duties. Angelini's retainer/"salary" reported to Pensions for the years he was enrolled as the Paulsboro Solicitor was:

- \$4,725 in 1995
- \$4,961 in 1996
- \$4,960 in 1997
- \$5,562 in 1998
- \$5,580 in 1999
- \$5,804 in 2000
- \$6,007 in 2001
- \$6,217 in 2002
- \$6,466 in 2003

- \$6,723 in 2004
- \$6,994 in 2005
- \$6,992 in 2006
- \$1,748 in 2007 (See Appendix A.)

Although Angelini's contracts with Paulsboro also provided that he would "perform all of the duties" of the Borough Solicitor, they allowed that his firm could represent the Borough. The evidence gathered by OIG indicates that, in fact, the firm performed the vast majority of the Solicitor's work. OIG was told by Borough staff that attorneys from the firm, not Angelini, were the Borough's contact persons for multiple matters. In addition to paying a retainer for Angelini's attendance at council meetings, the Borough paid the following to the firm in recent years for legal work performed on behalf of the Borough:

- 2004 - \$65,291.54
- 2005 - \$28,477.89
- 2006 - \$33,938.63
- 2007 - \$55,295.58
- 2008 - \$74,499.30

This flexibility to have the work performed by members of the firm tends to indicate that Angelini was an independent contractor and not an employee.

Other evidence gathered during OIG's investigation indicates that Angelini was not an employee of the Borough of Paulsboro between 1995 and 2007 any more than he was before 1995 when he was paid as an independent contractor for the same services. Instead, the evidence indicates that he was still an independent contractor, but that his payment was treated as salary so

that he could receive pension credits. For instance, OIG's investigation revealed that many conditions of Angelini's work for the Borough of Paulsboro were inconsistent with an employee-employer relationship just as they were before 1995. Angelini was free from supervision by the Borough and it did not assign him an office; provide him with office equipment (e.g., computer, telephone, etc.); conduct performance evaluations; provide him with business cards or municipal identification credentials; or require him to prepare periodic time sheets or work a set number of hours. Moreover, just as before 1995, he did not receive the benefits ordinarily afforded to an employee and he was neither allowed to accrue leave time (vacation, sick, or holiday) nor provided with health benefits.

OIG found additional evidence of Angelini's independent contractor status in his contracts with the Borough of Paulsboro. In addition to specific provisions found in the contracts, each of these contracts was for professional services and was awarded pursuant to the Local Public Contracts Law. This further calls into question Angelini's status as a pension-eligible employee as individuals hired to provide professional services are typically considered independent contractors.

OIG was told by Paulsboro personnel that the Borough re-examined Angelini's status in early 2007 and discussed it as being similar to former Senator Wayne Bryant's "situation". At the time, Bryant was under indictment and being tried in Federal court for a "no show" position and attendant pension fraud. At that point, it was decided that Angelini should no longer be treated an employee and should instead be treated as an independent contractor. Paulsboro subsequently amended its salary ordinance to remove the solicitor position from the list of salaried personnel and stopped reporting Angelini's payments to PERS as salary. Going forward

from this change, Angelini and his firm continued to be paid an hourly rate for the legal services they provided to the Borough.

The Borough's conduct changing Angelini's status is evidence of its officials' recognition that the payment arrangement set up many years before, in 1995, was providing unwarranted pension credits to Angelini. However, when the arrangement was ended, nothing was done to call Pensions' attention to the matter to determine whether any corrective action was required for his almost thirteen years of apparently unwarranted credits. Without the current investigation, the pension credits assigned to Angelini because of Paulsboro's mischaracterization of Angelini as an employee all of those years would have likely gone unchallenged.

**G. Gloucester County Board of Social Services Assistant Counsel 1987-1997; Chief Counsel 1997 - 2006**

Angelini was initially retained to provide legal services to the Gloucester County Board of Social Services (GCBSS) in 1987.<sup>23</sup> When Angelini was first appointed by GCBSS, it was to the position of Assistant County Counsel. According to Board minutes, his duties were to represent the Board in legal matters as required. In 1997, the GCBSS appointed Angelini to the position of its Chief Counsel, and he was continuously retained in this capacity through 2006. According to Board minutes, his responsibilities also increased, and as Chief Counsel, Angelini was required to attend all monthly Board meetings.

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<sup>23</sup> The same year Angelini formed his private law partnership.

According Pensions, GCBSS reported Angelini's compensation for those years he provided legal services to GCBSS, and for which he received pension credits, as follows:

- \$12,897 in 1987
- \$22,949 in 1988
- \$23,979 in 1989
- \$26,497 in 1990
- \$27,000 in 1991
- \$28,271 in 1992
- \$28,352 in 1993 through 1996
- \$30,048 in 1997
- \$37,269 in 1998
- \$38,548 in 1999
- \$39,663 in 2000
- \$41,274 in 2001
- \$50,508 in 2002
- \$60,282 in 2003
- \$62,205 in 2004
- \$64,469 in 2005
- \$66,634 in 2006 (See Appendix A.)

OIG was told by the Executive Director of GCBSS that Angelini's compensation was approved by the Board.<sup>24</sup> Each year the GCBSS reported to Pensions that Angelini was a Board

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<sup>24</sup> According to Angelini, the position was in the salary ordinance, and was based on a percentage of funds designated for salary.



employee and that these payments were “salary.”<sup>25</sup> According to Angelini, all assistant counsel and chief counsel positions were paid through payroll and their salaries were reported to Pensions. However, evidence gathered during OIG’s investigation suggests that Angelini was not an employee of the GCBSS and that he was an independent contractor. For instance, OIG’s investigation revealed that many conditions of Angelini’s work were inconsistent with an employer-employee relationship. Angelini was not supervised and was not assigned an office at GCBSS; he was not provided with office equipment (i.e. computer, telephone, etc.); he did not undergo performance evaluations; he was not provided with GCBSS identification credentials; he did not have a work schedule and was not required to work a set number of hours; and he did not accrue leave (vacation, sick or holiday) time.<sup>26</sup> In addition, Angelini never entered into an employment contract with the GCBSS. The GCBSS Board of Directors never passed a resolution authorizing the GCBSS to hire Angelini or retain him in any manner. During the nearly 20 years Angelini represented the GCBSS, it never created a personnel file for him.

Also indicating that he was not an employee of the GCBSS, the evidence indicates that he did not perform all of the work assigned to him. Instead, by his own admission, he relied on members of his law firm to attend court proceedings for him. In response to questions raised in a news article about the work Angelini performed on behalf of the Board as Assistant County Counsel, Angelini admitted in 1993 correspondence that members of his law firm appeared in court in his stead on a “few occasions”. His admission indicates that Angelini acted like outside

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<sup>25</sup> Angelini provided sworn testimony during a trial concerning legal services obtained by GCBSS. He testified that, at the time he was first retained, the GCBSS had in place a policy to designate its attorneys as employees. Other testimony indicated that the attorney who formerly held this position was also paid a salary that was reported to Pensions.

<sup>26</sup> GCBSS told OIG that Angelini received health benefits from the GCBSS until several years ago and that he stopped receiving these benefits when GCBSS employees were required to contribute to the payment of their health benefits. At that time, Angelini opted to not contribute to his benefits.

counsel and an employer himself, who, although personally retained by the Board to represent it, believed that it was appropriate to assign his associates to stand in for him in court.

OIG interviewed the GCBSS Executive Director and reviewed records provided by GCBSS and found that Angelini's law firm performed a substantial portion of Angelini's work for the agency. OIG reviewed records concerning GCBSS Board meetings that Angelini was required to attend and found that from 1997 through and including 2006, the Board conducted 120 monthly meetings. Of these, Angelini attended 79 meetings.<sup>27</sup> More particularly, Angelini attended:

1997: 12 meetings

- Angelini attended 11 meetings;
- Attendance records inconclusive at 1 meeting.

1998: 12 meetings

- Angelini attended 9 meetings;
- Associate attended 1 meeting;
- Attendance records inconclusive at 2 meetings.

1999: 12 meetings

- Angelini attended 9 meetings;
- Associates attended 2 meetings;
- Attendance records inconclusive at 1 meeting.

2000: 12 meetings

- Angelini attended 6 meetings;
- Associates attended 4 meetings;
- Attendance records inconclusive at 2 meetings.

2001: 12 meetings

- Angelini attended 7 meetings;
- Associates attended 5 meetings.

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<sup>27</sup> OIG did not include data for the prior years because as Assistant County Counsel, Angelini was not required to attend GCBSS meetings.

2002: 12 meetings

- Angelini attended 7 meetings;
- Associates attended 5 meetings.

2003: 12 meetings

- Angelini attended 8 meetings;
- Associates attended 4 meetings.

2004: 12 meetings

- Angelini attended 8 meetings;
- Associates attended 4 meetings.

2005: 12 meetings

- Angelini attended 6 meetings;
- Associates attended 6 meetings.

2006: 12 meetings

- Angelini attended 8 meetings;
- Associates attended 4 meetings.

Members of his firm attended 35 meetings in Angelini's absence, and according to the records, there was no attorney in attendance at six meetings.

In addition, associates in Angelini's law firm staff regularly performed the legal services assigned to Angelini by GCBSS and continued to appear in court on GCBSS matters. OIG was told by the current GCBSS Executive Director that his staff understood that certain GCBSS matters were assigned by Angelini to his associates and that staff discussed those matters with the assigned law firm associates instead of Angelini. Indeed, in recent sworn trial testimony, Angelini admitted that he had associates at his firm perform or assist with legal research, join him at GCBSS Board meetings, and work on GCBSS litigation files.<sup>28</sup> Angelini likened this to using his paralegals and secretaries. However, this further indicates that he is an independent

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<sup>28</sup> Unlike some of Angelini's other outside counsel relationships, Angelini's firm was not paid an additional hourly rate for the associate's time.

contractor – an employer himself who can call on his own employees to assist him in the performance of the requirements of the work he does for clients.

Noteworthy is that Angelini’s correspondence concerning GCBSS was on Angelini, Viniar & Freedman, LLP letterhead rather than the entity’s letterhead. This further indicates that Angelini represented the GCBSS in his capacity as outside counsel and a partner at the law firm rather than as an employee of the entity.

Despite Angelini’s failure to perform many of the required services himself and despite the indicia that Angelini’s relationship with GCBSS was not an employee-employer relationship, GCBSS reported to Pensions that it paid Angelini his entire compensation as salary for each of the years he had a relationship with the entity.

## **H. South Jersey Transportation Authority Counsel**

### **1. 1991-1994**

Angelini, Viniar & Freedman, L.L.P., served as outside counsel to the South Jersey Transportation Authority (SJTA)<sup>29</sup> from 1991 through 1994. Angelini told OIG that during those four years, he had worked out an arrangement with SJTA enabling him to be paid the firm’s retainer through SJTA’s payroll. SJTA reported those payments to Pensions as if they were salary.

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<sup>29</sup> In 1991, the entity was called the New Jersey Expressway Authority. It was renamed SJTA after merging with the Atlantic County Transportation Authority in 1992/1993. For ease of reference, throughout this report, the entity will be referred to as SJTA.

Angelini told OIG that he recalled that he and his firm were awarded a retainer of \$18,000 per year for each year between 1991 and 1994 to attend SJTA Board meetings and that the firm was paid an hourly rate for additional legal work. Records provided by Pensions reveal that SJTA had reported that it paid Angelini a “salary” of \$16,500 in 1991; \$18,000 in 1992; \$18,000 in 1993; and \$18,000 in 1994. Angelini’s admission to OIG that his firm was hired by SJTA to be outside counsel between 1991 and 1994 and that the retainer was his and the firm’s indicates that the retainer payments should not have been made to him through SJTA’s payroll and that he was not entitled to pension credits for those payments for those years. Nonetheless, Angelini claimed those retainer payments as his own. Angelini told OIG that this was satisfactory with his partners because they in turn did not have to pay him a similar amount of draw from the law firm’s capital account.<sup>30</sup>

## **2. 2002 - 2006**

Angelini’s firm was not re-appointed SJTA outside counsel in 1995. However, his firm was again appointed outside counsel to the SJTA beginning in 2002. SJTA Board resolutions revealed that, beginning in 2002 and continuing through 2006, Angelini, Viniar & Freedman, LLP, was among three law firms hired by SJTA to serve as outside counsel. SJTA records indicate that the SJTA Board approved annual retainers of \$30,000 each for Angelini’s firm and

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<sup>30</sup> OIG did not interview Angelini’s partners or investigate how these payments were disclosed on the firm’s accounts and books.

the two other firms for 2002<sup>31</sup>, 2003, 2004, and 2005. In 2006, the retainer was reduced to \$10,000 each for all three firms.<sup>32</sup>

The SJTA Board resolutions provided that, in return for the retainers, the firms were to provide attendance at SJTA Board and/or Board Committee meetings, prepare as necessary for those meetings, and prepare any required post-meeting work or reports. SJTA records show that the Board and Board Committee meetings usually occurred on two separate days each month. However, in either case, minutes indicate that together they did not usually require a full day of attorney time at SJTA facilities.

SJTA Board resolutions provided that in addition to retainers, the firms would be paid an hourly rate for any additional legal work SJTA required of them. Invoices and other records indicate that in addition to the annual retainer it paid to Angelini's firm, SJTA paid his firm the following amounts for legal services:

- \$61,946 in 2002;
- \$129,540 in 2003;
- \$213,629 in 2004;
- \$176,402 in 2005; and
- \$265,557 in 2006.

Invoices from the law firms, SJTA records, and other evidence indicate that the firms hired by SJTA all billed SJTA in the same manner and were paid by SJTA in essentially the

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<sup>31</sup> Although the SJTA Board resolution reflects approval of a retainer of \$30,000 for Angelini, Viniar & Freedman, LLP, in 2002, SJTA records and Angelini's statements to OIG indicate that the retainer payment for 2002 was only \$15,000. SJTA records do not reflect that the other half of the firm's approved retainer amount – \$15,000 – was paid to Angelini or anyone else that year. Angelini told OIG this was because he was first named Special Counsel and later named General Counsel.

<sup>32</sup> During OIG's review of SJTA, OIG questioned the reasonableness of a \$30,000 retainer for the minimal amount of work required: preparation for and attendance at Board meetings. Shortly thereafter, SJTA changed the retainer amount to \$10,000 for the same work: preparation for and attendance at Board meetings.

same manner for the additional legal work that was not covered by the retainer. The firms submitted monthly invoices at the agreed upon hourly rates, and SJTA paid the firms directly.

However, those documents also indicate that SJTA and the Angelini firm treated the retainers differently. The other firms were paid a lump sum payment at the beginning of the retainer period. On the other hand, SJTA did not pay lump sum retainer amounts directly to Angelini's law firm. Angelini said that he approached SJTA representatives and proposed that he be paid the retainer as a salary. He told OIG that he was able to work out the same payment arrangement with SJTA that he had with the Authority between 1991 and 1994 (and simultaneously with other entities). Thus, SJTA agreed to pay the firm's retainer in a *pro rata* amount to Angelini through SJTA's payroll and report these payments to Pensions as Angelini's salary. Thus, SJTA reported to Pensions that it paid Angelini a salary between 2002 and 2006 as follows:

- 2002 - \$15,000
- 2003 - \$30,000
- 2004 - \$30,000
- 2005 - \$30,000
- 2006 - \$10,000<sup>33</sup> (See Appendix A.)

Of the law firms that were retained by SJTA during this period, this was the only case in which the firm's retainer was paid to a firm's partner through SJTA's payroll system. Attorneys in the other law firms that were hired at the same time that Angelini's firm was and received a retainer for attending Board meetings were not treated as employees. OIG was told by a former SJTA Executive Director that he understood that the arrangement to pay Angelini the firm's

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<sup>33</sup> Although W-2s issued every year after 2002 (when, as described *infra*, Angelini was paid only \$15,000) through 2005 reported that Angelini was paid the full amount of the \$30,000 retainer through the SJTA payroll, SJTA only reported one-half of the amount to Pensions. SJTA was unable to account for the inaccurate reporting.

retainer through SJTA's payroll was done so that Angelini could be enrolled in the State pension system.

Angelini told OIG that the benefit to him from this arrangement was that he would receive Pension credits. When asked what the benefit to SJTA was, Angelini told OIG that the entity would receive low cost legal fees. It was pointed out to Angelini that the other two firms that were appointed at the same time that his firm was were paid the same retainer amount and had to perform the same job requirements for the retainer amounts. Therefore, it did not seem that SJTA was receiving low cost legal fees in return for paying him through its payroll or any other benefit for that matter. Angelini countered that SJTA also received the benefit of paying the retainer over the year rather than in a lump sum at the beginning of the contract. Angelini's response did not take into consideration that added record keeping, employer's contribution to Pensions, and the effect on employees who participated in carrying out this arrangement.

Evidence gathered during OIG's investigation, however, indicates that Angelini was not an SJTA employee but rather, that he was an independent contractor. For instance, OIG's investigation revealed that many conditions of Angelini's work were inconsistent with an employee-employer relationship. OIG found that neither Angelini nor SJTA kept records of the time he spent at SJTA facilities.<sup>34</sup> He kept his own schedule, generally working fewer hours than equaled one full day a month at SJTA facilities, those hours being for the monthly Board meetings and Board Committee meetings. Angelini was not provided paid vacation, holiday, or

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<sup>34</sup> The evidence indicates, however, that in order to process a payroll check, SJTA was required to create and maintain a false record of the amount of time Angelini spent at SJTA facilities. OIG was told that the system would not create a payroll check for an employee who worked less than one day a week. Therefore, SJTA maintained time reports indicating that Angelini was working at SJTA one day a week although all other evidence indicates that he was not at SJTA facilities one day a week and he billed separately for the work he did off-site, not covered by the retainer.



sick time, or other paid time off. If he worked on additional legal work that was required by SJTA but not covered by the retainer, he billed separately for the hours on his firm's invoices.

Other work conditions indicated that Angelini was an independent contractor and not an SJTA employee entitled to pension benefits for the work he performed for SJTA. For instance, Angelini was neither required to report to a supervisor nor did he supervise other SJTA employees. He was not assigned an office, required to report to an SJTA job site, given a job description, provided with office equipment (i.e. computer, telephone, etc.), or required to participate in ethics or other training as SJTA employees were. SJTA neither conducted a performance evaluation for Angelini nor provided him with SJTA identification credentials. Angelini did not receive health benefits from SJTA, and unlike SJTA's actual employees who decline health benefits, he did not receive a cash payment in lieu of these benefits.<sup>35</sup> Thus, the work conditions demonstrate that Angelini was not an SJTA employee who was entitled to employee pension benefits but, rather, that he was an independent contractor.

In 2002, the Board did not have a contract with Angelini's firm. Instead, the record indicates that the firm was retained as Special Counsel to SJTA in 2002 by resolution. The retainer for the year was \$15,000, but the resolution does not reflect specific requirements of the firm in return for the retainer.

The record does reflect, however, that between 2003 and 2006, the firm was retained as General Counsel. The SJTA Board resolutions provide that the \$30,000 retainer (that Angelini claimed as his own) was to be paid for his attendance at Board and Board Committee meetings. Board minutes reflect that of the 42 Board meetings held during those years, Angelini attended

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<sup>35</sup> During the years at issue here, SJTA employees were permitted to waive receipt of SJTA-provided health benefits. Those employees who waived their benefits received a cash payment.

33 and considered it appropriate to send members of his firm in his place to the others. More particularly, Board minutes for the years January 2003 through July 2006 reflect that:

2003: 12 meetings

- Angelini attended 11 meetings;
- Associate attended 1 meeting.

2004: 12 meetings

- Angelini attended 10 meetings;
- Associates attended 2 meetings.

2005: 12 meetings

- Angelini attended 7 meetings;
- Associates attended 5 meetings.<sup>36</sup>

2006: 6 meetings

- Angelini attended 5 meetings;
- Associate attended 1 meeting.<sup>37</sup>

The Board likely considered it appropriate for Angelini to send a partner or a knowledgeable associate to Board meetings since the Board had hired a law firm and understood that the lead partner in the firm or other outside counsel might not always be available due to illness, vacation, or scheduling conflicts. However, Angelini continued to claim – and SJTA continued to pay – the retainer payments (through payroll), with pension deductions, even though the work was done by another person.

OIG interviewed Angelini about the retainer being paid to him through SJTA payroll, instead of through or directly to his firm. Angelini told OIG that at the time he worked out the

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<sup>36</sup> Angelini told OIG that he missed several meetings in 2005 because he underwent surgery that year and was in recovery.

<sup>37</sup> SJTA did not reappoint Angelini's firm in 2006.

arrangement for him to be paid the firm's retainer through the SJTA payroll, he was aware of the pension benefit of the arrangement since he had been in the State pension system before.

Although Angelini claimed that the pension benefit he was receiving was not "the main reason" he requested the 2002 through 2006 arrangement with SJTA, the explanations he provided did not offer a plausible alternative justification for this payment arrangement. For instance, Angelini told OIG that the main reason for the payroll arrangement was so that he could receive the full amount of the retainer without sharing it with his partners or his firm because SJTA was *his* client, not his partners' or the firm's. A variation of this explanation was that by his receiving his share of the partners' distribution of the SJTA fees by this retainer directly from SJTA, his partners would not have to pay him from the firm's capital account. He also said that he had worked out this arrangement because he wanted to receive the money over time rather than in a lump sum payment in order to meet ongoing expenses in case his private practice income was inadequate to meet his bills in a given month. Angelini said that his partners were aware of the arrangement and did not object to it.

As to Angelini's rationale that he received the retainer through the payroll because he wanted to keep the retainer for himself, Angelini acknowledged to OIG that he could have worked out some other arrangement with SJTA and/or his partners that would have enabled him to personally receive the full retainer amount – and to receive it in periodic payments – without having the payments go through the SJTA payroll. Angelini recognized, however, that had an arrangement with his partners been utilized, rather than an arrangement that allowed him to be paid through the SJTA payroll system, he would not have received pension credits. Indeed, Angelini told OIG that he was aware that, while he was paid through the SJTA payroll, he would

be enrolled in the pension system and that at no time did he tell SJTA that he was willing to forego pension credits. Thus, Angelini provided no other plausible explanation for his entering into this arrangement with SJTA, leaving the reasonable conclusion that he had entered into the arrangement with SJTA primarily to provide him pension credit to which he was not otherwise entitled.

Additional evidence indicates that Angelini's relationship with SJTA was not an employee-employer relationship. When in 2002 through 2006, Angelini and his firm were retained by SJTA to be outside counsel, his primary occupation was as a partner in a law firm where he had an office; engaged in the firm's business, solicited clients for the firm, and invoiced untold hours worked for the firm – including hours worked for SJTA for other than attendance at Board meetings; and he supervised firm staff. In addition, between 2002 and 2006, Angelini's other legal work (reported to Pensions) included work as Chief Counsel for Gloucester County Board of Social Services; Solicitor for West Deptford Township; Solicitor for the Borough of Paulsboro; Municipal Prosecutor for the Borough of Clayton; Solicitor for the Township of Mantua (discussed below); and Counsel for South Jersey Port Corporation (discussed below). The evidence therefore indicates that Angelini was an independent contractor working on many matters at the same time for many separate clients and that it is unlikely that any of them would be considered an employee-employer relationship particularly when the evidence indicates that none of these relationships bear the indicia of an employer-employee relationship.

The evidence provided to OIG does not indicate that Angelini felt it necessary to ask permission from the entities for which he was already providing legal services to take on these

new positions to provide simultaneous legal services as he would if he considered any of the entities to be his employers.<sup>38</sup> Angelini acted as if he were independent counsel to each of these entities. Indeed, given that he was providing legal services to so many of them simultaneously, it would appear to be extremely difficult for him to provide those services in any other way and without the assistance of associates and partners in his firm.

### **I. Township of Mantua Solicitor 2001 to 2007**

Records provided to OIG by the Township of Mantua indicate that between 2001 and through 2007, the Township of Mantua entered into contracts with Michael Angelini appointing him Township Solicitor. For the year 2001, the Township agreed to pay Angelini \$100 per hour for all legal work required by the Township. Angelini invoiced the Township for the hours he worked, and the Township paid him for those hours. He was not paid a salary, and he received no pension credits for his work in Mantua Township for 2001.<sup>39</sup>

The 2002 contract between Angelini and Mantua Township appointing him Solicitor directed that Angelini was to be paid \$125 per hour for all legal services performed on behalf of the Township. The contract did not indicate any change in Angelini's responsibilities, nor did it provide that Angelini was to be paid a retainer or a "salary".<sup>40</sup> However, Mantua Township records and Pension records indicate that it was in 2002 that Mantua Township authorities began to treat at least a portion of Angelini's hourly attorney fees as "salary" and pay it to him through

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<sup>38</sup> As a lawyer, he should have performed a conflict check. However, as a State government employee, he would have been *required* to have sought and obtained permission to work for other entities.

<sup>39</sup> Neither Township nor Pension records indicate that Angelini was paid a "salary" through the Township payroll in 2001 (although by 2001, he had begun this practice in other public entities). It further appears that prior Mantua Township solicitors also did not receive a "salary" or "retainer" and instead were paid an hourly rate per invoices.

<sup>40</sup> Prior to 2002, the Mantua Township salary ordinance did not reference a solicitor's salary, but in 2002 the salary ordinance was amended to provide a salary for the Township Solicitor.

Mantua Township's payroll so that he would receive pension credits as a result of his work as an outside attorney for the Township. Pension records indicate that in 2002, Mantua Township paid Angelini \$9,998<sup>41</sup> through its payroll and reported this amount to Pensions as Angelini's "salary".

Angelini told OIG that he recalled that either Mantua's Mayor or Administrator had approached him about lowering legal fees and asked if he would be interested in receiving a salary instead of paying an hourly rate. Angelini agreed to be paid a portion of his firm's legal fees through the Township's payroll instead of an hourly rate to contain its costs. Angelini said that this arrangement was beneficial to him because taxes would be withdrawn from his payments and he would be enrolled in the pension system based on these payments.

Starting in 2003 and continuing through 2007, the Township of Mantua and Angelini documented the payment methodology they had implemented in 2002. Each of those years, the Township entered into a contract with Angelini appointing him Solicitor. According to each contract, the Township agreed to pay Angelini a retainer of \$10,000 for attending regular monthly Township Committee meetings and participating in routine telephone conferences. The contracts also provided that he would be paid an hourly rate for all other legal work required by the Township. In 2003, the hourly rate for additional legal work was raised to \$135; this rate increased to \$145 per hour in 2004; to \$150 in 2005 and 2006, and to \$160 in 2007.

Each year between 2002 and 2007, the Township reported to Pensions that Angelini was a Township employee and that his "salary" was \$10,000. The evidence gathered during OIG's

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<sup>41</sup> Although the amount was not reflected in Angelini's contract, it was reflected in the Township's payroll register, and Angelini received a W-2 reflecting the amount.

investigation indicates that Angelini was not an employee of Mantua Township during those years. Instead, he remained an independent contractor with some of his charges for legal work paid through Mantua's payroll and reported to Pensions as Angelini's salary so that he could receive pension credits while other charges were invoiced. Indeed, OIG's investigation revealed that the conditions of Angelini's work did not change from the first year when he was paid only an hourly rate by invoice to attend meetings and to perform all other legal services.

As with his other public entity outside counsel positions, conditions of Angelini's position with Mantua Township were inconsistent with an employee-employer relationship and were indicative of an outside consultant relationship not entitled to public employee pension credits. For instance, Angelini was free from supervision and was not required to report to a supervisor. Nor did he supervise Township employees. Moreover, he was not given a job description; assigned to work in a Township office; required to report to any Township worksite; provided with office equipment (e.g., computer, telephone, etc.); given performance evaluations; provided with Township identifying business cards or municipal identification credentials; and was not required to prepare periodic time sheets or work a set number of hours. Furthermore, Angelini did not accrue leave time (sick, vacation or holiday) and did not receive health benefits.

In addition, other language in Angelini's contracts with Mantua Township make evident that the Township hired a professional consultant rather than an employee. The contracts specifically permitted his law firm to also handle legal matters, including legal matters that Angelini might have handled under the retainer on behalf of the Township. The contracts provide that the "professional services as defined herein may be rendered by any qualified attorney at law who is a partner or associate of the law firm of Angelini, Viniar & Freedman,

LLP, of which said Township Solicitor [Angelini] is a partner[.]” The firm handled many matters for the Township; firm attorneys other than Angelini served as the Township’s contact persons on a variety of issues; Township staff told OIG that for certain legal matters they would contact associates at the firm, rather than Angelini, when assistance or information was needed; and the firm invoiced the Township thousands of dollars for legal services as allowed by Angelini’s contracts with the Township.

The firm received its payment directly from the Township via its general account for vendor payments. In addition to the annual \$10,000 retainer paid directly to Angelini, Mantua Township provided OIG records showing that the firm was paid the following amounts:

- In 2003 - \$25,359
- In 2004 - \$38,114
- In 2005 - \$51,872
- In 2006 - \$71,282
- In 2007 (January through May) \$31,308

Because Angelini was a partner in his law firm, he may have billed for some of the hours the firm invoiced, and it is likely that he shared<sup>42</sup> in the amounts paid to the firm on those invoices by Mantua Township.

Starting in 2003, Angelini was required to attend Township Committee meetings as a condition of his retainer. For the year 2002, when Angelini attended meetings but attendance was not specifically required by his contracts, he attended approximately half of the meetings (12

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<sup>42</sup> Angelini told OIG that generally these retainer payments were in lieu of his draw from the partner’s capital account. OIG did not investigate whether or not his statement was accurate, but it is reasonable to assume that the firm’s income contributed to the firm’s operating expenses and that he shared in the benefit of having those expenses paid from various sources of firm income.



of 23 in 2002). OIG reviewed the minutes of Mantua Township meetings and found evidence indicating that, beginning in 2003 and continuing through 2007, Angelini attended only 15 of the 109 Township Committee meetings. The minutes were inconclusive about whether there was a Solicitor present at six of the 109 meetings. The minutes report that Angelini attended no more than six of 21 meetings during any of these years; that he attended only one of 21 meetings in 2007; and that he attended no meetings in 2006. The meeting minutes report that attorneys from Angelini's firm attended 117 of the 126 remaining meetings.<sup>43</sup> More particularly, the records show:

2003: 21 meetings

- Angelini attended 5 meetings;
- Associates attended 15 meetings;
- Attendance records inconclusive for 1 meeting.

2004: 21 meetings

- Angelini attended 6 meetings;
- Associates attended 15 meetings.

2005: 20 meetings

- Angelini attended 3 meetings;
- Associates attended 16 meetings;
- No attendance at 1 meeting.

2006: 26 meetings

- Angelini attended 0 meetings;
- Associates attended 22 meetings;
- Attendance records inconclusive for 4 meetings.

2007: 21 meetings

- Angelini attended 1 meeting;
- Associates attended 19 meetings;
- Attendance records inconclusive for 1 meeting.

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<sup>43</sup> Two other attorneys handled the six remaining appearances and there were three recorded absences.

Although the evidence indicates that Angelini did not perform a substantial portion of the work required for the retainer/“salary”, the Township continued to pay the retainer through its payroll and report it as salary to Pensions. As stated above, Angelini told OIG that although it was a requirement under the retainer contract for him to attend meetings and important for him to attend Township Committee meetings as the named Township Solicitor, it was appropriate for him to send a qualified associate in his place as long as the Township officials were satisfied. He also believed that since he was the person named on the contract and the person who was the recipient of the retainer payments, it was appropriate for him to receive the pension credits regardless of who attended the meetings.

OIG found additional evidence of Angelini’s independent contractor status in his contracts with Mantua Township. In addition to specific provisions found in the contracts, each of these contracts was for professional services and was awarded pursuant to the Local Public Contracts Law. This further calls into question Angelini’s status as a pension-eligible employee as individuals hired to provide professional services are typically considered independent contractors.

#### **J. South Jersey Port Corporation Counsel 2003 - 2006**

At its April 30, 2002 meeting, the Board of Directors of the South Jersey Port Corporation (SJPC) appointed Angelini, Viniar & Freedman, LLP, as its General Counsel, with the understanding that the firm would be represented by Michael Angelini. The firm took over all of the legal work of SJPC, and Board Minutes reveal that Angelini began attending Board meetings immediately thereafter and was identified in the minutes as “Port Counsel.” That year,

the law firm billed SJPC \$152,397.75 by way of invoices it submitted for work it had performed on behalf of the Authority, and Angelini received neither a separate retainer nor payments through SJPC's payroll.

SJPC minutes reflect that at the January 23, 2003 SJPC Board meeting, Angelini was appointed General Counsel with a "base salary" of \$30,000 per year. The "salary" was for preparation of Counsel's reports for Board meetings and attendance at Board meetings and was paid to Angelini through SJPC's payroll system. All other legal work was to be billed at an hourly rate, and although the minutes did not mention Angelini's law firm, the firm continued to represent SJPC and invoice for the work. Nothing else about Angelini's work requirements changed because of this Board agreement and, thus, he continued to attend Board meetings as "Port Counsel". This arrangement remained in effect until mid-2006; as such, Angelini was paid \$30,000 each year, through SJPC's payroll system.<sup>44</sup>

The evidence gathered during OIG's investigation reveals that the arrangement to pay Angelini an annual "salary" of \$30,000 was agreed upon so that Angelini could be paid through the SJPC payroll, be reported to Pensions as his salary, and he would receive attendant pension credits. Indeed, in 2003, SJPC was the seventh governmental entity that included Angelini in its payroll system, and his total "salary" from the seven entities for the year, as reported by the entities to Pensions, was just over \$207,000.

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<sup>44</sup> Board records show that, effective July 1, 2006, the Board voted to appoint the firm of Angelini, Viniar & Freedman, LLP, and Angelini to serve as General Counsel but altered the terms of compensation. The Board ceased making payments directly to Angelini through the SJPC payroll system and paid the entire retainer that was owed to the firm. In calendar year 2006, SJPC paid the firm \$160,392.62 and paid Angelini \$15,000 through its payroll (as payment for the first half of 2006, through June 30, 2006). The remainder of the annual \$30,000 retainer, \$15,000, was paid to the firm.

Angelini told OIG that this arrangement had come about at his suggestion. He told OIG that he approached the SJPC Board and suggested to them that the entity might be interested in implementing the arrangement that was in place at some of the other entities for whom he and his firm provided legal services. He explained that the benefit to him would be the pension credits. When asked what the benefits to SJPC would be, Angelini said that the entity would receive a cost savings.

SJPC agreed to pay Angelini \$2,500 per month for preparation for and attendance at monthly board meetings. Angelini told OIG that he believed that this rate was well below market rate. When asked how long the SJPC meetings lasted, Angelini explained that he usually arrived an hour early and the meetings lasted about two hours, although they could last longer. He also said that often an associate accompanied him to the meetings – and the entity received “two attorneys for the price of one.”<sup>45</sup> Angelini did not provide an estimate of how much time *he* spent preparing for the meetings, and since it was not separately billable, it is unlikely that he would have records.<sup>46</sup>

Evidence gathered during OIG’s investigation, however, indicates that Angelini was not an employee of SJPC and that, instead, he was an independent contractor. Importantly, Angelini’s conditions of work indicate that he was not an employee of SJPC during the years that the SJPC paid him through its payroll. Angelini was not required to report to a supervisor, was not assigned his own office, did not undergo training ordinarily required of employees, and was not provided with office equipment (i.e. computer, telephone, etc.). He did not undergo a

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<sup>45</sup> However, only Angelini received pension credits for this work.

<sup>46</sup> OIG did not audit the firm’s invoices to determine whether the other attorney from Angelini, Viniar & Freedman, LLP, was there on other matters, to assist Angelini, or the stand in for Angelini in his absence under the retainer agreement.

performance evaluation and was not eligible for paid vacation, sick, holiday, or other paid time off. He was also not provided any fringe benefits that are routinely available to all employees.

In addition, the evidence gathered during OIG's investigation indicates that Angelini was substantially aided by attorneys from his firm in providing the duties required for his retainer. Although Angelini, Viniar & Freedman, LLP, was not referenced in the 2003 Board records that appointed Angelini General Counsel, the same associate from the firm almost always attended SJPC Board meetings; sometimes attended when Angelini did not; and was also referred to in SJPC Board attendance records as "Port Counsel" whether Angelini was in attendance or not. OIG's review of SJPC Board records confirmed this, as follows:

2003: 12 total meetings

- 3 meetings attended by Angelini (alone);
- 9 meetings attended by Angelini and associate.

2004: 11 total meetings

- 1 meetings attended by Angelini (alone);
- 10 meetings attended by Angelini and associate.

2005: 11 total meetings

- 5 meetings attended by Angelini and associate;
- 6 meetings attended by associate (alone).

2006: 13 total meetings

- 2 meetings attended by Angelini (alone);
- 10 meetings attended by Angelini and associate;
- 1 meeting attended by associate (alone).

SJPC minutes indicate that Angelini did not attend Board meetings for six months from March through August 2005; and only the firm attorney attended those Board meetings as "Port

Counsel”.<sup>47</sup> Angelini told OIG that the entity was satisfied with the arrangement and thus, his failure to do the work should not affect his pension credits. In effect, Angelini would allow the employer to determine pension regulations.

SJPC’s Executive Director during the years Angelini represented the Authority told OIG that the associate did “most of the work for SJPC.” Despite this, SJPC continued to pay Angelini’s “salary” through its payroll and report the “salary” to Pensions as if Angelini were an SJPC employee.

SJPC records reveal that SJPC continued to pay Angelini, Viniar & Freedman, LLP, for the additional legal work that was not covered by the retainer. Those invoices revealed that, in addition to the \$30,000 SJPC paid to Angelini to attend Board meetings and prepare Board reports for those meetings, it paid his law firm the following for additional legal work:

- \$153,470.66 in 2003
- \$176,610.92 in 2004
- \$150,477.55 in 2005
- \$160,392.62 in 2006

The SJPC Executive Director told OIG that the SJPC had not authorized a payment arrangement like Angelini’s for any other person, both before Angelini came to work for the Authority and after he left. Furthermore, before Angelini began to work for the SJPC, there was

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<sup>47</sup> Angelini told OIG that he did not attend as many meetings this year because he had surgery and was recuperating for several months. Angelini also believes that SJPC minutes are likely inaccurate and that he only missed meetings for three months. Angelini acknowledged that he did not attend the March, April, and May meetings but noted that he was recuperating from surgery that occurred on March 1 of that year. Although SJPC records specifically indicate that Angelini did not attend meetings in June, July, and August, and that his associate appeared in his stead, Angelini told OIG that notations in his Lawyer’s Diary do not indicate that his partner attended those meetings, as they usually would if that was the case. Angelini said that the absence of such a notation in his Lawyer’s Diary “in all probability means that [he, Angelini] did in fact attend those meetings.”

no position similar to his at the Authority and the position ceased to exist after the SJPC stopped paying him through its payroll system. There is such no position currently at SJPC.

In mid-2006, SJPC voted to end the method of paying Angelini through its payroll although it continued to retain the firm and him to represent it as outside counsel. This change in the payment relationship but not in the legal representation indicates that there never was an employee-employer relationship between SJPC and Angelini and that the payment arrangement was entered into to provide Angelini with pension credits.

#### **K. Gloucester County Improvement Authority Solicitor January 2007 - March 2008**

The Gloucester County Improvement Authority (GCIA) first retained Angelini to serve as its Solicitor in December 2006. GCIA entered into a contract with him that provided for a two-month term of service (January 1, 2007 through February 28, 2007)<sup>48</sup> for which the Authority would pay a pro-rated annual “salary” of \$46,000. Angelini and the Authority entered into a second contract for February 15, 2007 through March 1, 2008; it provided that Angelini would be paid a pro-rated annual “salary” of \$47,610.

Both years the Authority reported to Pensions that Angelini was an Authority employee and that these amounts were “salary.” However, evidence gathered during OIG’s investigation indicates that Angelini was not an employee of the GCIA. Instead, he was an independent contractor, but just as he had in the case of other public entities, he had arranged with the Authority’s responsible parties to treat his payment as salary so that he could receive pension credits.

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<sup>48</sup> Angelini was retained to complete the term of the prior Solicitor who resigned before the end of his term, which would have been February 28, 2007.

For instance, many conditions of Angelini's work were inconsistent with employment. Angelini was free from supervision or regular involvement with the Authority as it did not assign him an office; provide him with office equipment (e.g., computer, telephone, etc.); conduct performance evaluations; provide him with business cards or GCIA identification credentials; provide him all of the policies that were supplied to GCIA employees; or require him to prepare periodic time sheets or work a set number of hours. Also, Angelini did not receive the benefits ordinarily received by employees as he was not allowed to accrue leave time (vacation, sick or holiday) and he was not provided health benefits.

Moreover, the contracts explicitly declare that the Authority did not consider Angelini to be an employee. Provision 17 of both contracts ("Independent Attorney Status") provides that it is the "express intention and understanding of the parties that [Angelini] is an independent attorney and not an employee, agent, joint venturer or partner of the GCIA." This section also provides that "[n]othing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between GCIA and [Angelini] and/or any employee or agent of [Angelini]." In addition, Provision 18 ("Taxes and Benefits") provides that Angelini "is not an employee of the GCIA for state or federal tax purposes, and that GCIA has no obligation to provide to [Angelini] ... any benefits, including but not limited to Workers' Compensation, Social Security, Federal and State withholding taxes, group insurance, retirement benefits or other contributing benefits, sick leave or vacation pay, customarily provided by an employer with respect to an employee."

When asked how he could justify receiving pension credits for work under this contract, Angelini told OIG that he could not recall signing this contract and the explicit language therein.



He told OIG that the terms of the contract were contrary to his understanding of the arrangement with the entity. Angelini believes that the Authority considers him an employee. He told OIG that he received a W-2, was paid through payroll, and received pension credits.

Other GCIA contract language also indicates that the Authority was hiring an independent contractor and his law firm rather than an employee. The December 2006 contract was between the Authority and Angelini and his law firm and was entered into after Angelini and the firm submitted a joint application for the position. In their application, they wrote that “Michael Angelini and Angelini, Viniar & Freedman will provide all legal services required for the position of Solicitor” for the GCIA and that, “Firm attorneys will be available on an ‘as needed’ basis, in order to ensure that the [GCIA] is consistently represented with the highest level of expertise and without any interruption of service.” In support of this claim, in their application, Angelini and the firm highlighted the extensive experience of all of the firm’s attorneys and listed the numerous other government entities that the firm had represented since 1981.

The language in the February 2007 contract also indicates that the Authority was hiring an independent contractor and his law firm. Although the contract was between only Angelini and the Authority, it provided that Angelini would attend all regular and special GCIA meetings and “perform those services normally associated with those of a Solicitor for a government agency.”

According to the GCIA contracts, Angelini was also required to advise the Authority on “all matters of a legal nature,” prepare resolutions and contracts required for the “execution of the business of the GCIA.” The contracts also established a category of work for which Angelini

would be paid an hourly wage in addition to his “salary.” Angelini was authorized to bill \$110 per hour for any services he provided in association with litigation or at the direction of the Board of Commissioners of the Authority. Angelini was required to submit detailed invoices and vouchers in order to receive payment for these services and the Authority was required to review Angelini’s submissions and approve all payments. The contract also explicitly permitted attorneys from Angelini’s law firm to provide these services to the GCIA.<sup>49</sup>

In addition, both contracts provide that Angelini would be “responsible for all costs and expenses incident to the performance of consulting services provided for GCIA...” including but not limited to “expenses incurred by [Angelini] in performing Services for the GCIA except as provided in the Proposal or as specifically agreed upon in writing by the GCIA.” Such provisions are atypical of an employer/employee relationship.

Despite this evidence that Angelini was not an employee and that he was not entitled to any of the benefits customarily provided by an employer to employees, both of the contracts between Angelini and the GCIA provide that he would be enrolled in the State Pension system based on his “salary[;]”<sup>50</sup> and the GCIA issued payroll checks, deducted pension contributions from the payroll-issued checks, and made contributions to the pension system on his behalf as if he were an employee enrolled in the State Pension system.

GCIA contracts go to great lengths to avoid creating an employee-employer relationship with Angelini. The contract clauses thereafter attempting to create for him a pension right do not appear to have that capacity and are apparently contrary to law. The indicia of the relationship

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<sup>49</sup> The contract provided that associates and partners of the firm could “perform those services normally associated with those of a Solicitor for a government agency.” The firm, however, did not submit any invoices for services during Angelini’s term with the Authority.

<sup>50</sup> The contracts provide that the “compensation includes enrollment in the Public Employee Retirement System...”

between Angelini and the GCIA and the contract establishing the relationship indicate that Angelini was not an employee of the GCIA. It appears that Angelini is not entitled to pension credits for the alleged “salary” that GCIA reported to Pensions while Angelini served as GCIA Solicitor.

OIG found additional evidence of Angelini’s independent contractor status in his contracts with the GCIA. In addition to specific provisions found in the contracts, each of these contracts was for professional services and was awarded pursuant to the Local Public Contracts Law.<sup>51</sup> This further calls into question Angelini’s status as a pension-eligible employee as individuals hired to provide professional services are typically considered independent contractors.

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<sup>51</sup> During its review of GCIA Board resolutions and Angelini’s contracts, OIG identified facts that raised concerns about GCIA’s compliance with the Local Public Contracts Law in procuring the services of professional service providers. This is discussed further below and will be referred to the Department of Community Affairs, Division of Local Government Services.

### **III. CONCLUSION AND REFERRALS**

Despite the evidence that Angelini was not an employee, each of the State, county and local government entities described herein issued Angelini payroll checks, deducted pension contributions from the payroll-issued checks, and made contributions to the pension system on his behalf as if he were an employee enrolled in the State pension system. Novel and contrived arrangements, often proposed by him, were utilized. It is reasonable to conclude that these payment structures were utilized to provide Angelini unwarranted pension benefits. OIG accordingly refers this report to the Division of Pensions for its analysis and any appropriate action.

In addition, OIG refers the conduct of the individuals and entities as described herein to the following State entities to determine whether it warrants any action by them:

- Division of Criminal Justice;
- State Ethics Commission;
- Division of Taxation, Department of Treasury;
- Department of Labor and Workforce Development;
- Division of Local Government Services, Department of Community Affairs; and
- Office of Attorney Ethics.

Under separate cover, OIG will provide Pensions for their review, a list of names of individuals whom OIG has identified during the course of its investigation or whose names were provided to OIG by Angelini that may have engaged in the same conduct as Angelini.

#### **IV. RECOMMENDATIONS TO ENHANCE THE DIVISION OF PENSIONS' REVIEW**

As noted earlier in this report, all government entities participating in PERS and other pension systems<sup>52</sup> are required to submit enrollment applications for new employees and regular reports of their employees' salaries, pension contributions and related data to the Division of Pensions. The Division receives reports for thousands of employees and it relies upon these reports as it processes the employees' pension and health benefits. As demonstrated in this report, there may be occasions in which an individual is not eligible for a pension, notwithstanding that he was enrolled in the pension system and his government entity submitted regular reports to the Division on his behalf. OIG learned during its investigation that, while the Division initiates inquiries when it becomes aware of a potential irregularity with respect to an individual's pension eligibility, it cannot independently verify the information provided in each application and report and must rely upon the government entities' representations. Moreover, the Division does not have the power to subpoena records or swear witnesses prior to taking their testimony, which limits its ability in this regard. Given that there may be occasions when neither the government entity nor the Division may identify an ineligible individual, or that substantial time may elapse before this is recognized, consideration should be given to the following recommendations that are intended to enhance the Division's review of entities' submissions and reduce the instances in which pensions are awarded inappropriately.

- Enhanced certification requirements for government entities.

Currently, each government entity relies upon a Certifying Officer who "is the person at each employing location who certifies the accuracy and validity of all documents and forms sent

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<sup>52</sup> Including but not limited to the Teachers' Pension and Annuity Fund and the Police and Firemen's Retirement System.

to the Division[.]” <http://www.state.nj.us/treasury/pensions/epbam/finance/certoffi.htm>. As such, the Certifying Officer is “responsible for reviewing the completeness and accuracy” of the above-referenced reports and associated payments made by the entities. <http://www.state.nj.us/treasury/pensions/epbam/finance/roc.htm>. The Officer is required to sign the reports “[o]nce satisfied that the ... [data are] correct” and, in conducting his review, he should “follow whatever procedures seem reasonable or prudent under the circumstances.” Id.

By way of example, the Division provides sample certification language that the Officer is required to sign when submitting a quarterly report to the Division: “I hereby certify that the following is a correct report of deductions based on contract salaries only of members of the pension fund employed in this district.”<sup>53</sup> With respect to enrollment applications, the Certifying Officer and the Human Resources Representative who complete the application are required to sign the document; however, neither is required to sign a certification or otherwise attest to the accuracy of the information provided in the document.

Failure to require an adequate certification diminishes the importance of the information being provided to the Division. The certifying officer should be required to explicitly attest to the accuracy of the representations made to the Division and to acknowledge that there could be consequences for intentional false representations. An explicit certification of this nature will help to underscore the importance of the reports and encourage careful analysis of any questions associated with the facts contained in the report prior to their submission to the Division.

Moreover, the certifying officer should not be solely responsible for the accuracy of the certification. Responsibility for the certification should not be delegated to one person only, with

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<sup>53</sup> This language accompanies a sample report for a hypothetical school district. Id.

all others abdicating their obligation to ensure that representations made on behalf of the entity are accurate. A supervisor should ensure that the certifying officer is complying with the rules governing his role and that the certification does not contain false statements or omissions of a material fact resulting in a misleading report. Consideration should be given to requiring a supervisory officer to certify that he has reviewed the underlying reports and that they do not contain inappropriate representations.

Further, Pensions is currently without recourse when a certifying officer submits a false certification and, as such, there is an absence of potential consequences for submission of a false certification. It goes without saying that if a certifying officer or his supervisor were aware of the potential of consequences, such as a fine, admonition or employment action, they would have an incentive to make certain that the facts to which they have certified are correct. Accordingly, consideration should be given to vesting the Division with authority to take action when it learns that a certifying officer or his supervisor has submitted a false certification.

- Enhanced training requirements for government entities.

In an effort to aid both the government entities and the Division, those employees who participate in the production of reports to the Division should be provided with enhanced training to help them identify those individuals who, although they provide services to the government entity, are not eligible for enrollment in the pension system. As discussed herein, independent contractors are ineligible for enrollment; however, application of the standards used to identify independent contractors requires an understanding of the law and the facts to apply. Similarly, employees who did not sufficiently perform their work assignments but who delegated them to others may not be eligible for all or a portion of a pension. Training should be provided to the

appropriate government entity employees, including the certifying officer, to help them identify these and other issues. They should also be directed to consult with the Division and, where appropriate, the Attorney General's Office, when necessary to address these questions.

- Assignment of a dedicated investigator to assist the Division.

The Division may benefit from the assistance of an investigator to assist it in searching for and examining problematic pension enrollments, reports, and retirement applications. A dedicated investigator could help in identifying questionable employees and conduct investigations to determine whether those employees were properly enrolled or whether their pension eligibility was somehow compromised during their tenure. The investigator could further enhance the Division's work by conducting this analysis earlier than may otherwise be possible. As noted, Angelini has been enrolled in the pension system for nearly 28 years. A more robust system could aid in identifying individuals who may actually be independent contractors, such as Angelini, and others whose pension eligibility may be in question for other reasons, prior to the time they submit their retirement applications.

An arrangement similar to that currently utilized by the School Development Authority (SDA) may be optimum for Pensions. Pursuant to a Memorandum of Understanding between OIG and SDA, full time Assistant Inspectors General work exclusively on SDA matters. Their responsibilities include investigating and examining various operations of the SDA to assist in ensuring that its activities are performed in an economical, effective, ethical and efficient manner in order to help guard against waste, fraud, abuse and mismanagement, and to identify opportunities for cost savings. They work under the guidance of the Inspector General but report to the Chair of SDA and report to its Board. OIG is authorized to issue subpoenas and swear



witnesses, important investigatory tools. This model may prove useful to the Division of Pensions, particularly as it would provide investigatory tools and expertise. A memorandum of understanding is flexible and can be crafted so as to best serve the Division's needs as well as eliminate the necessity of legislation to give the Division the authority to issue subpoenas and oaths.

OIG's experience has been that the cost associated with the assignment of an investigator to the Division would likely be more than offset by the potential savings that the Division and the State could realize. It is reasonable to anticipate that annual savings realized from the identification of individuals who are not entitled to pensions (but who would have otherwise received pensions) would offset the cost associated with retaining the investigator.

- Further review of certain professional service providers

OIG asks the Division to advise it of any action it takes in response to this Report. Depending upon the nature of the Division's action, if any, OIG may have further recommendations for the Division concerning the need to review other professional service providers' relationships with government entities and whether those providers have been inappropriately enrolled in the pension system.

**Appendix A**

**Michael Angelini 's Pension Credit History**

**From January 1981 through September 2008**

<u>Location Name</u>	<u>East Greenwich Twp.</u>	<u>Monroe Twp.</u>	<u>Gloucester County</u>	<u>Oaklyn Borough</u>	<u>Clayton Borough</u>	<u>Gloucester Co Bd of Soc Serv.</u>	<u>West Deptford Twp.</u>	<u>Paulsboro Borough</u>	<u>So. Jersey Trans. Auth.</u>	<u>Mantua Twp.</u>	<u>So. Jersey Port Corp</u>	<u>Gloucester Co. Imp. Auth.</u>	
<u>Enrollment Date</u>	<u>01/01/81</u>	<u>01/01/83</u>	<u>01/01/84</u>	<u>01/01/89</u>	<u>01/01/83</u>	<u>02/01/87</u>	<u>01/01/86</u>	<u>01/01/86</u>	<u>02/01/91</u>	<u>01/01/02</u>	<u>01/01/03</u>	<u>01/01/07</u>	
<u>Year</u>	<u>Public Defender</u>	<u>Public Defender</u>	<u>Ass't County Counsel</u>	<u>Solicitor</u>	<u>Prosecutor</u>	<u>Assistant Counsel &amp; Chief Counsel</u>	<u>Solicitor</u>	<u>Solicitor (except 1986 Pros)</u>	<u>Counsel</u>	<u>Solicitor</u>	<u>Counsel</u>	<u>Solicitor</u>	<u>Total</u>
2008							14,000*	*	*	*	*	7,935*	21,935
2007							84,000	1,748	*	10,000	*	47,476	143,224
2006						66,634	72,000	6,992	10,000	10,000	15,000		180,626
2005						64,469	72,000	6,994	30,000	10,000	30,000		213,463
2004						62,205	72,000	6,723	30,000	10,000	30,000		210,928
2003					7,964	60,282	70,000	6,466	22,500	10,000	30,000		207,212
2002					7,658	50,508	65,000	6,217	7,500	9,998	*		146,881
2001					7,364	41,274	60,000	6,007		*			114,645
2000					7,080	39,663	60,000	5,804					112,547
1999					6,808	38,548	54,000	5,580					104,936
1998					6,808	37,269	48,000	5,562					97,639
1997					6,576	36,048	36,000	4,960					83,584
1996						28,352	12,816	4,961					46,129
1995						28,352	12,480	4,725					45,557
1994						28,352	12,000	*	18,000				58,352
1993						28,352	12,000	*	18,000				58,352
1992						28,271	12,000	*	18,000				58,271
1991					5,228	27,000	12,000	*	16,500				60,728
1990				2,000	4,932	26,497	12,000	*					45,429
1989				2,002	4,602	23,979	10,000	*					40,583
1988					2,214	22,949		*					25,163
1987						12,897		*					12,897
1986					4,432		9,996	4,848					19,276
1985			21,000		5,728								26,728
1984			17,496		4,800								22,296
1983	1,600	2,004			4,800								8,404
1982	1,600												1,600
1981	1,596												1,596

\* Angelini providing legal services, but not/no longer receiving pension credits.