

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

In re: ANGEL ZAPATA, ) OEIG Case #12-00848

OEIG FINAL REPORT (REDACTED)

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

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

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

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

FINAL REPORT

**I. ALLEGATIONS**

The Chicago Transit Authority (“CTA”) Office of Inspector General received a complaint alleging that CTA Bus Operator Angel Zapata worked secondary employment as a tax preparer and that he specifically took sick leave time for the sole purpose of performing tax preparation services. Pursuant to Section 75-10(b) of the Illinois State Officials and Employees Ethics Act, the Office of Executive Inspector General (“OEIG”) assumed the investigation.

The OEIG interviewed several individuals and reviewed documents relating to the initial allegation involving Mr. Zapata. The OEIG determined that there was insufficient evidence to conclude that he took sick leave time for the *sole* purpose of performing tax preparation services. Therefore, that allegation is unfounded.

However, during its investigation, the OEIG confirmed that Mr. Zapata worked as a tax preparer while a CTA employee and finds that Mr. Zapata engaged in this secondary employment while on leave from the CTA under the Family and Medical Leave Act (“FMLA”),

in violation of CTA policy. In addition, Mr. Zapata violated CTA policy by failing to obtain permission from the CTA to engage in the secondary employment. The OEIG recommends that Mr. Zapata be disciplined.<sup>1</sup>

## **II. BACKGROUND**

### **A. The CTA's Family Medical Leave Act Procedure**

The federal FMLA provides up to twelve weeks of unpaid, job-protected leave to eligible employees who have a serious health condition that renders the employees unable to perform their job duties or have to care for immediate family members, including parents, who suffer from serious health conditions. Employees may be eligible for intermittent FMLA leave for chronic conditions (suffered by the employee or an immediate family member), if approved by the CTA's third-party administrator. CTA policy defines "intermittent leave" as "leave taken in separate blocks of time due to a single qualifying reason." CTA Administrative Procedure (AP) #1013, 3.14.

### **B. The CTA's Secondary Employment Policies**

The CTA requires employees to complete a Secondary Employment Application (Form 7822) and receive permission from the CTA to engage in secondary employment, prior to engaging in such employment. AP #1022, 4.1 and 4.2.<sup>2</sup> "Secondary Employment" is defined in AP #1022 to include "the service or activity rendered by an active employee of the Authority for which some form of compensation from any other source than the CTA is received. This includes self-employment and ownership of business. It includes payment by salary, wages, commissions...or anything else of value." *Id.* at 3.2.

### **C. CTA Employee Angel Zapata**

Angel Zapata began employment with the CTA in December 1995 as a Bus Operator. Mr. Zapata has worked evening shifts for the CTA from at least 2007. Mr. Zapata is approved for intermittent FMLA leave to care for his [REDACTED]. As of February 2010, Mr. Zapata's FMLA medical documents indicate that Mr. Zapata is approved to care for his [REDACTED] for up to five episodes of her illness per month, with each episode lasting approximately one day.

## **III. INVESTIGATION**

### **A. Angel Zapata's Website for his Tax Preparation Business**

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<sup>1</sup> During his interview, Mr. Zapata admitted that he never reported the income he earned from performing tax preparation services as income on his taxes. Section 20-80 of the Ethics Act, 5 ILCS 430/20-80, provides that, if the OEIG determines that alleged misconduct may give rise to criminal penalties, the OEIG may refer the matter to an appropriate law enforcement authority. Accordingly, the OEIG will refer this matter to the Illinois Department of Revenue and the Internal Revenue Service.

<sup>2</sup> The *Chicago Transit Authority General Rule Book Governing All Employees* (in effect October 1, 1989) Rule 9(a) and the CTA Code of Ethics, Section 2.10, also prohibit employees from engaging in outside employment without obtaining prior written permission of the CTA.

During the investigation, the OEIG reviewed Mr. Zapata's website (angelzapata.com) for his tax preparation business, "Income Tax Preparation & Notary Services by Angel Zapata."<sup>3</sup> On this website, Mr. Zapata indicates that he provides a variety of services, such as:

- Income tax preparation and planning;
- Bookkeeping and accounting;
- Notary public; and
- "Much, Much, Much More, Just Ask!!!"

On angelzapata.com, Mr. Zapata indicates that he began his career as an "accountant/bookkeeper" in the late 1980s; was an "Authorized E-File Provider;" and has been "Self-Employed since 1995." The website also contains a "Price List" for income tax preparation services, indicating that he charges approximately the following amounts:

- 1040EZ with no dependents or deductions - \$50
- 1040A with dependents but no deductions - \$65
- 1040 with dependents and deductions - \$75
- Business Returns – starting at \$100

## **B. Comparison of Illinois Department of Revenue and CTA Records**

As part of the investigation, the OEIG obtained Mr. Zapata's Preparer Tax Identification Number ("PTIN") from his personal tax returns, in which he identified himself as his own paid tax preparer and then listed his PTIN. The OEIG then obtained, from Illinois Department of Revenue ("IDOR"), a spreadsheet of individuals whose tax returns were identified as being prepared with Mr. Zapata's PTIN for tax years 2009, 2010, and 2011. For those years, 1,679 tax returns had been submitted to IDOR listing Mr. Zapata's PTIN as the tax preparer.

The OEIG compared IDOR's records of Mr. Zapata's submission of tax returns as the tax preparer with his CTA attendance and FMLA records. Between February 8, 2010 and May 18, 2012, Mr. Zapata electronically filed (e-filed) a total of 255 tax returns on 37 days for which he was absent from the CTA for FMLA-related leave.<sup>4</sup>

## **C. Angel Zapata's Secondary Employment Status at the CTA**

The OEIG obtained and reviewed Mr. Zapata's CTA personnel records. These records did not contain any Secondary Employment Applications (Form 7822) submitted by Mr. Zapata requesting CTA's permission to pursue and obtain secondary employment.

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<sup>3</sup> Income Tax Preparation & Notary Services Inc. was also incorporated by the Illinois Secretary of State on January 5, 2012, identifying Mr. Zapata as the registered agent.

<sup>4</sup> There were also paper tax returns filed using Mr. Zapata's PTIN during this time period. Those filings are not reflected in the OEIG's analysis because the OEIG was unable to determine whether Mr. Zapata completed or submitted those tax returns to IDOR during time that he was on FMLA leave.

The records, however, included a "Secondary Employment Survey," completed by Mr. Zapata on December 15, 1995, on which Mr. Zapata indicated that he worked secondary employment with Dominick's grocery store. Mr. Zapata responded "no" to a question on the survey that asked if he was self-employed, had business interests, or performed consulting work.

#### **D. Interview of Angel Zapata**

On September 5, 2012, investigators interviewed Mr. Zapata. Mr. Zapata initially stated that he did not e-file taxes for other people prior to 2012, because he was not authorized to do so (by the Internal Revenue Service). In response to further questioning, however, Mr. Zapata stated that he e-filed tax returns for himself and four other friends in 2011 and 2012 through a Turbo Tax program. Later in the interview, Mr. Zapata stated that he e-filed additional tax returns, but he refused to estimate the number of tax returns he filed with his e-file provider number.

Mr. Zapata admitted that when he prepared tax returns, sometimes he was paid for these services, but stated that sometimes he was not paid. He also stated that when his clients do not pay for his services, he refuses to prepare their tax returns in the future. Mr. Zapata said that he did not set rates for his tax preparation services; rather, he accepted whatever amounts his friends and family offered him, usually in the form of cash or check, which he considered to be "gifts" or "tips," rather than an official form of compensation. He further explained, "Whatever they give me, they give me." Mr. Zapata could not recall how much income he received from preparing tax returns on an annual basis, but stated that he never received more than \$100 from any particular client.<sup>5</sup>

Mr. Zapata was shown a Price List from his website. Mr. Zapata explained that the fees listed on his website are the prices he would like to charge for his services; but, at the moment, he has not charged those fees because he is trying to build his business and needs referrals. Mr. Zapata also stated that he did not report this income on his own tax returns because he did not feel he earned enough money to report it. Later in the interview, Mr. Zapata stated that sometimes his clients do pay the fees listed on the Price List on his website.

Mr. Zapata denied ever taking vacation, personal, sick, or FMLA leave from the CTA in order to work on tax returns. Mr. Zapata, however, stated that he did file tax returns on days he took off from CTA, using FMLA to care for his [REDACTED]. He stated that there were times when he had to take FMLA leave to care for his [REDACTED] until her in-home healthcare provider arrived and, because CTA required him to take a full day off, rather than increments, he would file tax returns after his [REDACTED]'s provider arrived. Mr. Zapata stated that he also took off days, using FMLA, because he has to take his [REDACTED] to medical appointments or care for her during the day time, and then has to sleep during the night when he would otherwise be driving CTA buses. Mr. Zapata stated that he did not believe he violated AP #1013 by filing tax returns while on FMLA, even though he had not been preapproved by CTA to perform any secondary business, because he was not working for anyone else.

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<sup>5</sup> On August 9, 2012, the OEIG interviewed [a CTA employee], [REDACTED]. [REDACTED] stated that Mr. Zapata prepared and e-filed her 2010 and 2011 tax returns. [REDACTED] also stated that Mr. Zapata charged her \$120 to prepare her taxes, which was deducted from her tax refund.

Mr. Zapata stated that he did not have written permission to engage in secondary employment regarding his tax preparations. He stated that he never submitted Form 7822 for his tax preparation business because “It’s in the beginning stages” and he had not “done anything” other than work on taxes for friends and family.

With regard to his website, Mr. Zapata stated that he put “Self-Employed since 1995” on his website so that people viewing his website would believe he had more experience than he did. He said that this statement, that he was “self-employed,” was false because he believed preparing tax returns for other individuals was not “self-employment.” He stated that he does not charge fees for most of the services listed on his website, including his tax preparation services; he only accepts what clients voluntarily give him.

#### **IV. ANALYSIS**

##### **A. Angel Zapata Violated CTA’s FMLA Policy**

The CTA policy on FMLA states: “Employees may not engage in secondary employment...if they take a leave for their own illness or injury under FMLA. Employees on authorized FMLA leave to care for an immediate family member may only participate in secondary employment that has been pre-approved...and that is consistent with the purpose of, and representations made in obtaining, the FMLA leave.” AP #1013, 4.14. Another CTA policy states that if an employee has secondary employment that has been approved by CTA, this approval is “suspended whenever the employee is on a leave of absence or FMLA leave of absence.” AP #1022, 4.6(D). Mr. Zapata was approved for intermittent FMLA leave to care for his [REDACTED] for several years and repeatedly engaged in unapproved secondary employment during that time. The records show that Mr. Zapata e-filed 255 tax returns, in his role as a tax preparer, on 37 days that he took FMLA leave. In addition, Mr. Zapata admitted that after taking care of his [REDACTED] on days he used FMLA leave, he would file tax returns. Therefore, the allegation that Mr. Zapata engaged in secondary employment while taking FMLA leave, in violation of AP #1013, is **FOUNDED**.

##### **B. Angel Zapata Violated CTA’s Secondary Employment Policies**

As stated above, the CTA policy on secondary employment requires employees to complete the Secondary Employment Application (Form 7822) and receive permission from the CTA to engage in secondary employment, prior to engaging in such employment. AP #1022, 4.1 and 4.2. CTA defines “Secondary Employment” to include “the service or activity rendered by an active employee of the Authority for which some form of compensation from any other source than the CTA is received. This includes self-employment and ownership of business. It includes payment by salary, wages, commissions...or anything else of value.” *Id.* at 3.2.

In this case, by his own admission, Mr. Zapata has worked as a tax preparer and has received compensation for these services. The records from IDOR show that he has filed at least 1,679 tax returns for the tax years 2009, 2010 and 2011. Mr. Zapata’s website and the interview of one of his clients corroborate the fact that he received payment for these services. Mr. Zapata, however, never obtained permission from CTA to engage in secondary employment, either at his

initial hire at CTA when he completed a survey regarding secondary employment, or at any subsequent time.

Mr. Zapata stated in his interview that he did not believe that his tax preparation services constituted “secondary employment” for a variety of reasons. However, CTA policies define “secondary employment” broadly, to include the performance of any services for which some form of compensation is received, including payment of anything of value. Mr. Zapata provided tax preparation services and received cash as compensation; thus, he was obligated to report and receive CTA’s permission to engage in secondary employment, which he did not do. Therefore, the allegation that Mr. Zapata failed to obtain permission from the CTA prior to engaging in secondary employment, in violation of CTA policy is **FOUNDED**.

**C. The OEIG Found Insufficient Evidence to Conclude that Angel Zapata Took Sick Leave for the Sole Purpose of Performing Tax Preparation Services**

The complainant alleged that Mr. Zapata worked secondary employment as a tax preparer and took sick leave time for the sole purpose of performing tax preparation services. In his interview, Mr. Zapata denied ever taking vacation, personal, sick, or FMLA leave from the CTA in order to work on tax returns. The OEIG also interviewed several other individuals and reviewed numerous documents relating to this allegation, and determined that there was insufficient evidence to conclude that Mr. Zapata took sick leave time for the *sole* purpose of performing tax preparation services. Therefore, that allegation is **UNFOUNDED**.

**V. CONCLUSIONS**

After due investigation, the OEIG issues these findings:

- **FOUNDED** – Angel Zapata engaged in secondary employment while taking FMLA leave, in violation of AP #1013.
- **FOUNDED** – Angel Zapata failed to obtain permission from the CTA prior to engaging in secondary employment, in violation of multiple CTA policies.
- **UNFOUNDED** – Angel Zapata took sick time for the *sole* purpose of performing tax preparation services.

The OEIG recommends that Mr. Zapata be disciplined for violating several CTA policies over an extended period of time.

The OEIG further recommends that Mr. Zapata fully comply with CTA’s Secondary Employment application policy prior to engaging in any further employment. Finally, the OEIG takes no position as to whether the CTA should approve or not approve Mr. Zapata’s Secondary Employment Application as this is a management issue best addressed by the CTA.

No further action is required and this matter is closed.

Date: **December 28, 2012**

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**OEIG RESPONSE FORM**

Case Number: 12-00848

Due Within 20 Days of Receipt of  
Report

Please check the box that applies.

- We have implemented all of the OEIG recommendations.  
(Provide details regarding action taken.)

Please be advised that Mr. Angel Zapata, #32213, was discharged via mail on June 19, 2013.

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- We will implement all of the OEIG recommendations but will require additional time.  
We will report to OEIG within 30 days from the original return date.  
(Provide details regarding action planned / taken.)

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(over)

- We are implementing one or more of the OEIG recommendations, however, we plan to depart from other OEIG recommendations.  
(Provide details regarding action planned / taken and any alternate plan(s).)

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- We do not wish to implement any of the OEIG recommendations.  
(Explain in detail why and provide details of any alternate plan(s).)

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Signature

Adrian Lewis  
Print Name

CTA General Mgr.  
Print Agency and Job Title

06 19 2013  
Date