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Commission on Legislative Ethics

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November 27, 2017

Honorable Carl E. Heastie
Speaker
New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

Dear Speaker Heastie:

As you know, the Ethics Committee is responsible for investigating complaints that the New York State Assembly Policy Prohibiting Harassment, Discrimination and Retaliation (“Policy”) was violated. We write to summarize the results of a recent follow-up investigation involving Assembly Member Steven F. McLaughlin, and to set forth our findings of fact and recommendations to you, in accordance with the Policy.

BACKGROUND

As you will recall, on June 21, 2017, the Ethics Committee reported to you the results of its investigation into allegations of sexual harassment hostile work environment against Assembly Member McLaughlin (“Initial McLaughlin Investigation”). Those results included the Ethics Committee having split as to whether the alleged sexual harassment had taken place, and recommending that Assembly Member McLaughlin receive additional training to which he had agreed (“Initial McLaughlin Findings”). In response, you wrote to the Ethics Committee on June 22, 2017, endorsing the additional training and requesting that the Ethics Committee write to Assembly Member McLaughlin and his counsel with certain information. Former Chair Charles Lavine promptly sent that letter on June 23, 2017.

On June 9, 2017, as the Initial McLaughlin Investigation was drawing to a close but prior to the Initial McLaughlin Findings, Counsel to the Assembly Minority (“Minority Counsel”) informed the Assembly’s Independent Counsel and Neutral Investigator, and the Ethics Committee that, prior to that day’s meeting, a call was received from a senior-level member of the Assembly minority staff. That person had advised the Minority Counsel that it appeared there had been a leak of information about the Initial McLaughlin Investigation, including the name of the alleged target of the

sexual harassment. The Ethics Committee authorized an investigation into the apparent leak of information (“Follow-up McLaughlin Investigation”).

On September 13, 2017, after an extensive investigation involving interviews with seven people, in addition to Minority Counsel and the senior-level Assembly minority staff member that first reported the alleged leak, our Independent Neutral Investigator issued a final report to the Ethics Committee (“Final McLaughlin Report”). The Final McLaughlin Report indicated, among other things, that there was evidence that Assembly Member McLaughlin had revealed the existence and details of the allegations to an Assembly employee who had then spread the information elsewhere. The evidence also showed that Assembly Member McLaughlin had made these disclosures before he was informed by the Ethics Committee of the name of the alleged target and the details of the allegations, thus undermining his claim during the Initial McLaughlin Investigation that he had no idea who would make such claims against him. On October 12, 2017, the Committee met to review the Final McLaughlin Report.

On October 13, 2017, the Ethics Committee issued a confidential notice to Assembly Member McLaughlin setting forth renewed allegations that he had engaged in sexual harassment hostile work environment, in addition to an allegation that he leaked confidential information (“October 13, 2017 Notice”). The October 13, 2017 Notice offered him the opportunity to appear before the Ethics Committee to give sworn testimony and be questioned by Members of the Committee, and/or submit a sworn statement or statement from his counsel. Assembly Member McLaughlin declined to appear before the Ethics Committee, but submitted a sworn statement dated October 31, 2017 (“October 31, 2017 Statement”). Importantly, in paragraphs 6 through 8 of the October 31, 2017 Statement, Assembly Member McLaughlin strongly implied that the source of the leak, that was the initial subject of the Follow-Up McLaughlin Investigation, was the Assembly Ethics Committee.

The Ethics Committee held a hearing on November 2, 2017, and continued the hearing on November 21, 2017. Assembly Member McLaughlin was afforded an additional opportunity to appear at the latter date to give sworn testimony and be questioned by Members of the Committee, and/or submit an additional sworn statement or statement from his counsel. After submitting his October 31, 2017 Statement, Assembly Member McLaughlin did not participate in this investigation or provide any additional information.

On November 21, 2017, the Ethics Committee carefully reviewed and considered all the evidence before it, including:

- 1) the Final McLaughlin Report and its exhibits;
- 2) the August 2016 transcript of Assembly Member McLaughlin’s interview with the Independent Neutral Investigator;
- 3) the January 2017 transcript of Assembly Member McLaughlin’s sworn testimony and subsequent October 31, 2017 Statement;
- 4) some of the witness’ statements and transcripts; and
- 5) all of the testimony and other evidence before it.

FINDINGS OF FACT

The Ethics Committee finds that Assembly Member McLaughlin revealed information about the nature of the complaint, the name of the complainant, and the results of the Initial McLaughlin Investigation to his confidant and former employee, who is currently an Assembly minority conference employee. This employee then revealed the information to two other Assembly minority conference employees, and later discussed it with another person (who is not an Assembly employee) and a high-level Senate staffer to the Temporary President and Majority Leader of the NYS Senate. One of the Assembly minority conference employees who received the information from Assembly Member McLaughlin's confidant further revealed the information to a number of NYS Senate staffers, including to the same high-level staffer previously referenced.¹

The Ethics Committee also finds that Assembly Member McLaughlin was the original source of the leaked confidential information, and that he made the disclosure after having been instructed in writing on June 28, 2016, by Former Chair Lavine, "not [to] discuss any information concerning the complaint, the parties to the complaint, or the investigation itself, except to the extent necessary to seek legal advice" ("June 28, 2016 Instruction"). The June 28, 2016 Instruction further warned Assembly Member McLaughlin "not [to] discuss this matter with any Assembly employees or interns, including without limitation, your own staff or former staff."

The Ethics Committee further finds that Assembly Member McLaughlin's disclosures violated the Policy and the Ethics Committee's implementation of the Policy, which are consistent with New York Consolidated Laws, Civil Rights Law Section 73(7). This violation led down the road to further disclosures within the Assembly, the Senate and elsewhere. As a result, multiple people are aware of the name of the target of the sexual harassment, as well as the details of the sexual harassment, which involved being asked for nude photographs.

Moreover, the Ethics Committee notes the critical importance of confidentiality during the investigation process. It was reported to us that, for approximately 4 years, virtually every witness interviewed by the Independent Neutral Investigator for Assembly investigations has expressed a concern about confidentiality. One of the purposes of the Policy's confidentiality provisions is to ensure that targets of harassment are not dissuaded from complaining, and witnesses feel safe to come forward. Therefore, the Ethics Committee finds that individuals that leak information that they have been instructed to keep confidential should be held accountable. Otherwise, the Policy will be severely undermined, and this would have long-term ramifications for the Assembly's efforts to combat sexual harassment including, *inter alia*, discouraging future victims from coming forward without fear of damage to careers and reputations. Accordingly, it is the Ethics Committee's *strong* recommendation that you move to deter such conduct in the future and obviate a notion that targets of discrimination and harassment who come forward and complain risk public exposure.

¹ It is highly possible that the leaked information was communicated to other elected officials, persons running in a local primary for County Executive of Rensselaer County and others.

In addition, the Ethics Committee finds that the timing of when Assembly Member McLaughlin revealed the name of the complainant and details of the harassment to his former employee and confidant indicates that he is guilty of the sexual harassment of which he was accused. He made this disclosure prior to having received the details from Former Chair Lavine through the Notice of Hearing, dated November 1, 2016 (“November 2016 Notice of Hearing”), regarding the Initial McLaughlin Investigation and, therefore, he could not have known the information unless he had, in fact, engaged in the conduct.

Furthermore, the Ethics Committee finds that Assembly Member McLaughlin provided false information to the Independent Neutral Investigator and the Ethics Committee when he stated, during his August 2016 interview, that he had no idea who the complainant was or the nature of the complaint. The evidence now shows that while he denied having knowledge in the summer of 2016, he revealed the name of the complainant and details of the complaint to his former employee and confidant long before being informed of them by the November 2016 Notice of Hearing.

When the Ethics Committee first considered the evidence before it, it did not know of Assembly Member McLaughlin’s statements to his former employee in which he revealed knowledge of the details of the allegations that he could only have known if he had engaged in the conduct. In reconsidering the Initial McLaughlin Findings, which came down to a credibility determination, the Ethics Committee now finds that Assembly Member McLaughlin was not credible in his denial of the allegations. The Ethics Committee also finds that Assembly Member McLaughlin did, in fact, violate the Policy by making offensive comments to a female Assembly employee by asking her for nude photos.

In sum, the Ethics Committee makes the following findings of fact:

- 1) Assembly Member McLaughlin engaged in sexual harassment in violation of the Policy by asking a female employee of the Assembly for nude photos;
- 2) Assembly Member McLaughlin was not truthful when he told the Ethics Committee’s Independent Neutral Investigator that he had no idea who could be making sexual harassment allegations against him; and
- 3) Assembly Member McLaughlin violated the June 28, 2016 Instruction when he revealed the name of the target of his sexual harassment and the details of the sexual harassment to an Assembly employee who, in turn revealed those details to others, setting off a chain of disclosures both inside and outside the Assembly.

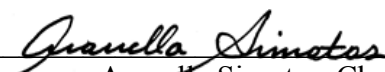
RECOMMENDATIONS

It is the Ethics Committee's considered judgment that Assembly Member McLaughlin's violations of the Policy warrant a response which is designed to stop him from continuing to engage in conduct that violates the Policy, including the dissemination of confidential information.

The Ethics Committee recommends the following actions:

1. A letter of admonition be issued publicly to Assembly Member McLaughlin by you on behalf of the entire Assembly, enumerating the findings of the Committee, and stating that Assembly Member McLaughlin's conduct violated the Policy, as it pertains to sexual harassment and confidentiality, and is inconsistent with the standards of conduct to which Members of the Assembly should be held;
2. Assembly Member McLaughlin be directed to cease revealing the name of the complainant and details of the allegations and investigation;
3. Assembly Member McLaughlin be precluded from having any interns working in his Assembly office or District Office, and that the prohibition applies to interns assigned by the Assembly, as well as any interns that might be engaged through unofficial channels; and
4. Assembly Member McLaughlin be required to reimburse the Assembly for the cost of the comprehensive supplemental sexual harassment and retaliation prevention training he took in July 2017.

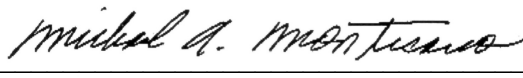
Respectfully submitted,

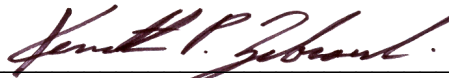

Aravella Simotas, Chair

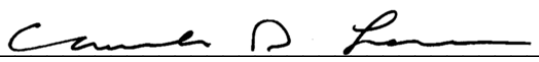

Brian Curran²

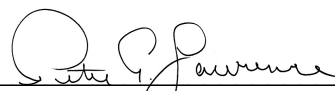

Joseph M. Giglio


Michele Titus


Michael A. Montesano


Kenneth P. Zebrowski


Charles Lavine


Peter A. Lawrence

cc: Minority Leader Brian M. Kolb

² Assembly Member Curran does not concur with Finding of Fact 1 and the portion of Recommendation 1 that refers to sexual harassment.