



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

COMMITTEES
Codes
Health
Higher Education
Insurance
Judiciary

CHARLES D. LAVINE
Assemblyman 13th District

CHAIR
Ethics and Guidance Committee

CO-CHAIR
Legislative Ethics Commission

December 30, 2013

Via FCM and Email

Speaker Sheldon Silver
Room 932
Legislative Office Building
Albany, New York 12248

Dear Speaker Silver:

On June 7, 2013, you advised The Assembly Ethics and Guidance Committee (“Committee”) that you had learned of allegations that in 2009, Assemblymember Micah Kellner had sexually harassed a female staffer, and referred those allegations to the Committee for investigation. The Committee promptly retained Rossein Associates as an independent neutral investigator and counsel (“investigator”) to assist in investigating, and advise the Committee with respect to, the claims. The investigator performed an extensive, independent and neutral investigation and the Committee invited Assemblymember Kellner to appear before it and offer testimony. Assemblymember Kellner testified, in the company of his counsel, on December 4, 2013.

The Assembly’s Sexual Harassment/Retaliation Policy for 2009-2010 (“the Sexual Harassment Policy”), which remained in effect in 2011, stated, in relevant part, that, “Every Assembly employee is entitled to an employment environment free from sexual harassment, and all Assemblymembers and employees are hereby advised that sexual harassment will not be tolerated in the Assembly workplace.” The Policy followed the Federal Equal Employment Opportunity Commission guidelines with respect to the definition of sexual harassment. Such definition includes unwelcome verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

The Committee has carefully reviewed and considered this matter, including an unofficial transcript of Assemblymember Kellner’s interview with the investigator which he provided to the Committee together with a statement swearing to its accuracy; Assemblymember Kellner’s sworn testimony before the Committee; and his counsel’s arguments. Based on all the evidence before it, the Committee unanimously makes the following findings:

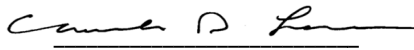
1. In 2009 and 2011, comments that Assemblymember Kellner directed at members of his staff, together with other conduct, created a hostile work environment.
2. That conduct violated the Assembly’s Sexual Harassment Policy, which is predicated upon applicable laws.
3. That conduct is unbecoming of a Member of the Assembly and reflects poorly on the entire body.

It is the Committee's considered judgment that Assemblymember Kellner's conduct constituted a violation of the Sexual Harassment Policy and that such conduct warrants a response which is designed to stop the harassment and ensure that similar harassment does not recur in the future towards other employees, including:


1. That a letter of admonition be issued publicly by the Speaker on behalf of the House, enumerating the findings of the Committee and indicating that Assemblymember Kellner's conduct with respect to this matter violates the Assembly's Sexual Harassment Policy and is inconsistent with the standards of conduct to which Members of the Assembly should be held;
2. That Assemblymember Kellner be immediately removed as Chair of any Assembly Committees;
3. That Assemblymember Kellner is not to have any interns placed or working in his Assembly offices;
4. That an independent investigator conduct climate surveys of Assemblymember Kellner's employees at least semi-annually to ensure that there is no repeat of the conduct; and
5. That Assemblymember Kellner be required to attend immediate and comprehensive supplemental sexual harassment training.

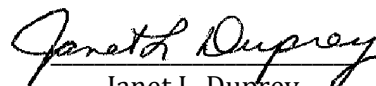
The Committee also recommends that the Sexual Harassment Task Force prepare recommendations for the Speaker to issue new written, accurate and complete guidelines, as soon as possible, with particular attention paid to what constitutes a sexual harassment complaint and a clear statement providing for the process of pursuing complaints.


Respectfully submitted,

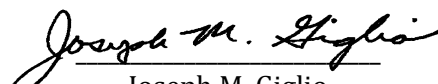

Charles D. Lavine

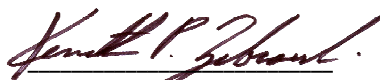

Brian Curran


Kevin Cahill


Janet L. Duprey


Michele R. Titus


Joseph M. Giglio


Kenneth Zebrowski