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**THE ASSEMBLY
STATE OF NEW YORK
ALBANY**

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Committee on Ethics and Guidance

Co-CHAIR
Legislative Ethics Commission

COMMITTEES
Consumer Affairs
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Labor
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August 4, 2020

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Via Email

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 Assembly Committee on Ethics and Guidance (“Committee”) has jurisdiction over, and is responsible for, investigations of possible violations of the Assembly’s Policy Prohibiting Harassment, Discrimination and Retaliation, revised 3/12/2019 (“the Policy”, “Policy”). We are writing to summarize the results of a recent investigation and to communicate our findings and recommendations to you, in accordance with the Policy.

On December 6, 2019, Carlin Meyer, Counsel to the Committee, received a mandatory report from H.R. Director Kathleen Joyce concerning an incident reported to her by a female employee of Assembly Member Michael M. Miller which caused the employee to be sufficiently fearful that she sought to work from home. After consultation with Counsel, Committee Chair Aravella Simotas telephoned the Member to inform him that an investigation would be undertaken by the Committee into acts which may have constituted gender discrimination or harassment in violation of the Policy, which he could access via a link on the Committee website. She reminded him that he should comply with it, in particular with its requirements that he preserve evidence, maintain the confidentiality of the investigation, and refrain from communicating with his staff members or others (other than to his legal counsel, if any) about the investigation or facts related to it. The following day, Assemblywoman Simotas referred the matter to independent investigator Danielle J. Marlow of the law firm of Moritt, Hock & Hamroff, LLP. In conformity with the Policy’s requirements, she also sent Assembly Member Miller a letter indicating that an investigation had commenced, a Written Plan to Prevent Retaliation, Preserve Documents, and Ensure Non-Interference with Witnesses (“Written Plan”) and a Notice to Preserve Evidence -- along with a copy of the Policy. After describing the Policy requirements regarding confidentiality, the Written Plan clearly informed Assembly Member Miller (under the heading “Non-interference with Investigation”) not to discuss the investigation with anyone he suspected might be the complainant, a witness, or involved in any way, nor

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anyone with whom the investigators could reasonably expected to speak, nor any Assembly employees or interns, including his own staff and former staff, other than to ensure document retention.

On December 13th, the Committee was informed by email that the law firm of Joel Hashinsky would be representing Assembly Member Miller, and possessed the documents sent to him on the 7th. The Written Plan was again sent to Assembly Member Miller through his counsel on February 27, 2020, by independent investigator Marlow and on March 30, 2020, by Committee Chair Jo Anne Simon, who had been appointed to replace Aravella Simotas.

On January 30, 2020, the Committee received a copy of the investigator's Report, accompanied by 11 exhibits, followed by a brief Supplemental Report on March 16, 2020, addressing additional allegations of retaliation. On June 16, 2020, the Committee met and determined to accept the investigator's finding that while the evidence did reveal inappropriate and unprofessional conduct, it did not "support a finding that Miller engaged in harassment and/or discrimination in violation of the Policy or applicable law because his actions were not directed towards [the subject of the mandatory report] based upon her gender, and the evidence does not establish a pattern of [sex-based] misconduct."¹

The Committee postponed until a later meeting its discussion of the investigator's additional finding that Assembly Member Miller engaged in "retaliation or intimidation and violated the requirements of the Policy to keep the investigation confidential" and recommendation that he be "reprimanded and/or required to attend counseling." The Committee did so in order to give the Assembly Member an opportunity to appear before the Committee, as required by the Policy. On June 27th, an invitation to appear at a July 14th hearing was sent to Mr. Miller's attorneys, containing, as required by the Policy, a written general summary of the evidence forming the basis of its investigation, accompanied by a cover memo making clear that the investigator had not found gender-based discrimination or harassment. Assembly Member Miller ultimately declined the Committee's invitation, choosing instead to rely on his own Affidavit, an Affirmation submitted by his lead attorney, Joel Hashinsky, Esq., the transcripts of investigatory interviews conducted by Independent Counsel Marlow and other relevant documents. (The Committee sought and received written confirmation that Assembly Member Miller understood that he was waiving his right to appear).

On July 27, 2020, the Committee met and carefully reviewed and considered the evidence, including the two Reports, transcripts of interviews of Assembly Member Miller, summaries of witness interviews, and records of emails and text messages, along with Mr. Hashinsky's affirmation and Assembly Member Miller's affidavit. The Committee accepted the factual findings of the independent investigator that Assembly Member Miller had spoken with numerous persons other than his attorneys, including members of his own staff, at least one New York State Senator, certain community leaders and a powerful District Leader. The investigator found that Assembly Member Miller had some of these conversations knowingly if not deliberately within earshot of members of his District Office staff, in one case speculating about who might be the complainant (and who the Member was certain was not), and in another announcing that his lawyer told him he could sue the complainant for libel and slander. Noting the difference between the interview statements by members of his staff and the tone of several pre-investigation email exchanges

¹ The language unanimously adopted by the Committee reads: "The Ethics Committee accepts the February 3 report and its finding that the conduct which generated the mandatory report, while unprofessional, did not by itself constitute discrimination or harassment in violation of the Policy, nor was the other evidence gathered sufficient to support such a finding."

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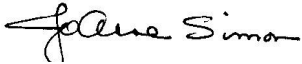
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among staff members, the independent investigator surmised that the Member's overheard conversations likely impacted the willingness of the witnesses to be forthcoming in her interviews. (One staff member refused altogether to be interviewed.)

After considerable deliberation, the Committee unanimously adopted the following motion:

The Committee finds that Michael G. Miller breached the confidentiality of the investigation in a manner that had the effect of intimidating potential witnesses. The Committee recommends that the Speaker admonish the Member, order the Member to undergo training on the Policy and law of retaliation, and order that a climate survey be conducted of the Member's office(s).

Respectfully submitted,



Jo Anne Simon,
Chair, Committee on Ethics and Guidance



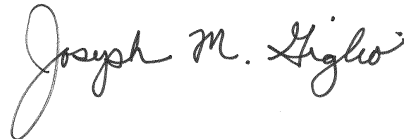
Charles Lavine, Committee Member



Kenneth Zebrowski, Committee Member



Monica Wallace, Interim Committee Member*



Joseph Giglio, Ranking Member



Michael Montesano, Committee Member



Peter Lawrence, Committee Member



Mary Beth Walsh, Committee Member

*Committee Member Catalina Cruz recused herself from this matter.