

CONFIDENTIAL
FINAL INVESTIGATION REPORT

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I. Introduction

This report summarizes the findings of my investigation into a Legislative Branch (“Branch”) Personnel Rule 27 (“Rule 27”) conduct report made by ██████████ (“Ms. ██████████”) against Senator Sara Gelser (“Sen. Gelser”). Effective March 25, 2019, the Legislative Administration Committee (“LAC”), acting by and through the Legislative Administrator under ORS 173.720, engaged Stoel Rives LLP to perform services under the State of Oregon Contract for the Purchase of Services (“Contract”). Following appointment of the Acting Legislative Equity Officer (“LEO”), the Contract was amended in December 2019, to substitute the LEO for the LAC.

II. Executive Summary

On December 30, 2019, Sen. Gelser told Ms. ██████████, her Chief of Staff, that Ms. ██████████’s “many consistent errors” were “not sustainable.” In response, Ms. ██████████ raised allegations for the first time that Sen. Gelser had subjected her to a “toxic” and “abusive” work environment. Sen. Gelser considered the allegations serious and important, and immediately reported Ms. ██████████’s concerns to Jessica N. Knieling (“Ms. Knieling”), Interim Human Resources Director. That same day, Ms. Knieling contacted Ms. ██████████ to offer resources and support, and to better understand Ms. ██████████’s concerns regarding her work environment. Among other things shared, Ms. Knieling advised Ms. ██████████ that the matter would be referred to an outside investigator pursuant to Rule 27 given the nature of the allegations. Ms. ██████████ responded that she did not intend to initiate an investigation or even involve Human Resources (“HR”). Two days later, however, on January 2, 2020, Ms. ██████████ raised a new allegation that some of what she experienced was “retaliation” by Sen. Gelser for Ms. ██████████ taking or attempting to take family medical leave.¹

Ms. ██████████’s allegations—which are asserted solely against Sen. Gelser—fall into two categories: (1) an original complaint of an “emotionally toxic and abusive environment” and (2) a follow-up complaint regarding concerns of interference with or retaliation for taking (or

¹ Ms. ██████████ took protected family medical leave on October 29 through November 5, 2019.

attempting to take) family medical leave. Rule 27 as applied to this matter only encompasses conduct that, if substantiated, may rise to the level of unlawful conduct. The latter report of interference with or retaliation due to protected family medical leave clearly falls within the purview of the Rule. With respect to the initial report, because terms such as a “toxic” and “abusive” work environment are often used synonymously with allegations of unlawful harassment or a hostile work environment, this investigator did probe these allegations to see if Ms. [REDACTED] was stating facts that, if true, would rise to the level of unlawful conduct. The required facial review analysis under Rule 27 answered this question in the negative. Accordingly, only the allegations in (2) above—of interference/retaliation due to Ms. [REDACTED] taking medical leave—are before the Conduct Committee for resolution.

As detailed below, after multiple interviews with the parties and an exhaustive review of extensive documentary evidence, this investigator did not find any substantiated fact or evidence that Sen. Gelser interfered with or acted in a discriminatory or retaliatory manner toward Ms. [REDACTED] in relation to her use of protected family medical leave or any attempt to exercise protected leave rights.

III. Further Background Regarding Ms. [REDACTED] Complaint

In addition to forwarding Ms. [REDACTED]’s concerns regarding a “toxic” and “abusive” work environment to Ms. Knieling on December 30, the following morning, December 31, Sen. Gelser sent the following email to Ms. [REDACTED] and copied Ms. Knieling:

“[REDACTED],

“Thank you for letting me know about your intentions for the future and about your frustrations in the office via text yesterday. The concerns you raise are serious and important. I want to be sure you have everything that you need to ensure they are appropriately addressed. Jackie Sandmeyer and Jessica Knieling (who is copied on this email) are resources that are available to you as you consider your options.

“I am committed to ensuring your work environment is safe and respectful. In order to be sure that happens, I am reaching out to Jessica to offer assistance to me in meeting your needs and addressing the challenges we are having in our office. I care very much about you in both a personal and professional capacity and wish only the best for you. It is my hope that Jessica will be able to help us find accommodations² to meet your needs and ensure your success.”

² In mid-December, Ms. [REDACTED] texted Sen. Gelser about a recent medical diagnosis. Ms. [REDACTED] confirmed with Ms. Knieling in their discussions on December 31 and January 2 that she was not seeking or requesting any accommodation.

As mentioned above, Ms. Knieling and Ms. ██████ spoke on December 31 to discuss Ms. ██████ concerns and available resources to support her. Ms. ██████ emailed Ms. Knieling later that same day to make the public record clear that she did not send Sen. Gelser the December 30 text message because she wanted “to start an investigation or get [Sen. Gelser] into any kind of trouble, or even involve HR.” Rather, Ms. ██████ stated that she was “simply giving [Sen. Gelser] feedback,” including that she did not believe there was a way to solve “[their] consistent communication errors.” In other words, Ms. ██████ stated intent was to make the “argument” she and Sen. Gelser were having on the morning of December 30 (and what Ms. ██████ describes as the related “accusations and cruelty”) stop in the moment (which Ms. ██████ reported it did, in fact, stop); it was not Ms. ██████ intention to “put all this in motion.” Ms. ██████ also expressed confidentiality concerns. In response, Ms. Knieling advised she would treat this report as confidentially as possible, but made clear that their communications were a public record, and encouraged Ms. ██████ to discuss her concerns with Acting LEO Jackie Sandmeyer (“Mx. Sandmeyer”), who has broader confidentiality shields under Rule 27.

Upon reflection, and after speaking with her therapist and attorney, Ms. ██████ asserted retaliation concerns with respect to taking (or attempting to take) leave under the Oregon Family Leave Act (“OFLA”) or the Family and Medical Leave Act (“FMLA”). After this investigator’s first meeting with Ms. ██████ and her counsel, it became clear that she also was raising concerns of interference with protected leave. Accordingly, this investigation encompasses both retaliation and interference concerns to ensure that the full scope of Ms. ██████ leave-related allegations are investigated and resolved.

IV. Investigation Methodology/Procedural Matters

Investigation Methodology. The following individuals were interviewed as part of this investigation: ██████ ██████ (January 10, February 13, and March 12) (also present was her attorney³) and Sen. Sara Gelser (January 16 and February 21 (the latter via telephone)). Given the nature of Ms. ██████ allegations, there were no additional fact witnesses with first-hand or independent information with respect to the family leave interference/retaliation allegations.⁴ Thus, all of the information obtained through this investigation was from the parties directly, or in response to requests for information directed to the Branch.

At the initial interview with each party, I explained my role as an independent investigator and fact-finder hired by the Branch to conduct an investigation into the facts and

³ Ms. ██████ was represented by counsel throughout the investigation, and her counsel was present for all three interviews.

⁴ Though Sen. Gelser’s former staff members may have information relevant to Ms. ██████ toxic/abusive work environment allegations, they were not interviewed given the facial determination that these allegations did not fall within the purview of Rule 27.

provide a report pursuant to Rule 27. I encouraged confidentiality to the extent possible, including to help ensure the integrity of the investigation, but clearly explained that I could not guarantee confidentiality of the information provided to me and, ultimately, that this matter would be before the Conduct Committee. I solicited and answered the parties' (and Ms. ██████ counsel's) questions before the interviews commenced to be sure, to the best of my ability, everyone understood the procedure. Ms. ██████ and her counsel had procedural questions, including about the voluntariness of her participation in the interviews and investigatory process. For my part, I made clear that meeting with me was entirely voluntary as well as my understanding that the Branch did not compel her to meet with me. I also referred Ms. ██████ and her counsel to the Branch for further guidance, including to Mx. Sandmeyer, Acting LEO.

This investigation is document intensive and many of the records received and reviewed are material to this investigation and findings, as further explained below. In fact, Ms. ██████ relies almost exclusively on text and email exchanges with Sen. Gelser to support her claims of retaliation and interference. These documents also establish the necessary chronology and timeline of salient events. To that end, while the parties' accounts and recollections were duly considered, this investigation did not turn on either party's specific memory of events.

Both Sen. Gelser and Ms. ██████ desired to provide this investigator with as complete of a background as possible, which essentially covered the entirety of their approximate year of working together.⁵ Though not all of that information is dispositive to the below findings, it is the practice of this investigator to receive whatever documents and background information the parties deem appropriate to submit, and then weigh them for relevance and probative value of the issues that fall within the scope of the investigation. The same practice was followed here.

Though not an exhaustive list, I reviewed the following in the course of my investigation:

- Legislative Branch Personnel Rule 27: Harassment-Free Workplace (HCR 11; January 2019);
- Revisions to Rule 27 as promulgated by HCR 20 (enacted June 29, 2019);
- Complete text message thread between Sen. Gelser and Ms. ██████ (December 10, 2018 through January 5, 2020);
- Additional text messages between or among Sen. Gelser, Ms. ██████ and Lina de Moraes;
- Additional text messages provided by Ms. ██████ between Ms. ██████ and third parties;

⁵ Sen. Gelser provided this investigator with complete access to all of her communications with Ms. ██████ including text messages, emails, and phone records. This is not to suggest in any way that Ms. ██████ was not forthcoming. Rather, it is to acknowledge that Sen. Gelser responded to these allegations in an open and non-defensive way, including allowing this investigator access to relevant information.

- Christmas card from Ms. [REDACTED] to Sen. Gelser (December 24, 2019);
- Cell phone records between Sen. Gelser and Ms. [REDACTED] (including but not limited to the time period from October 29, 2019 through November 5, 2019);
- Emails, including email “Daily Memos,” between Sen. Gelser and Ms. [REDACTED] (including but not limited to the following time periods: (1) October 29, 2019 through November 5, 2019; and (2) December 10, 2019 through January 6, 2020);
- Employee Services records regarding all requests by Ms. [REDACTED] (or someone on her behalf) for OFLA/FMLA leave, and all related communication;
- Employee Services records reflecting communication with Sen. Gelser regarding Ms. [REDACTED] performance or other employee relations matters involving Ms. [REDACTED] including HR assistance sought by Sen. Gelser regarding Ms. [REDACTED] in the December 2019 through January 2020 timeframe;
- Employee Services records regarding any reports, complaints, or concerns by Ms. [REDACTED] about Sen. Gelser; and
- Review, including Branch IT review, of emails or other documents reported to be accessed, deleted, and/or forwarded by Ms. [REDACTED] on January 6, 2020.

Procedural Matters. Procedural issues did affect the overall timing of this investigation, and particularly the delivery of this report, as further explained below.

By way of relevant summary, Ms. Knieling, on behalf of the Branch, referred this matter to me on or about December 31, 2020, and made me aware of Ms. [REDACTED] expanded allegations on January 2, 2020. As appointing authorities, both Sen. Gelser and Ms. Knieling have mandatory reporting obligations under HCR 20(2)(b), (11)(b). This matter arose subsequent to the enactment HCR 20 (enacted on June 29, 2019), which made significant revisions to Rule 27. The majority of the amendments were not to take effect until the appointment of the LEO. The Branch appointed Mx. Sandmeyer as Acting LEO on November 11, 2019, and they commenced their role on December 2. Given that this matter arose subsequent to the LEO appointment, the assumption was that this matter would be governed both procedurally and substantively by HCR 20. Though I was not privy to the internal discussions at the Branch, to the best of my knowledge Rule 27 interpretation and application issues were under review by the Branch, including by Legislative Counsel’s Office, in the December-January timeframe. In mid-January 2020, I received guidance from the Branch that the procedural aspects of the “new” Rule 27 (as amended by HCR 20) were to apply retroactively to all pending matters, but the substantive portions (*e.g.*, definitions of prohibited conduct) of the version of Rule 27 in effect at the time the complaint is received shall apply. This guidance confirmed that HCR 20, in its entirety, applies to both the allegations raised in and the procedure of this investigation.

As mentioned above, at the outset and at various points throughout the investigation (including between the first and second interview), Ms. [REDACTED] (or her counsel on her behalf) raised numerous procedural questions as well as confidentiality concerns. I did my best to address those contemporaneously, and also referred Ms. [REDACTED] (and her counsel) back to the

Branch, including to Mx. Sandmeyer, for additional process counseling, which I understood took place. Additionally, Ms. ██████ changed counsel during the course of the investigation, and that resulted in a corresponding request by the new attorney for time to get up to speed and meet with Ms. ██████. These issues affected the timing of this investigation, including the fact-finding portion.⁶ Though I was able to complete Ms. ██████ interview in mid-March, that coincided with the outset of the COVID-19 pandemic. Suffice it to say, this has materially affected the timeline of this investigation, including the preparation and submission of this report.

Pursuant to HCR 20(d)(A) and (C), the draft report was provided to the complainant (Ms. ██████) and the respondent (Sen. Gelser) on June 15, 2020. Each had seven days from receipt to provide written responses to this investigator. The HR Director and the Office of Legislative Counsel have no role in review of any party's responses to the draft report. Any decision to modify the draft report shall rest solely with the outside investigator. Neither party provided any responses. There are no substantive changes between the draft report and final report.

Interim Safety Measures. Finally, by all accounts both Sen. Gelser and Ms. ██████ agreed as of December 30 that their current working arrangement was unsustainable. Ms. ██████ reassured Ms. Knieling in their exchange on January 2 that she had no immediate safety concerns, that she was not seeking or needing any workplace accommodation, and that the behavior (which she describes as “the accusations and cruelty”) had in fact stopped, which was the very intention of her December 30 text message to Sen. Gelser. Notwithstanding, given the nature of her allegations, the decision was made to place Ms. ██████ on administrative leave—a decision fully supported by this investigator.

V. Findings of Fact

While speaking with Ms. ██████ and Sen. Gelser regarding this matter, both parties emphasized their respective desire for this investigator to understand the broader context of their working relationship. To that end, the information presented to this investigator—which was quite extensive—for the most part involved overlapping circumstances and background information relevant to both categories of allegations (those related to an “emotionally toxic and abusive environment” and those related to medical leave retaliation and interference). Accordingly, and given the inextricable overlap, this investigator examined Ms. ██████ allegations of medical leave interference and retaliation within the context of all information provided. This report, however, summarizes only those factual findings, many of which are established or corroborated by documentary evidence, germane to the matter before the Conduct Committee—medical leave retaliation and interference. Where this investigator resolved a material dispute or made a credibility determination, that is specifically noted.

⁶ Accordingly, the Acting LEO approved an extension of the investigatory timeline under HCR 20(14)(b). Regular status reports were provided to the parties.

I find the following:

1. Sen. Gelser serves District 8 and was elected to the Oregon State Senate in 2014. Prior to that, she served in the Oregon House of Representatives since 2005.

2. Sen. Gelser hired Ms. [REDACTED] as her Chief of Staff (“COS”), effective December 2018. Though Ms. [REDACTED] had previously worked for an elected official, this was her first position at the Capitol.

3. After Sen. Gelser notified Ms. [REDACTED] that her “consistent errors” were “not sustainable,” Ms. [REDACTED] first raised concerns about an emotionally “toxic” and “abusive” working environment via text message to Sen. Gelser between approximately 10:30 a.m. and 11:00 a.m. on December 30, 2019. Ms. [REDACTED] had not raised any prior allegations regarding Sen. Gelser—either to Sen. Gelser directly or to HR. The timeline of events on December 30 that immediately preceded Ms. [REDACTED] allegations against Sen. Gelser is important, and specific findings are made below.

4. Sen. Gelser was scheduled out of the office on vacation on December 30; Ms. [REDACTED] returned to work that day after being out the prior week. Sen. Gelser sent Ms. [REDACTED] a text message at approximately 8:18 a.m. to check in and advise her that a priority list of tasks was forthcoming. Sen. Gelser emailed the priority list to Ms. [REDACTED] at about 8:40 a.m., which included a “to do” list for a January 6 Town Hall in Albany. After Sen. Gelser received an email about a phone call that was not on her calendar, she texted Ms. [REDACTED] again at about 9:09 a.m. to inquire whether Ms. [REDACTED] was receiving Sen. Gelser’s messages and asking Ms. [REDACTED] to confirm whether someone was in fact expecting a phone call from her. At about 9:30 a.m., and after consulting her calendar and seeing that things had changed since she checked the prior Friday (including that the Albany Town Hall had moved to later in the month), Sen. Gelser reached out on a more urgent basis to Ms. [REDACTED] via text in order to help clarify these time-sensitive scheduling issues.

5. At 9:41 a.m., Sen. Gelser emailed Ms. Knieling to seek her assistance with respect to an HR matter. The two spoke almost immediately. Sen. Gelser told Ms. Knieling she was seeking HR assistance with respect to Ms. [REDACTED] including to address what Sen. Gelser described as continuing performance concerns (*e.g.*, calendar inaccuracies, timeliness, and responsiveness). This conversation occurred prior to Ms. [REDACTED] raising concerns regarding her working environment.

6. Though her work day commenced at 8:00 a.m., Ms. [REDACTED] first responded to Sen. Gelser’s text messages at approximately 10:13 a.m. Back and forth messages ensued for approximately the next 15 minutes between Sen. Gelser and Ms. [REDACTED] with respect to the scheduling issues, including the Albany Town Hall. Though not an exhaustive summary of that issue, in approximately mid-December, a hold was placed on Sen. Gelser’s calendar for a Town Hall in Albany on January 6. As far as Sen. Gelser knew, that was the status when Sen. Gelser and Ms. [REDACTED] wrapped things up for vacation over the holidays. The event was still on the

calendar for January 6 when Sen. Gelser checked again on or about December 28. Based on that reliance, and prior conversations with Ms. ██████ Sen. Gelser commenced advertising and promoting the Town Hall event for January 6 (and also had declined to attend an important family event that evening). It was not until the morning of December 30 that Sen. Gelser saw that the Town Hall had come off the calendar for January 6 and was moved to later in the month. In responding to Sen. Gelser's December 30 inquiry about the status of the Albany Town Hall, Ms. ██████ initially texted: "I'm confirming that I didn't 'eff' that up and tell you something incorrect." Sen. Gelser responded that she must be able to rely on her calendar—which Ms. ██████ maintained as part of her job duties—as being accurate. From her perspective, Ms. ██████ pointed to several "Daily Memos"⁷ between the two (including one from 12/18) where she had indicated that January 6 was not available for the Albany Town Hall at the desired location but that there was availability on January 22. Ultimately, however, Ms. ██████ did not make a contemporaneous change in the calendar.⁸ It is fair to say that frustration was mounting on both sides in relation to the scheduling mishap.⁹

7. During their December 30 text message exchange, Sen. Gelser was direct in telling Ms. ██████ "[T]he calendar needs to be accurate at all times. I have to be able to trust the calendar...I need to be able to rely on what you tell me and what is in the calendar.... Otherwise, I cannot function either in my work or family life. *Let's talk next week in person about how to support that and expectations moving forward. There are so many consistent errors and that is not sustainable. We need to fix it.* Thank you in advance for sending those communications. I'm logging off now because I've already been on far longer than I promised my family." (Emphasis added.)

⁷ It had long been Sen. Gelser's practice to communicate with her staff via what is referred to as "Daily Memos" that are sent via email. Generally speaking, the expectation was for the COS to update them daily with respect to important calls or questions. Previous issues were often carried forward until matters fully resolved.

⁸ It is unnecessary to conclusively resolve who bore what responsibility for this breakdown in communication. As discussed below, this was not the first time Sen. Gelser had raised issues regarding calendaring mistakes made by Ms. ██████—some Ms. ██████ took responsibility for and some she attributes to what she describes as poor communication by Sen. Gelser or changed expectations.

⁹ The frustration was perhaps exacerbated by a recent, drawn-out issue (which was both time-consuming and expensive for Sen. Gelser) regarding Ms. ██████ work cell phone (that Sen. Gelser was paying for) and Ms. ██████ needing to switch out a SIM card that Sen. Gelser mailed to her. In fact, that issue arose in late September, prior to Ms. ██████ OFLA leave, and did not resolve until December 29.

8. Ms. [REDACTED] wrote in response:¹⁰

“I don’t think it’s helpful to argue over text about what went wrong. I was told that I needed to take full responsibility for this event and to stop bothering you about it. We talked on the phone while we were both on vacation. I was trying to completely disconnect like you told me to (and how my doctor ordered me to)¹¹ and didn’t know that you would take over the event over our mutually agreed upon holiday. I take full responsibility for the YMCA error. I am fine being blamed for other errors publicly because that’s a staffer’s job. But our other consistent communication errors are mutual errors over shifting expectations.

“*You are correct that this is not sustainable.* I’m not going to abandon you before or during such an important session, because my integrity is higher than that. But perhaps it would help our working relationship to let you know that I am actively looking for another position and will leave this job as soon as I am able to make a switch after session.

“I cannot successfully support you when what you tell me you want changes without warning. *I can’t be successful professionally in such an emotionally toxic and abusive environment.* I believe that you are an incredible Senator, a fierce advocate for your district and for foster kids and marginalized people. When I took this position, and through the end of the 2019 session, I saw myself working with you for years—perhaps even into your next elected office. But you can’t treat your staff like this. I firmly believe that if you saw another staffer being treated this way, you would burn down the Capitol in their defense. You’re going to continue to lose staff if you don’t change how you treat them moving forward. *This is a toxic and emotionally abusive work environment and no one can be successful within it.*

“I have almost no responsibility, no path forward to get more responsibility and am consistently ‘failing’ in my job for you, despite working harder in the interim than I did during session, because you consistently tell me you want one thing and then do the exact opposite. I accept full responsibility for a variety of mess-ups. *But when a staffer is*

¹⁰ As this constitutes Ms. [REDACTED] initial complaint, it is stated verbatim and in its entirety.

¹¹ Sen. Gelsler stated that she was surprised by this statement because she had never received a doctor’s note, and one was not provided to the Branch. As further outlined below, Ms. [REDACTED] first requested a “mental health day” in the Daily Memo on December 17. Ms. [REDACTED] does not recall telling Sen. Gelsler prior to this December 30 text exchange that her health care provider “ordered” her to take time off of work. Had that expectation been communicated to Sen. Gelsler, Sen. Gelsler stated that she would have had no problem meeting that request.

working in such a high state of anxiety and emotional abuse, more mistakes are bound to happen.

“I hope the knowledge that I am actively trying to find a way out of this mess will help you in your frustration with the situation. Please know that I am more frustrated than you could ever be. And I hope that you never treat another staffer this way ever again.

“Like I said above, I’m not going to leave until I find another position, and if I find one before or during session, part of my acceptance will be contingent upon my staying with you through session.

“I’ll continue to send you the information you requested via email. Have a great day and see you next week.”

(Emphasis added.) This concluded the December 30 text message thread.

9. Upon receipt, Sen. Gelser copied Ms. [REDACTED] above text message into an email and forwarded it in its entirety to Ms. Knieling at 11:02 a.m., asking for Ms. Knieling’s help. As set forth in Section III, above, Sen. Gelser responded to Ms. [REDACTED] the next morning to advise her that her concerns were serious and important, and encouraged the assistance of HR and the Acting LEO.

10. In her own words, Ms. [REDACTED] intent in sending Sen. Gelser the text message on December 30 wherein she alleged an “emotionally toxic and abusive” work environment among other things, was to give Sen. Gelser “feedback,” and to try and stop their argument over text messages (described by Ms. [REDACTED] as “accusations and cruelty”) in the moment. According to Ms. [REDACTED] it did stop at that instant (in fact, Sen. Gelser had closed out the conversation prior to Ms. [REDACTED] responding). During the interviews, Ms. [REDACTED] also mentioned other precipitating events where she believed that Sen. Gelser was “micromanaging” her and other staff; sending her texts correcting her or telling her things needed to be different; “berating” her over texts and sending her a “barrage” of text messages; having to be on call “24/7”; and “punishing” her for small mistakes. Ms. [REDACTED] described this as an increasingly stressful situation causing her a heightened state of anxiety. She felt Sen. Gelser was questioning everything she did, and was constantly saying she was doing everything wrong.

11. During the interview process, I probed these issues to examine whether Ms. [REDACTED] was stating allegations that, if true, could rise to the level of harassment or a hostile work environment. Ms. [REDACTED] did not proffer any facts that would link the allegations of an “emotionally toxic and abusive working environment,” and the other precipitating events summarized in paragraph 10, above, to any protected status to bring these allegations within the scope of Rule 27. Ms. [REDACTED] attorney did not assert that Sen. Gelser’s actions rose to the level of harassment. Their position did not change after I advised Ms. [REDACTED] and her counsel of my facial review analysis (that her “toxic” and “abusive” workplace allegations, even if true,

could not state a violation of Rule 27), and that only the leave-related allegations would be before the Conduct Committee.¹²

12. Turning to the leave-related allegations, on January 2, 2020, Ms. ██████ asserted she may have experienced retaliation by Sen. Gelser for “taking OFLA leave last week (and attempting to take it the week before), and retaliation for taking FMLA.” Ms. ██████ had neither requested nor taken any OFLA leave in the week prior (December 23-27).¹³ The only protected family medical leave Ms. ██████ took was from October 29, 2019 through November 5, 2019, due to her own serious health condition (she sustained a concussion). The Branch approved her leave under OFLA; Ms. ██████ was not eligible for leave under FMLA because she had not yet worked at the Branch for a year.

13. During the interview process, this investigator sought to clarify with Ms. ██████ the precise nature of her leave-related allegations, including when she first believed that Sen. Gelser had engaged in any inappropriate conduct—as the first it was reported was on January 2, two months after her leave concluded. During our first interview, and before I had received and reviewed the underlying records, Ms. ██████ unequivocally stated that Sen. Gelser had continued to demand she do things while on OFLA leave such that it felt like Sen. Gelser was “interfering with her leave.” She also stated that at the time, she felt like she needed more leave but she did not want to “fight [Sen. Gelser] tooth and nail for it”; and she “got in trouble” and Sen. Gelser was “mad at her” for not working (*i.e.*, for taking leave).

14. Importantly, Ms. ██████ said that the alleged retaliatory conduct and interference occurred solely through Sen. Gelser’s written communication with her—text messages and emails—as opposed to any in person or telephone communications. Accordingly, this investigator reviewed the totality of relevant documents, including the complete text threads between the two parties, email communication (including during Ms. ██████ leave), and cell phone records. There is nothing in the written record to corroborate any interference or retaliation by Sen. Gelser with respect to Ms. ██████ OFLA leave. The record is to the contrary, as set forth in the findings below.

15. Ms. ██████ fell and injured herself at home on the evening of October 28, 2019.

16. Starting at about 8:30 a.m. on October 29, there were a few texts exchanged between Sen. Gelser and Ms. ██████ about scheduling issues. It was not until about 10:30 a.m. that Ms. ██████ told Sen. Gelser that she hit her head hard the night before on a dresser, was

¹² See discussion in Section VI, *infra*, for concluding comments.

¹³ Ms. ██████ also took what was self-described as a “mental health day” on December 20, 2019, and received paid sick leave. This was unrelated to her prior OFLA leave and was not otherwise OFLA-qualifying.

feeling dizzy and nauseous, and was going to urgent care. Sen. Gelser responded, “Hope you feel better soon!” There were a few minutes of other back and forth exchanges (initiated by Ms. [REDACTED])

17. No further text exchange transpired until about 12:15 p.m. when Ms. [REDACTED] advised Sen. Gelser she was at the ER and then about 15 minutes later when Ms. [REDACTED] texted, “Well, I have a concussion!” At about 3:30 p.m., Sen. Gelser texted: “Sorry to bug you but do you have the call in details for the DHS meeting tomorrow?” (they were not included on her calendar). Ms. [REDACTED] promptly responded, stating she was putting the information together and also said, “I just got back from the hospital and they don’t want me looking at a computer or working until the 2nd, but I’m ignoring their orders to make sure you’re covered the rest of the week. I’ll have it to you soon [smiley emoji]. I am really sorry for the inconvenience of this. When I am back I’ll put in a request for sick leave.” Sen. Gelser responded, “Ok thanks. Just please get me the number for tomorrow. But you are gone until the 2nd?” Ms. [REDACTED] texted her a picture of her medical certification, and Sen. Gelser gave her a thumbs up emoji and said, “Get better. I will try to track down the phone number.” Ms. [REDACTED] immediately responded that she was “on it” and “didn’t want to leave [Sen. Gelser] hanging,” and that she would stop once she got Sen. Gelser set up for her meeting the next day. Sen. Gelser said, “Thank you, but you need to follow directions from your doc.”

18. After a few more exchanges sorting out the details of the meeting, their thread concluded as follows:

- Ms. [REDACTED] “I’m sorry I got hurt.”
- Sen. Gelser: “I’m sorry you got hurt, too. Take care of yourself and get better. Avoid dressers! They can’t be trusted. Also, don’t look at your screens!!!! The need for brain rest is a real thing and you will feel worse for longer if you don’t do it. Early rest is the most important. (Spoken as the mother of two concussed children, including 1 with two high impact concussion that led to long term challenges). Have Logan download books and tape and podcasts for you. TV is bad for your too unfortunately. But your ears can be active.”
- Ms. [REDACTED] “Ugh thank you Sara. You’re the best. I feel particularly bad because I feel like our working relationship has been off lately and I was determined to make it better. :(You’ll laugh though when you hear how I got hurt.” (Ms. [REDACTED] then detailed how she fell.)
- Sen. Gelser: “Ouch! Okay, turn off your phone and get better. I’ll see you next week.”
- A few minutes later, Ms. [REDACTED] initiated a text about scheduling, Sen. Gelser sent a brief response, and their exchange concluded about 3:50 p.m.

19. There were no further text exchanges until Sen. Gelser reached out on the evening of October 31 to say, “Hope you are not looking at screens and letting your brain rest, but just

sending you a note for when you look that I hope you feel better soon!” Ms. ██████ responded the next morning with, “Thank you Sara [heart emoji].”

20. There were no further texts exchanged until Ms. ██████ reached out on the afternoon of November 3 to say, “I’m feeling like I’ll be ready to work tomorrow! Do you need me to do anything before then?” Sen. Gelser responded the next morning, November 4: “Glad you are feeling better! Seriously though make sure you are ready. It isn’t worth coming back fast if you aren’t ready. Your brain is important and it’s super important it recovers properly.”

21. Ms. ██████ responded on the evening of November 4: “Thank you for encouraging me to make sure I’m 100% before I come back. I didn’t feel good this morning (head was all fuzzy) so I slept most of the day. I’m starting to feel stressed about my backlog of stuff I need to do for you though. So I’m definitely going to start tackling stuff tomorrow morning and will keep you posted on how I’m feeling. But I think I will be good to go in the morning! My first priority is the Albany round table logistics, unless you have something more pressing! Hope you’ve been well [smiley emoji].” Sen. Gelser replied, “Thank you and I’m glad you are feeling better.” Sen. Gelser provided Ms. ██████ with updates and a “to do” list, but ended by saying: “Sleep well tonight, and let me know in the morning for sure if you are back. I’ve wanted to be careful not to contact you via text while you are recovering and won’t (after answering this question) until you are officially back.” Ms. ██████ responded, “That sounds good. Thank you Sara!”

22. Ms. ██████ did not return to work on November 5, and there was no communication between the two. Ms. ██████ returned to work late-morning on November 6.

23. Neither party recalled any telephone calls occurring during Ms. ██████ leave, and this is corroborated by the cell phone records reviewed.

24. With respect to emails, and as further illustrated by Sen. Gelser’s October 29 text messages to Ms. ██████ it was not Sen. Gelser’s expectation that Ms. ██████ would be checking or responding to emails during her leave. The work had to get done, and Sen. Gelser assumed those duties (no other staff were working during the interim). Through this process, Sen. Gelser became aware of and was surprised by what she perceived to be many scheduling balls that had been dropped, so she made an effort to get caught up on the scheduling.¹⁴ Sen. Gelser did copy Ms. ██████ on some email replies or forwarded things to her for scheduling purposes upon her return. Sen. Gelser did not send Ms. ██████ any email communication that requested or required her to perform any work during her leave, nor was there any communication that evidenced that Sen. Gelser was upset or mad about Ms. ██████ being off

¹⁴ After Ms. ██████ was settled back at work, in early December Sen. Gelser revisited the scheduling issues, and continued to address with Ms. ██████ expectations around scheduling, calendaring, and responding to constituents in a timely manner, emphasizing that timeliness and reliability are crucial.

work on medical leave. Rather, the communications reflect the contrary, including that in many responses, Sen. Gelser shared that Ms. [REDACTED] was out of the office on leave and would respond to them upon her return.

25. The factual record is indisputable that: (i) Ms. [REDACTED] remained on protected OFLA leave from October 29 through November 5 (though the medical certification stated that Ms. [REDACTED] was able to return to work on November 2 or sooner if her symptoms had resolved); (ii) she received her full period of requested leave; (iii) she did not request any additional leave; (iv) there was no denial of requested leave benefits; (v) she was not required to perform any work during her leave; (vi) Ms. [REDACTED] was reinstated to her same position; and (vii) Sen. Gelser encouraged her—on more than on occasion—to make sure she took the time she needed to heal and to not come back to work prematurely.

26. Even after reviewing the key documents with her during our interviews (so that she could have a full opportunity to respond), Ms. [REDACTED] remains unwavering in her belief that Sen. Gelser was “pushing back on her for taking leave,” was “trying to take her leave away,” and was “fixated on taking [her] paycheck away from her.”¹⁵ This belief seems to have arisen after Ms. [REDACTED] returned from leave and was triggered by communication regarding whether Ms. [REDACTED] had sufficient paid time off to cover her leave and how to properly designate the leave. What the record bears out is that Ms. [REDACTED] likely conflated two materially (and legally) distinct concepts: (1) her entitlement to protected leave, and (2) whether the leave would be paid. Given that OFLA is unpaid leave, confusion or frustration over how to properly designate paid time off cannot be a basis for a leave-related interference or retaliation claim. There is no dishonor whatsoever in Ms. [REDACTED] being confused about the issue.¹⁶ But Ms. [REDACTED] belief

¹⁵ As I shared with Ms. [REDACTED] several times throughout our discussions, she most certainly is entitled to her own feelings and the impact Sen. Gelser’s words and actions had on her. This investigator is empathetic to the fact that Ms. [REDACTED] expressed high levels of stress and anxiety in relation to both her working relationship with Sen. Gelser and the investigatory process. By the end of our discussions, Ms. [REDACTED] was either directly or by implication comparing Sen. Gelser to an “abuser” and talked about a “cycle of abuse,” and described her as a “boss who hated her and thought [she] was stupid.” When we reviewed personal sentiments shared over text messages and in her Christmas card to Sen. Gelser, Ms. [REDACTED] said that those communications that expressed care and concern between the two are not genuine and are just Ms. [REDACTED] “sucking up to [Sen. Gelser].” Ms. [REDACTED] also does not believe Sen. Gelser’s sentiments to be genuine. It is not for this investigator to render any opinion about Ms. [REDACTED] personal feelings or emotions, one way or the other, but resolution of these allegations must be grounded in objective facts and evidence, not subjective beliefs and opinions.

¹⁶ In fact, Sen. Gelser also had openly professed confusion about how to ensure Ms. [REDACTED] paid time off was properly recorded well in advance of Ms. [REDACTED] OFLA leave and sought the assistance of HR to clarify things. In August 2019, Sen. Gelser contacted Ms. Knieling because she had concerns that Ms. [REDACTED] was not appropriately and accurately tracking her time. They met and Ms. Knieling enlisted the assistance of a payroll specialist to

that Sen. Gelser took steps to preclude her from taking leave and/or being paid for that leave with accrued paid time off, is belied by the indisputable record evidence. To the contrary, Sen. Gelser's intent, as evidenced by her actions, was to help ensure that Ms. [REDACTED] was properly entering her leave so that she could be paid. Given that all of this transpired over email and text, there is no room for debate.

27. The initial communication about leave designation came from HR. HR notified Ms. [REDACTED] on Friday, November 8, 2019, that her request for OFLA leave was approved, retroactive to October 29. Further, Ms. [REDACTED] was instructed that for payroll and leave tracking purposes, she was to code her timesheet by checking the "FMLA" box in Trackstar, and to stop coding it as such when she had concluded her leave. She also was instructed to "seek approval from [her] supervisor to use other leave or leave without pay as necessary."

28. November 12 is when Sen. Gelser and Ms. [REDACTED] first had any discussion about proper entry of her leave and whether it would be paid. They communicated about this issue over text and the Daily Memos. Relevant excerpts include:

- On November 12, Ms. [REDACTED] texted Sen. Gelser: "My concussed self didn't realize that I had made doc appts tomorrow morning when you're scheduled to be in Salem [insert emoji]. I assume you need me tomorrow to support you, correct?"
- Sen. Gelser responded: "I know you need to do your medical appointments so go ahead and keep them. Please set up a time on the calendar for us to talk about your schedule generally. Also, have you been able to get all the time entered into the system? It has to go through TrackStar – not just Workday. I'm worried you are about to run out of paid leave and want to be sure that you have an accurate sense of where you are at with that as you do your planning. We can sit down together with Jessica and figure it all out."
- Ms. [REDACTED] responded: "Nah I'll move them to later in the week! We actually don't need to talk to Jessica, I've been working with HR already about my time. It's under FMLA because it was a traumatic injury."
- Sen. Gelser responded: "*Right. It's protected time. I'm just not sure if it is paid time. (After all sick and vacation accruals have been used[.])*" (Emphasis added.)
- Ms. [REDACTED] responded: "Gotcha. Okay."

further support Sen. Gelser. Sen. Gelser learned that the time had to be entered in TrackStar, not WorkDay. In early September, Sen. Gelser addressed this issue with Ms. [REDACTED] under the heading of "HR Stuff" in their Daily Memos, and revisited the need for HR guidance with respect to accurate time entry in late September following Ms. [REDACTED] returning from a European vacation.

- Sen. Gelser stated: “You should keep your appointments tomorrow [though].”
- Ms. ██████ responded: “We can talk later!”¹⁷

29. Their email communication via Daily Memos on November 12-13 further substantiates that Sen. Gelser was in no way attempting to “take away” paid leave from Ms. ██████. Sen. Gelser’s efforts to ensure Ms. ██████ leave was appropriately tracked and designated is not improper, nor is it evidence of an improper or retaliatory motive. The full excerpt from the November 13 Daily Memo follows:¹⁸

Clarified FMLA with HR regarding my concussion leave. I’m good to go on all of that—it’s in your inbox if you’re interested. **Gotcha. I want to be clear I knew the time was protected and don’t object to the time off, I just wanted to be sure that you have accurate information about the paid time. The current system is a disaster in terms of how Workday and TrackStar interact so it is hard to keep track of time and make it accurate. I chatted with Mele yesterday too because I don’t understand how I am supposed to put approvals in and keep things accurate. I think she and I figured out we missed one vacation day (because when I put in your Europe trip I thought you were back at work on Thursday but it was actually Friday, so we have to add that Thursday in) and we have to get your other medical appointments in there from Aug/Sep/October. I just don’t want to be in trouble for authorizing/not authorizing things that are going to land me in the Oregonian, etc. Let’s get some time on the calendar next week for you and I to talk about managing this so it isn’t stressful for either of us. It also helped me to understand the accrual rates—which I wasn’t aware of. It’s actually a pretty good package--- much better than when I worked for the state! That’s good news, and I was relieved you have so much space for your leave to be paid. Cool! I added the vacation time from my camping trip in July, so I think we’re good to go.**

Accordingly, the record reflects that the issue regarding Ms. ██████ leave time, including that it would be paid, was resolved to her satisfaction by November 13, 2019. There was no other mention of it until her January 2 complaint. There are no facts to support that Sen. Gelser sought to “take away” any protected leave from Ms. ██████ or force her to take unpaid leave, or that she otherwise displayed animus against Ms. ██████ because she took six days off of work following her concussion.

30. Ms. ██████ also raises concerns with respect to how Sen. Gelser responded to her request for a “mental health day” in late December 2019. (This is also referenced in her December 30 report, and perhaps what she was referring to in her January 2 amended report.) In similar fashion to the OFLA leave allegations, Ms. ██████ believes that Sen. Gelser tried to stand in the way of her taking this time off when she needed it. Similarly, this belief is not substantiated by the record evidence, as the below findings demonstrate.

31. As a threshold matter, Ms. ██████ request to take a “mental health day,” which she took as a paid sick leave day on December 20, 2019, does not qualify as protected

¹⁷ It was around this time that Ms. ██████ shared her belief that Sen. Gelser “was trying to make [her] take unpaid leave for her concussion,” or similar thoughts, via text message with friends and her boyfriend. These texts reflect Ms. ██████ subjective belief and are not probative of Sen. Gelser’s actions or intentions.

¹⁸ The black text is authored by Ms. ██████. Sen. Gelser authored the red text.

OFLA/FMLA leave or as an attempt to take protected leave. The surrounding circumstances, however, may be instructive with respect to the query of whether there is any evidence to support the allegations that Sen. Gelser espoused any retaliatory motive against Ms. [REDACTED] for her prior use of protected leave. Again, in Ms. [REDACTED] words, she describes Sen. Gelser as “getting mad at her” for taking OFLA leave, and she also alleges generally that Sen. Gelser would get mad when she called out sick¹⁹ and similarly was mad about her “mental health day” request.

32. Ms. [REDACTED] shared with this investigator that she was in a heightened state of anxiety, which she relates 100% to work-related stress, and Ms. [REDACTED] suffered a panic attack on December 17. Ms. [REDACTED] was working remotely that day.²⁰ She had lunch with one of Sen. Gelser’s former staffers and attended therapy. Ms. [REDACTED] did not tell Sen. Gelser about her panic attack. That same day, however, Ms. [REDACTED] did raise the issue of needing to take a “mental health day” per her therapist’s recommendation in the Daily Memo, and Ms. [REDACTED] initially proposed taking it on December 20. Sen. Gelser responded that it was no problem, and that Ms. [REDACTED] had ample sick time. The two were in Salem together briefly on December 18. While precise recollections vary, the two did have at least a brief discussion (likely in Sen. Gelser’s office while looking at the calendar) about this. Sen. Gelser suggested that they take off all of the following week and close the office. Ms. [REDACTED] maintains that Sen. Gelser precluded her from taking a “mental health day” until it was “convenient” for Sen. Gelser, and that this is another example of how poorly Sen. Gelser supposedly treated Ms. [REDACTED] and how it made her “mad” when Ms. [REDACTED] asked for time off; however, this is not what the record bears out. The following Daily Memo excerpt reflects the discussion that was initiated on December 17 (Ms. [REDACTED] statement is in black and Sen. Gelser responded in red), and Ms. [REDACTED] response on December 18 is the last sentence in bold:

- My therapist recommended that I take a mental health day soon (she’s willing to send a doctor’s note to you/HR if that’s helpful) and I also need to confirm my personal day with you for the end of the year. I’m thinking about taking the 20th as a mental health day because the need is urgent (I would take it tomorrow, but that’s too much to dump on you and I can wait two days). And either the 24th or the 26th as my personal day. Would that work for you? I’m happy to coordinate phone/email coverage over the holidays. **Either the 24th or 26th is fine for your bonus holiday day- whichever works best for your family. I will be completely out next week (or at least that is my goal—I’m even going to set an out of office reply) And for the mental health day, that’s basically just a sick day and I think you have a lot of sick time. Just be sure it gets submitted so that neither of us get in trouble. As discussed, taking a mental health day on Friday and Monday, then using personal days for the rest of next week! Merry Christmas!!!**

¹⁹ I did not find objective support for this in the record. What the record does reflect is that on several occasions when Ms. [REDACTED] was sick, Sen. Gelser responded along the following lines: “Hi [REDACTED] I’m sorry you aren’t feeling well. Just take care of yourself, and mark the sick time in Trackstar from the day and rest tonight too. You’ll get better faster if you don’t work at night. Take care and thanks for the schedule update!”

²⁰ The two rarely worked together in person in November, and only twice in December, on December 11 and 18.

Then, the final exchange on the topic was on December 19:

From: [REDACTED]
Date: Thursday, December 19, 2019 at 5:18 PM
To: Sen Gelser
Subject: Memo 12/19

No phone calls today!

See below for updates on the CAT town hall and responses to your other questions.

I offered time to everyone in the scheduling folder and everyone you had forwarded to me to schedule and put holds for those meetings and calls in your calendar. It'll be easy to confirm those meetings when we're both back.

I'm going to take my mental health day tomorrow, but will work for an hour or two in the morning or midday to finalize the Albany library room (again, see below for an update there) and make sure no one needs anything before our holiday week. I'll also change the office voicemail to our out of office message. Feel free to text me tomorrow if you have any questions. I'll just be at the doctor and am getting a massage, but I'll be available if you need me.

Accordingly, the circumstances surrounding the "mental health day" do not evince anything other than Sen. Gelser supporting Ms. [REDACTED] request, her agreeing to the date Ms. [REDACTED] proposed, and Ms. [REDACTED] taking a paid sick leave day as agreed upon.

33. A few final points of note with respect to their working relationship. Sen. Gelser acknowledged awareness of Ms. [REDACTED] frustrations, including around the fact that Ms. [REDACTED] wanted more responsibility. In Sen. Gelser's opinion, however, Ms. [REDACTED] was not delivering on her assigned tasks. Many examples grounded in objective record evidence (primarily irrefutable documentary evidence) support this view as reasonable. Sen. Gelser also acknowledged to Ms. [REDACTED] at various points (including in August 2019), that her adjustments to how she wanted things tracked by way of the calendar and memos also likely were frustrating to Ms. [REDACTED]. Moreover, Sen. Gelser began having some concerns about Ms. [REDACTED] performance in the late-August/September 2019 timeframe, which predated Ms. [REDACTED] OFLA leave. These included Ms. [REDACTED] being frequently late to work, calendaring and scheduling snafus and missed appointments (including with respect to constituents), which ultimately lead to a lack of trust.²¹ Sen. Gelser believes she tried to reiterate instructions and expectations in a nice and professional way. Ms. [REDACTED] stated that she kept trying to get Sen. Gelser's attention to talk about these issues but that did not happen. In hindsight, however, Sen. Gelser realizes she probably could have raised the performance concerns more directly with Ms. [REDACTED] and that is why she was seeking HR's help on December 30. But there is nothing in the record to suggest that any decisions Sen. Gelser made with respect to assigning duties to Ms. [REDACTED] or any performance related frustrations, had any relation whatsoever to the fact Ms. [REDACTED] had utilized a week of protected family medical leave.

²¹ Again, it is not within the scope of this investigation to reach any conclusions about Ms. [REDACTED] work performance.

34. After an exhaustive analysis of the facts and evidence obtained during this investigation, which in large part consists of text and email records, this investigator does not identify any comments, conduct, or action that would be necessary to establish a retaliatory motive by Sen. Gelser toward Ms. [REDACTED] or interference with Ms. [REDACTED] protected leave.

VI. Resolution of Allegations Falling Outside of Rule 27

Based on the facial review, Ms. [REDACTED] allegations that Sen. Gelser subjected her to an “emotionally toxic and abusive environment” are outside the scope of Rule 27 and thus not before this Conduct Committee for resolution. Rather, they are the type of concerns more appropriately addressed under a respectful workplace policy. As provided in HCR 20(11)(i)(A)-(D), in this situation this investigator is vested with discretion to directly engage in coaching, recommend training, or take any other action warranted to achieve the policy objectives of a respectful workplace policy.

Having evaluated what essentially comprises the comprehensive history of the working relationship between Sen. Gelser and Ms. [REDACTED] inclusive of all of Ms. [REDACTED] concerns and complaints about Sen. Gelser and Sen. Gelser’s performance challenges with respect to Ms. [REDACTED] this investigator will not be taking or recommending any additional steps. While the two experienced occasions of mutual frustration (or even some intense exchanges), culminating in the December 30 text exchange, there is nothing substantiated in the record that would rise to the level of inappropriate workplace conduct on the part of Sen. Gelser, particularly conduct that needs to be remedied by training, coaching, or some other measure. The only caveat is if the two are going to continue working together in any capacity, this investigator will provide guidance in that respect. But according to Ms. [REDACTED] at least by December 30 she had reached the conclusion that she would be voluntarily resigning her position at the end of the interim session.