

February 1, 2021

Oregon Legislature
House of Representatives Conduct Committee

Co Chair Noble, Co-Chair Fahey, Members of the Conduct committee,

I have asked my attorney to read my statement for me, because we were told that only one of us would be allowed to speak today. We had assumed both of us could speak, since he is my counsel, but in finding out today that would not be allowed we will abide by the committee's guidance.

We hope you receive our 40 plus page rebuttal, which sets forth in detail important evidence and information. As I understand, you have not yet received this important document.

When this matter first arose, I was accused in the media of things like "inappropriate touching" of women who worked at the Capitol and that I was a risk to visitors to the Capitol. I knew that was never true, but it was disseminated in the media and that became the talking point about me.

After a nine month investigative process in which I was repeatedly denied any information about those initial allegations against me, we are here to respond to different allegations, in a report that finds that I made three women with whom I had consensual relationships uncomfortable during or after those relationships ended.

The report alleges that I blurred the lines between personal and professional relationships with my consensual romantic partners, and that had a negative impact on their work. Please let me unequivocally say that I am very sorry that I made anyone uncomfortable. I am not here to make excuses and I take full responsibility for my actions in making anyone uncomfortable.

These were offenses of ignorance, which I regret, and from which I can learn and grow from to become a better and more conscious man.

Because of my public position, I am rightly held to a higher standard of personal conduct. I absolutely believe that modeling good behavior is an important part of being an elected official.

I made mistakes in these relationships, which I know because I have now heard fully how I made partners feel uncomfortable.

I now want to pivot to an important discussion about this process that has been seriously flawed. This investigation has not been fair, timely, nor have I been given the opportunity to speak the full truth. Many have judged my conduct without knowing the facts. Many have read the report without having had the benefit of my response and substantial evidence. The final report was leaked to the media within two hours of its transmission by the investigator. Interestingly, and as far as we know, no one has leaked our response to the report. It appears that, even as this process proceeds, powerful people want to push me out of my duly elected position.

Speaker Kotek put her thumb on the scale by calling for my resignation immediately and acted to remove me from my committee assignments before this investigation had even begun. This sets a dangerous precedent, and shows that our current process is vulnerable to politicization and misuse. This action was extremely harmful not only to me, but to the faith of my colleagues and constituents in the fairness and resilience of our public systems of accountability.

Because of initial media reports and my removal from committees, in the minds of many of my peers, and many in the community, I appeared guilty before any due process.

I take my conduct seriously. I believe in a fair process for rooting out misconduct, and also in the rights of the accused. I believe that due process in workplace human resources procedures is important, to protect

both employers and employees. I have not been accorded any of the most basic rights that would be allowed under the employment laws adopted by this Legislature or collective bargaining agreements that cover our State employees.

Rule 27 is supposed to create a safe and welcoming environment at the Capitol, but the Rule is overbroad and in my experience traumatizes all participants in an unreasonably lengthy process that does not seek restorative, reconciliatory, or transformative justice. This process needs to change.

I believe this report glossed over critical evidence. Investigators ignored evidence I submitted which challenged claims against me. Even in writing this, I am limited from telling my truth as I am required to hold back anything that could be considered retaliatory or information that may identify the subjects.

I want the following facts to be known.

- 1) I had long-term friendships with the women identified in the Conduct Committee report as “Subjects” prior to becoming a legislator.
- 2) None of the women I dated ever worked for me nor were they legislative branch staff or employed by my employer, the State of Oregon.
- 3) The last time I’ve spoken with subject 1 was in the fall of 2017, after Speaker Kotek counseled me to cease communication which I did.
- 4) I have never had any meetings in the capitol with Subject 2 or 4.
- 5) The last time I spoke with subject 2 was in the Fall of 2018.
- 6) I have learned more about how they felt after the fact than I did at the time. At the time, subject 1 called me a “good friend” in June of 2017. Subject four in late January of 2018 said to me that as a friend I didn’t try hard enough to maintain and fight for a friendship.
- 7) The two text messages labeled “Abusive and Controlling” were originally labeled “jealous and controlling” then changed, these text messages are grossly mischaracterized.

- 8) Removing an email address from Gov. Delivery is not “hacking.” Every legislator can do it in one keystroke from their own page and I was required to under a no-contact order.
- 9) Evidence was given to investigators in a timely matter, they received the information that was requested from us shortly after their request, but it was their follow up for additional information that they assert was delayed. That information was minor and we believed it was irrelevant.
- 10) There was a significant delay early in the investigation due to the investigators’ capacity and emergencies.
- 11) The Report states that Rep. Hernandez refused to meet with investigators. This is completely untrue. Rep. Hernandez wanted an opportunity to interview again and provide additional information once he had full knowledge of the new allegations, as required by the Rule. Right in the middle of Rep. Hernandez’s attempts to obtain the information regarding the new allegations, the investigator issued her draft report on December 23 after 5:00pm. It is clear that the report was already drafted and the request to interview Rep. Hernandez was a sham.
- 12) Under HCR221 14B(c) it states that “The independent investigator shall keep the complainant and the respondent apprised of the investigation timeline and the status of the investigation at the outset of an investigation, on a regular basis thereafter and upon request of the complainant or respondent.” We made several requests for this and never once did we receive an answer.

The investigation report fails to analyze important legal issues.

There is no analysis of which version of Rule 27 applies; the version in effect at the time of the events, or the version in effect now.

Why does this matter?

The prior version of Rule 27 focused on employees and the Capitol workplace. There is no dispute that the Subjects identified in the report

were not my employees; in fact they were not legislative employees at all. You might note that when interviewed, all of my actual employees past and current supported the fact that I have behaved professionally and appropriately in the workplace and that they appreciated me as their boss.

The newer version of the rule, amended in 2019, significantly broadened the scope of the Rule where it now applies anywhere to a much broader set of people and a much broader set of events. New language was added to the rule where it is now sought to be applied against me in my personal relationships that had absolutely nothing to do with my work as a legislator.

The report should have analyzed which version of the rule applies. We believe that, consistent with Oregon Supreme Court caselaw in both the criminal and employment contexts, that the rule in existence at the time should apply. This is no mere technicality; much of the behavior described in the report wasn't covered under the rule at the time. The report acknowledges that none of the subjects were employees, but then briefly states that they "had work at the Capitol" without explanation.

In addition, there should have been an analysis in the report of whether the subjects had "business before the Legislative Assembly" at the time of the relevant conduct. There is no analysis of what that phrase means, and there is no analysis of what business the subjects had at the relevant time.

One of the challenges of this process is anonymity. While the rights of complainants should be respected, the process denies two basic rights that have always been associated with any fair administration of justice. The first is the right to question one's accusers. Without the ability to question the accuser, and obtain evidence from them, the process is skewed. The respondent is dependent on the fairness and impartiality of the investigator. But if the investigator doesn't obtain the evidence, or ignores evidence, then the process is flawed, as the respondent is unable to obtain the evidence and question witnesses. The second issue is anonymity itself. The respondent is forced to defend himself, and potentially lose his Legislative seat and associated benefits, while the complainant (who may

not have even complained) is cloaked in anonymity, free to have their accusations vetted by a sympathetic investigator but not a process designed to insure a fair outcome.

Finally, the sanctions available under the rule have changed from the prior version to the current version; that is not even mentioned in the report.

My attorney and I were told that only one of us could speak today. I believe that is a violation of my due process rights; I have not been able to present all of my evidence to you, and important information about the case has been withheld from you in the report.

When we were presented with a draft report, we had a very short time to respond. We responded with over 50 pages of material documenting that the report was misleading and inaccurate in myriad ways, but most importantly in the way it characterized my conduct with the subjects in question. Most of our evidence was ignored, including important text messages that show that my conduct was not “unwelcome” at the time. The report even suggests that I might have “hacked” someone’s computer or account; a baseless misleading accusation unsupported by any facts. I urge you to review the response that we filed to the report. Although we have not been able to provide our full response due to the rules surrounding this proceeding, the response that we presented shows much better the true facts surrounding these events and I urge you to give our detailed response due consideration.

Having relationships with people I had known before becoming a legislator did not strike me as inappropriate at the time. Given what has occurred during the last nine months, and now that the rules have been broadened as to who is considered “in the workplace,” and how broad “conducting legislative business” can mean, I would not and will not, make the mistake of having a relationship with anyone having even a passing connection to the Legislature again.

While the community we all serve has faced unprecedented hardships, my own mother fought COVID, and had to see anonymous accusations about me in the media. At a time when all of us have been isolated, I've lost many important relationships based on inaccurate reporting and the original headlines. I lost jobs based on these accusations being tried in the media.

I come from generational poverty, and severe trauma, and it has taken me a long time to understand, grow and learn from it. I know that I still have more growth and learning to do. I've dedicated my life to helping others and public service. I am better than my mistakes. I can help other men learn from my mistakes. I can help advance the message from the lessons I have learned.

Despite my criticisms of the process, I respect the conduct committee members and I look forward to this process concluding. I apologize for my actions that offended the subjects listed in the report. I do not believe that I violated the Rule in effect at the time, but if you do decide that I should be reprimanded in some way, I will take that to heart and will be absolutely respectful in all of my future conduct.

Thank you for your attention to this matter.

With respect,

Rep. Diego Hernandez