

CONFIDENTIAL REPORT

May 17, 2021

*Investigation
of Case #56*

Prepared by: Sarah J. Ryan

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I. INTRODUCTION

The Legislative Equity Office (“LEO”) retained the law firm of Jackson Lewis P.C. to investigate a conduct complaint by Representative Vikki Breese-Iverson against Representative Brad Witt. The conduct complaint is based on the text exchange attached as Exhibit 1 to this report. This Report contains factual findings based upon the information made available in the course of investigating this matter.

II. INVESTIGATIVE FRAMEWORK / PROCESS

A. RULE 27

As relevant to this Report, Rule 27¹ states that the Legislative Branch is committed to providing a safe and respectful workplace. Rule 27(1)(b). “Members of the Legislative Assembly ... are expected to conduct themselves in a manner that is free of harassment and to discourage all harassment in the workplace and at professional meetings, seminars, or at any event at which the Legislative business is conducted.” Rule 27(1)(e). Rule 27 is designed to provide options to redress harassment in the workplace and to file complaints to address and resolve concerns. Rule 27(1)(f)(A). *See also* Rule 27(1)(g).

1. Sexual Harassment Under Rule 27

Sexual harassment that creates a hostile work environment is prohibited by Rule 27. Rule 27(8). Under Rule 27(5)(a), sexual harassment is defined as, “unwelcome conduct of a sexual nature, including but not limited to sexual advances, requests for sexual favors, sexual comment, unwanted or offensive touching or physical contact, unwanted closeness, impeding or blocking movement, sexual gesture, sexual innuendo, sexual joke, sexually charged language, intimate

¹ The conduct which is the subject of this report occurred under the current version of Rule 27 (HCR 221).

inquiry, persistent unwanted courting, sexist insult, gender stereotype, or other verbal or physical conduct of a sexual nature, if:

(A) Submission to the conduct is made either explicitly or implicitly a term or condition of a person's employment;

(B) A person expressly or by implication conveys that declining to submit to the conduct will affect an individual's job, leave request, benefits, business before the Legislative Assembly, influence or opportunity of the individual to engage professionally with the Legislative Assembly, its members or staff; or

(C) The unwelcome conduct has the purpose or effect of unreasonably interfering with a person's job performance or creates a work environment that a reasonable person would find intimidating, hostile or offensive. For purposes of this rule 'unwelcome conduct' means conduct that an individual does not incite or solicit and that the individual regards as undesirable or offensive. An individual may withdraw consent to conduct that was previously welcomed, though a withdrawal of consent must be communicated to the person for whom consent is being withdrawn."

An individual creates a "hostile work environment by engaging in behavior that is unwelcome and is so severe or pervasive that it either affects a person's ability to function in the workplace or denies a person the benefits of the workplace." Rule 27(4)(c). On the other hand, "[h]arassment does not include every minor annoyance or disappointment that an [individual] may encounter in the course of performing the employee's job." Rule 27(4)(b).

Rule 27(5)(b) provides examples of sexual harassment:

- (A) Unwanted sexual advances, flirtations or propositions.
- (B) Demands for sexual favors in exchange for favorable treatment or continued employment.
- (C) Sexual jokes.
- (D) Verbal abuse of a sexual nature.

- (E) Verbal commentary about the body, sexual prowess or sexual deficiency of an individual.
- (F) Leering, whistling, touching or physical assault.
- (G) Using sexually suggestive, insulting or obscene comments or gestures.
- (H) Displaying sexually suggestive objects or pictures.
- (I) Sending or forwarding electronic mail or other communications of an offensive or graphic sexual nature.
- (J) Discriminatory treatment based on sex.

Rule 27(5)(b)

In this case, Complainant alleges that Respondent's comments in the text, attached as Exhibit 1, constitute quid pro quo harassment. Quid pro quo means, "something given or received for something else." <https://www.merriam-webster.com/dictionary/quid%20pro%20quo>. In the employment context, quid pro quo harassment occurs when an employer links employment benefits to the acceptance or rejection of sexual favors. *Mains v. Morrow, Inc., 128 Ore. App. 625, 635, 877 P2d 88 (1994), Craig v. M & O Agencies, Inc., 496 F.3d 1047, 1054 (9th Cir. 2007)*. In the context of Rule 27, quid pro quo harassment could occur if one member of the Assembly requested a sexual favor in exchange for voting in support of a bill submitted by another member of the Legislative Assembly. See Rule 25(a)(B). Complainant interpreted the text as stating that Respondent would vote for her bill if she agreed to a one-on-one meeting with him. Additionally, Complainant interpreted the text as an intimate inquiry ending with a sexual innuendo.

2. Who is Protected Under Rule 27?

Rule 27 provides that "any individual who experiences behavior prohibited by the Rule may utilize its reporting options ..." Rule 27(2)(A); *see also* Rule 27(1)(f) and (g). Rule 27 is designed to promote a respectful and inclusive environment at the State Capitol. The sexual harassment section of Rule 27 expressly provides that sexual harassment occurs "when a person expressly or by implication conveys that declining to submit to the conduct will affect an individual's job, leave request, benefits, *business before the Legislative Assembly, influence or*

opportunity of the individual to engage professionally with the Legislative Assembly, its members or staff.” Rule 27(5)(a)(B) (emphasis supplied). Complainant is an individual protected under Rule 27.

B. ROLE OF THE INVESTIGATOR

1. Engagement and Independence

The LEO hired Jackson Lewis P.C. to conduct an independent investigation regarding the conduct complaint against Respondent. My investigation was independent from the LEO and the Oregon Legislature, neither of which conducted, directed, or otherwise managed or influenced my investigation in any manner. Neither the LEO nor other representatives of the Oregon Legislature imposed limits on my access to information, nor did either require or prohibit any specific investigative steps. I had sole discretion to employ investigative resources, techniques, and processes appropriate in my professional judgment to complete the investigation and issue this Report.

The facts and findings set out in this Report are my own and are based on my evaluation of the evidence collected and reviewed. No changes or edits were made to this Report by anyone other than me, and no draft or advance copy of the Report was shown to or reviewed by anyone, except in connection with the draft review process required under Rule 27 and outlined below.

2. Determination

Rule 27 directs the investigator to use best practices in conducting the investigation and to make findings of fact relevant to the allegations. Unlike investigations regarding the conduct of those who are not members of the Legislative Assembly, investigators are not asked to determine whether Rule 27 has been violated by a member. Rule 27(14)(d)(B) and (E). However, Rule 27 directs the investigator to consider “whether the conduct that is the subject of the investigation

constitutes discrimination by denigrating or showing hostility toward a protected class or toward an individual because of the individual's status as a member of the protected class. The investigator shall report the investigator's considerations under this subparagraph in the investigator's draft, written findings. If the investigator determines that the conduct "constitutes discrimination by denigrating or showing hostility toward an individual because of the individual's status, as a member of a protected class, the investigator may not specify in the investigator's draft, written findings the protected class to which the individual belongs." Rule 27(14)(d)(C).

3. The Report

Section 14(d)(A) requires the Investigator to prepare draft written findings of fact at least eight (8) days before the investigation is concluded and to provide that draft to the Complainant and the Respondent. A draft of this Report was provided to Respondent and Complainant on April 30, 2021. Consistent with prior practice, a draft of this report was also provided to LEO. Under Rule 27, the Respondent and Complainant had seven (7) days to provide responses to the draft written findings. Rule 27(14)(d)(C). Respondent did not provide responses to the draft written findings. Complainant did so and where appropriate, I revised my written report.

III. INTERVIEWS / DOCUMENTS REVIEWED

I reviewed relevant documents, including Exhibit 1, and interviewed twelve witnesses in addition to the Complainant and the Respondent. I do not identify third-party witnesses by name in this Report because some witnesses are unwilling to participate in investigations, unless I provide assurances that they will not be identified by name in my reports.

My Report describes conduct that I found to be supported by the evidence collected in the course of my investigation. When appropriate, I identify the absence of evidence or conflicts in evidence that I was unable to resolve. My Report does not detail every piece of information that I

collected in my investigation, but, instead, contains the information that I believe is necessary to explain my factual findings and provide the Conduct Committee with information to enable it to determine whether a violation of Rule 27 occurred.

IV. FINDINGS

The text exchange attached as Exhibit 1 is ambiguous. In particular, the Respondent's comments can be taken several different ways. Complainant interpreted Respondent's comments as "quid pro quo" harassment. That is, the Complainant interpreted the text message as an offer by Respondent to vote for her bill in exchange for a date or sexual favors. Complainant also interpreted the text messages as sexual innuendo. Complainant's interpretation of the text exchange is not unreasonable.

Respondent states that he has no romantic or sexual interest in Complainant and did not intend to suggest such. Respondent also states that he did not intend to imply or suggest anything sexual in the text messages. Respondent states that he did not intend to offer to vote on Complainant's bill in exchange for a date or sexual favors. Respondent explained that he wanted to schedule an in-person meeting with Complainant in order to discuss his perception that they were not working well together. I find Respondent's explanation believable and find that Respondent did not intend to offer to vote on Complainant's proposed legislation in exchange for a date or sexual favors, or to suggest sexual matters.

These findings and those below constitute my considerations required under Rule 27 (14)(d)(C).

V. BASIS FOR FINDINGS

1. Complainant and Respondent serve together on several committees. With regard to one committee in particular, both have sought to advance legislation important to each of them.

Respondent is the chair of this committee and Complainant is the vice-chair. Complainant and Respondent are members of different political parties. The chair of a committee has some power over the vice-chair and members of the committee.

2. On April 12, 2021, in a text exchange, the entirety of which is attached as Exhibit 1, Complainant sought Respondent's vote on a bill. Respondent responded that his commitment to sustainability and other organizations prevented him from being able to vote for the bill. In the course of the text exchange, Respondent said: "We probably need to go for a beer sometime". Complainant ignored that invitation and responded by explaining her bill. Respondent then replied by stating, "I'm not wedded to a beer by any means. Could be dinner or...?" Complainant asked, "or what," and Respondent replied, "I've made two offerings. If you want to meet, find something better than dinner or a beer".

3. The April 12, 2021 text exchange is subject to several interpretations. Complainant interpreted Rep. Witt's comments as "quid pro quo" harassment. That is, the Complainant interpreted the text message as an offer by Respondent to vote for her bill, in exchange for a date or sexual favors. Complainant understood the text messages to state that Respondent would not vote for her bill if she did not agree to a one-on-one "suggestive" meeting with Respondent. Complainant also interpreted Respondent's messages as sexual innuendo. Complainant's interpretation is not unreasonable.

4. Complainant explained, and I find that the text messages from Respondent were undesirable and unwelcome. I find that Complainant was offended by the text message. Complainant explained that she was extremely anxious to conduct committee work with Respondent following the text exchange.

5. Additionally, five witnesses I interviewed, one of whom spoke to Complainant when the text exchange was taking place, reported that Complainant was genuinely upset and offended by the text exchange, which she interpreted as sexual harassment. Complainant consulted with several of these witnesses to confirm that they too interpreted the text exchange as a proposition by Respondent. They did so. Two witnesses described Complainant as visibly shaken by the text exchange and they observed that Complainant appeared to be struggling to conduct legislative business following the text exchange. Another described Complainant as very emotional when Complainant shared that the text exchange made her feel weak and intimidated. Two witnesses noted that Complainant remains upset and rattled by the text exchange.

6. I find that Complainant is accurately describing her interpretation of and reaction to the text exchange.

7. I reviewed prior text exchanges between Complainant and Respondent, which contained pleasantries and polite political debate.

8. Several witnesses advised me that Respondent is “not a good texter”. They stated that Respondent is often multi-tasking when he texts, and his intentions are sometimes hard to determine.

6. Respondent explained his view that in the course of this session, he had supported most, if not all, of Complainant’s legislation, but that Complainant had not reciprocated. Respondent believes that Complainant not only opposed his legislative goals but spoke in opposition to virtually all of his key pieces of legislation, both in committee and on the floor. Respondent states he was told that Complainant was lobbying others to oppose his key pieces of legislation. Respondent viewed Complainant’s efforts to thwart his legislative goals as highly unusual, particularly when directed by the vice-chair of a committee towards the chair.

Complainant disputes the accuracy of these perceptions and I make no findings as to whether they are accurate. However, I was able to confirm through several witnesses that Respondent held these views prior to the April 12, 2021 text exchange.

7. Respondent further explained that he was surprised by Complainant's April 12, 2021 text requesting his vote on a bill that he did not support, given his view of Complainant's lack of support of his initiatives. Respondent explained that he wanted to schedule an in-person meeting with Complainant in order to discuss what he perceived to be a challenging working relationship. Several witnesses confirmed that Respondent was trying to schedule an in-person meeting with Complainant, including scheduling efforts made through staff. Some of these same witnesses stated that Respondent stated that he wanted an in-person meeting with Complainant in order to improve what he perceived to be a challenging working relationship.

8. Respondent stated that he has no romantic or sexual interest in Complainant and did not intend to suggest such. Respondent explained that he did not intend to suggest in the April 12, 2021 text that he would vote for Complainant's bill, in exchange for a date or sexual favors. Respondent explained that he did not intend to suggest anything sexual in his text messages.

9. I find Respondent's explanation of his intentions with regard to the text exchange believable. The explanation is not inconsistent with the language of the text message. I was able to confirm through third-party witnesses that, accurate or not, Respondent perceived that Complainant was undermining his legislative agenda, at the same time he was supporting her agenda, and that Complainant's opposition to Respondent's legislative goals, given her role as vice-chair of the committee he chaired, was perceived by Respondent to be out of the norm. I was also able to confirm through third-party witnesses that Respondent desired to meet with Complainant to discuss his perception and find a way to move forward cooperatively. Witnesses

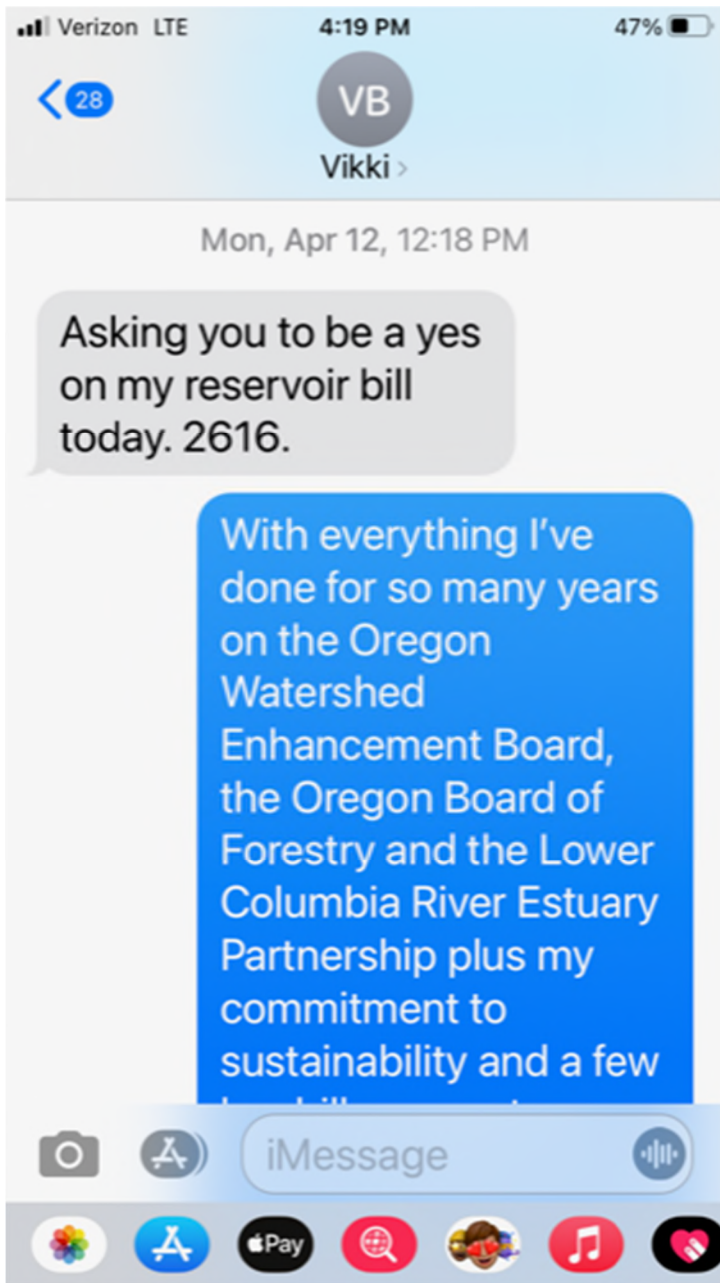
confirmed that Respondent was trying to set up a meeting with Complainant during the time of the text exchange.

10. I also spoke to three women who have worked in or at the Capitol for many years. All three witnesses stated that Respondent had never done anything to make them feel uncomfortable and had never engaged in inappropriate or questionable conduct. All three stated that they had never observed Respondent engaging in such conduct, nor had they heard any prior accusations of such. Two of the three women also observed Respondent in social settings associated with the Capitol (where alcohol was consumed) and both described Respondent's behaviors in those settings as above reproach.

11. Finally, Complainant and Respondent had socialized together twice before, although in groups, once at a bar and once at a private home. Complainant points out that Respondent was not present at either of these occasions upon her invitation. While it is not unusual for members of the Assembly (and others such as lobbyists) to invite one another out for a drink or dinner (at least pre-COVID), the motive for these invitations is not always clear.

VI. CONCLUSION

I find that Complainant's interpretation of the text message, and perception that it constituted harassment, was not unreasonable. I also find that the text message was not invited, or welcome, and that Complainant was offended, uncomfortable, shaken, and anxious as a result. However, I also find that Respondent did not intend to offer his vote on Complainant's bill, in exchange for a date or sexual favors, or to comment on sexual matters.





done for so many years on the Oregon Watershed Enhancement Board, the Oregon Board of Forestry and the Lower Columbia River Estuary Partnership plus my commitment to sustainability and a few key bills prevent me from being able to vote for HB 2616.

Oregon dept of forestry supports this bill

The former forester



Brad >

The former forester encouraged us to think and work broadly.

Fire pond..... yes. Good public policy..... each of us needs to decide.

Fish passage?

It is spring fed and goes no where.

That's good. How about all the similarly situated folks ?

Similarly situated?

We probably need to go for a beer sometime

Good public policy....if we had
This conversation in '96, when OWRd ruled similar ponds were to be registered. It would be a done deal. However, the landowners at that time lived out of state and did not know about the administrative rule.

I'm not wedded to beer by any means. Could be dinner or.....?

lived out of state and did not know about the administrative rule.

I'm not wedded to beer by any means. Could be dinner or..... ?

Today 2:13 PM

Or what?

I've made two offerings. If you wanna meet, find something better than dinner or beer.

Trying to get a vote count

Delivered