

## **Conflict of Interest Failure to Disclose Complaint**

This is a formal complaint under Senate Rule 3.33 for Senator Floyd Prozanski failing to declare his conflict of interests under ORS 244.020 before the Senate Conduct Committee vote on interim safety measures in November 28, 2022. The complaint is made under Or Const Art IV Sec 15 calling for the reprimand, censure or expulsion of this gross intentional violation of rule, statutory and constitutional requirements.

This is not a LBPR 27 complaint. Appropriate multiple communications were made with the acting Legislative Equity Office in advance of the work session on November 28, 2022.

This is not a prohibited use of official position complaint under ORS 244.040 which falls under the jurisdiction of the Oregon Government Ethics Commission.

Issues of gross violations of Or. Const Art III Sec 14 by legislators and employees will be filed separately.

Senator Floyd Prozanski is one of three Defendants in a federal lawsuit regarding the exact interim safety measures of the committee work session. Senator Courtney and Senator Manning are the other two Defendants. Senator Boquist is the Plaintiff. When the Defendant loses a 42 U.S. Code 1983 civil rights lawsuit, as per *ex parte Young*, they become personally liable.

Personal legal expenses for lawyers, filings, depositions, transcripts, video, miscellaneous not including damages could exceed several hundred thousand dollars. Senator Prozanski is presently using Attorney General lawyers without legislative approval and in violation of Or. Const Art III Sec 1.

Further, the Defendants (Senators Prozanski, Courtney & Manning) with their AG attorneys claim the following respondents to be represented by themselves which have legal conflicts as well: Lori Brocker, Brenda Baumgart, and Jessica Knieling all whom have been deposed in the past 90 days. Defendant's lawyers assert to represent Senator Girod and Senator Fredrick as well who are conduct committee members. Other respondents are not germane at this time.

A second Oregon Supreme Court case is pending with Senator Courtney, Dexter Johnson and Brett Hanes in regards to the unconstitutional use of the Attorney General and Oregon State Police. All three have inherent legal conflicts of interest as well.

The Oregon Government Ethics Commission which was contacted for information confirms ORS 244.020 means when “a public official is met with a conflict of interest when participating in official action which would or could result in a financial benefit or detriment to the public official” that official must declare a conflict of interest.

The Legislative Assembly expanded the definition of conflicts in ORS 173.900 stating conduct committee members “shall be recused from service on a committee on conduct performing functions under Article IV, section 15, of the Oregon Constitution, if the facts and circumstances at issue could impair the member’s ability to act impartially and without bias.” This will be covered under a separate complaint but relative to OGEC authorities, or those of a single legislative house authority under AG Opinion No 8265 February 24, 1999.

Senator Floyd Prozanski is an elected legislator, lucrative office holder, public official under the Legislative Branch. Floyd Prozanski is a public prosecuting attorney, a lucrative office, an oath required public official, and an officer of the court in the executive branch of the government.

OGEC states “Public official” is defined in ORS 244.020 as “the First Partner and any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.” Gibson v. Kay (1914), Or Const Art III Sec 1, and Or Const Art II Sec 10 appear to mean Mr. Prozanski cannot be both in the legislative and executive government branches.

Timeline:

Senator Prozanski was deposed a second time on **November 14, 2022** ref a federal lawsuit in regard to the interim safety measures imposed against Senator Boquist on July 8, 2019.

Senator Prozanski, Secretary Lori Brocker and LC Dexter Johnson held a pre-work session Teams meeting on morning of **November 15, 2022** regarding the events that have transpired. Tracy White of the AG’s office is attempting to block the exposure of these committee deliberations in violation of Or. Const Art IV Sec 14. Marc Abrams of the AG’s office has attempted to block committee of the whole communications made by Secretary Brocker on the same topic the following day.

Lori Brocker, Secretary of the Senate, was deposed second time on **November 15, 2022** in the same federal lawsuit.

Co Chair Senator Hansell was contacted by Co Chair Senator Prozanski on or about **November 16, 2022** with a request to hold a Senate Conduct Committee meeting to rescind the interim safety measures sanctions set on July 8, 2019 against Senator Boquist. Immediately, rumors abounded regarding the effort by Senator Prozanski to rescind the interim safety measures in an effort to moot the lawsuit in federal district court. A purely personal gain or loss prevention attempt illegally using his official position.

The Senate Conduct Committee work session agenda was posted on **November 21, 2022** at 2:29 pm. The work session was to be held at 8:00 am Monday, November 28, 2022 after the Thanksgiving Weekend. This is 3 years 4 months 20 days after interim safety measures sanctions were imposed, yet, suddenly it had to be completed on Thanksgiving week. Afterward, the one-page recording log took five days to prepare, and the one-paragraph committee report took eight-days to prepare.

Melissa Leoni, Committee Administrator, after the agenda was posted on OLIS, emailed Senator Boquist at 2:33 pm on November 21, 2022, to advise him of the work session. Ms. Leoni inquired if Senator Boquist wanted to attend the work session. Senator Boquist saw the email on November 22, 2022 the next day.

Between November 22-23, 2022, Senator Boquist posed several questions before the holiday weekend in which staff were gone from Wednesday morning until Monday morning. Senator Boquist was told it was a LBPR 27 work session, Co Chair Prozanski would be attending, the Legislative Equity Officer would not be attending, the independent investigator would not be attending, all the HCR Rule 27 versions contained the same interim safety measures, ORS 173.900 establishing the conduct committees for Rule 27 did not apply, and Senate Rule 8:15 requiring the President's approval did not apply. The Committee Administrator provided the wording for a prepared motion that Senator Prozanski would read himself at the work session on November 28, 2022.

That Committee Administrator replied in 90 minutes with the answers then departed Wednesday morning for the weekend. Senator Boquist had requested the Committee Administrator contact the acting Legislative Equity Officer for guidance but this was ignored. Whom prepared the answers in advance raises serious legal questions as well as raises expanded legal conflicts of interest. Legislative Counsel is prevented by the

BOLI Conciliation Agreement from participating but sworn testimony says Dexter Johnson was a participant in the pre-committee meeting.

LBPR 27 is overseen by the acting Legislative Equity Officer whom knew nothing about the scheduled work session. Interim safety measure recommendations come for the LEO and/or independent investigators whom were not involved at all. Senate Prozanski personally filled those roles in the work session. Outside legal counsel was not used as required, instead, Legislative Counsel and the Attorney General were utilized in violation of the law.

ORS 173.900 directly mandated the recusal of Senator Prozanski but the Committee Administrator stated in writing it did not apply? False.

Senate Rule 8:15 still requires the Senate President to approve agenda's for the Senate Conduct Committee. The Presiding Officer is required by ORS 173.900 and LBPR 27 to ensure, as the appointing authority, that no conflicts of interest are apparent for serving members. The Committee Administrator when questioned claimed the Co Chair's approved the agenda. President Courtney, as a defendant himself, would have known legal conflicts existed but the Presiding Officer was intentionally by-passed.

The Committee Administrator was asked to identify which version of the many LBPR Rule 27s applied to this work session? The response claim was all various Rule 27 interim safety measures are "substantially similar" which is false. The Committee Administrator referenced the original committee having authority in 2019 to implement interim safety measure pursuant to HCR 20 Rule 33 which is false.

HCR 20 dated June 29, 2019 Rule 33 (2) states: "For periods after the adoption of this concurrent resolution and before notice is given under subsection (1) of this section, the Legislative Administrator and the Human Resources Director may impose interim safety measures as described in Legislative Branch Personnel Rule 27 (13), to protect any person present in the State Capitol from harassment, sexual harassment or retaliation." The committee had zero Rule 27 authority. Senator Prozanski became fully aware of that fact on November 14, 2019.

Senator Prozanski and Secretary Brocker both were on the Committee Administrator's emailed answers. Given the timeline in this complaint that raises serious legal concerns. Dexter Johnson, whom was in the pre-work session Teams meeting per Secretary Brocker, was not on the email responses. However, the BOLI Conciliation Agreement should have prevented his participation from the beginning but did not. Further,

Legislative Counsel was involved in June 2022 when the Parliamentarian stated in writing no procedure existed to rescind the interim safety measures.

On November 14-15, 2022, in the presence of Senate Boquist, it was quite apparent Senator Prozanski and others became aware their previous actions had been taken without any legal authority.

Between November 23-27, 2022, Senator Boquist communicated back and forth with acting Legislative Equity Officer in regards to the applicability of LBPR Rule 27. Again, the LEO claims to know nothing about the work session.

On November 28, 2019, the Senate Conduct Committee conducted a 19 minute work session.

Senator Boquist read a prepared statement outlining serious discrepancies in the process pointing out what a reasonable person would consider conflicts of interest.

As a reporter said, "it was a confusing conduct committee meeting this morning. Senator Taylor was asking good questions but I didn't hear answers." Senator Prozanski failed to recuse himself under ORS 173.990. Senator Prozanski failed to provide any disclosure of a possible conflict under ORS 244.020. Despite questions posed by Senator Taylor and Senator Anderson to Senator Prozanski who proposed and explained the motion not one word was said of his personal and legal conflicts of interest.

Important in the work session discussions is several admissions by Senator Prozanski of meetings before the work session that pre-determined the approval of his motion. All of which violate open meeting laws and the constitutional requirement for open deliberations. Deliberations blocked from at least two members if not three of the committee. Or Const Art IV Sec 14 and Senate Rules 3.05 and 203.05 require all deliberations to be open to the public. The OLIS video makes it clear the decisions were made outside of the work session.

The recording log which Senator Boquist had to request contains no declaration of conflicts of interest. The OLIS video feed contains no declaration of any conflicts of interest. Transcripts of media provided official CDs will show word for word what transpired.

Senator Prozanski as a lawyer is bound to the Oregon Rules of Professional Conduct approved by the Chief Justice of the Oregon Supreme Court. Senator Prozanski as a prosecuting attorney in the executive branch of government knows the definitions of

bias, conflict of interest, and recusal. Senator Prozanski served on the Joint Capitol Culture Committee that crafted and passed out HB 3377 (ORS 173.900) and HCR 20 A (LBPR 27). Senator Prozanski was the carrier on the Floor of the Senate of HCR 28 (LBPR 27) incorporating ORS 173.900 in which the staff measure summary, with Senator Prozanski's name on it, states "if co-chairperson is unable to serve, then other member from the same party is acting co-chairperson." Senator Prozanski's failure to recuse and declare conflicts is intentional, knowing and willful, therefore, he should be reprimand, censured or expelled from the Oregon State Senate.

Due to the established S.R. 3.33 conflicts of interest copies of this complaint are being provided to the Oregon Government Ethics Commission with additional information regarding ORS 244.040.

Any participation in any investigation by the identified individuals with conflicts of interest other than as respondents will constitute violations of the Oregon Revised Statutes and the Oregon Constitution which will be pursued outside of the Oregon State Senate and outside of Or Const Art IV Sec 9.

Formally submitted on December 5, 2022



Brian J. Boquist



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Copies furnished:

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