

Sen Boquist

From: Sen Boquist
Sent: Thursday, February 23, 2023 12:33 PM
To: Sen Woods; Sen Anderson
Cc: Sen Weber; Sen Dembrow
Subject: FW: Senate Conduct Investigation Failures
Attachments: Sen Boquist Masons Rules Floor Letter 23 Jan 23 (002).pdf; OLCC Floor Ltr 14 Feb 23.pdf; Floor Letter 22 Feb 23.pdf

Senator Anderson & Senator Woods:

Given the bizarre circumstances leading to tomorrow's committee meeting that appears to be out of your control, please note, I have copied this original email to Senator Weber and Senator Dembrow as well.

Your committee has never had a meeting before. Your committee has not legally organized. Your committee has not adopted any rules. How the work session agenda for tomorrow even legally exists raises more questions than answers. Again, please note, four separate court orders or rulings confirm Dexter Johnson is Floyd Prozanski's lawyer with attorney client privilege on the very issued before your committee. Depending upon which court item you read, the Senate President and Lori Brocker with the Attorney General share this privilege with Dexter Johnson on this same issue. The only item posted in the meeting materials is that I'm told is an investigation from Dexter Johnson who is Floyd Prozanski's legal lawyer per the courts. For some reason, I do not think the two co-chairs set up this process. I do not think the co-chairs requested a legally conflicted lawyer to conduct an illegitimate investigation given Mason's, Senate, Chief Justice's ORPC, Statute and the Constitution. However, it is the four State Senators who are ethically and legally responsible not any employee of the legislature.

Please note, it is the co-chairs who have allegedly blocked public testimony if not a public hearing. Again, I believe someone else is giving the co-chairs very bad advice if this is even true. It is requested this email and attachments be placed on OLIS into the public record if you plan to proceed tomorrow. Several other official documents including real Ethics Commission rulings will be forward for posting as well. Copies will be provided to all four members in case the co-chairs decided against public disclosure.

Again, I would suggest you read the below email then work through the legal requirements of an investigation modeled after the real rules and the Ethics Commission procedures over the next few weeks.

Given the conduct committee is in possession of a second wider complaint it would be best to get your process down first.

Sincerely requested,

Brian Boquist

State Senator

From: Sen Boquist
Sent: Wednesday, February 22, 2023 2:55 PM
To: Sen Anderson <Sen.DickAnderson@oregonlegislature.gov>; Sen Woods

<Sen.AaronWoods@oregonlegislature.gov>

Subject: Senate Conduct Investigation Failures

Co Chair Anderson & Co-Chair Woods:

You may want to postpone your scheduled Senate Conduct Committee hearing given you have never conducted any investigation at all. Simply having Senator Prozanski's own lawyer write a hall pass reeks of conflict of interest under Mason's Rules, Oregon Revised Statutes and the Oregon Constitution. You should look at the attachments as well. A delay to get it right is appropriate.

Recall the real issue is not adjudication but reestablishing some ethical standards in the Oregon State Senate. The reason eight State Senators voted against the Senate Rules on January 9, 2023 is they lack clarity on the Mason Rules, Senate Rules, Statute and Constitution you are required to follow in the conduct committee.

Senate Rule 3.33 (6) required you to follow the committee rules for your investigation which you did not. The Senate Conduct Committee has no committee rules. None. Not adopted yet.

Senate Rules 8.10 (3) required you to follow the nonexistent committee rules, Senate Rules, Mason's Rules, and statute in your investigation. You have not.

Mason's Rule Section 518 (3) prevents the committee from delegating an investigation to one of its members or even staff. You did.

Mason's Rule Section 796 is required to be followed when investigating a member of the Senate. You did not.

Mason's Rule Section 521 and 522 apply to Senate Rule 3.33 as well. They were not.

Mason's Rule Sections 518, 795, 796, 797 and 798 were not followed. In fact, it appears the committee followed no known rules. None.

It is to the credit of the President Wagner this complaint is even before the committee to investigate. Senate Rule 3.33 (5) required the old President to forward the complaint to the conduct committee which he did not.

You two co-chairs are in possession of two related complaints. The Senate Rule 33.3 complaint was stonewalled by the past President. The present President, or his staff, has blocked the second set of complaints. Seriously doubt any meeting will resolve the second complaint matter despite the constitution.

None-the-less, the committee is required to conduct an investigation which it has not unless some large report is to be posted on OLIS at the last minute.

The only evidence of an investigation on OLIS is from Senator Prozanski's personal lawyer Dexter Johnson. Who appointed Mr. Johnson to conduct a phony investigation in violation of rules, statutes, the ORPC, and no less than three court rulings remains a question? See above. See below.

Court opinions published in specific regard to Dexter Johnson and Floyd Prozanski enjoying full attorney client privilege on this issue is three fold. Three separate published court rulings. Where is this fact in your investigation?

Then the U.S. District Court of Oregon in a December 2022 ruled Dexter Johnson, Floyd Prozanski and Lori Broucker enjoy attorney client privilege for the actions leading to the November 28, 2022 Senate Conduct Committee work session. Dexter Johnson is Floyd Prozanski's personal lawyer. The Attorney General enjoys

the same privilege with Floyd Prozanski and Dexter Johnson. Oh, and the Senate President as well. You co-chairs have a real problem.

The actions of the conduct committee use of Dexter Johnson and legislative counsel in direct opposition to a federal court ruling is dramatic. The Chief Justice of the Oregon Supreme Court oversees the Oregon Rules of Professional Conduct rule C 1.7 (a) and (b) prohibit the use of Dexter Johnson unless both Floyd Prozanski and myself agreed in writing. No such document exists. Dexter Johnson has continued to insert himself into conduct committee business in violation of rules, laws, and the BOLI Conciliation Agreement. Legally, it is the Oregon State Senate members of the committee who are responsible. There is no excuse "my lawyer told me to do it" as Mr. Johnson cannot be your lawyer either.

To be clear, Mr. Johnson has issued an LC Opinion to me, on January 23, 2023, instead of having another lawyer independently issue an opinion. He illegally inserted himself instead of recusing himself. Mr. Johnson has injected himself into pending LC 4319 and LC 4324 opinions regarding related constitutional issues as well. It is legally impossible for Dexter Johnson to representing anyone in regard to the issue before the conduct committee on February 24, 2023.

Dexter Johnson is an employee in the legislature with no legal authority to bind the decisions of Oregon State Senate. Only a vote of the committee then backed by the entire chamber is binding. Mr. Johnson failed to mention this fact in is political opinion issued in your name. Besides rules and statutes stating this fact, the U.S. District Court has ruled Dexter Johnson has no decision-making authority. He is responsible for nothing in the committee or chamber. Only the elected State Senators are responsible for such decisions. Again, this is confirmed in this very situation by the U.S. District Court and Ninth Circuit Court of Appeals.

Dexter Johnson has no legislative authority to commit the legislature to paying Senator Prozanski's legal bills.

In fact, ORS 173.135 requires the Legislative Counsel Committee by a vote of the committee to use or hire outside counsel. The Legislative Counsel Committee has not met in years. The Legislative Counsel Committee has never authorized any counsel for Floyd Prozanski. The Legislative Counsel Committee is controlled by members not employees. Only a vote of the committee members of Legislative Counsel Committee can commit legal services for any litigation. Only a committee vote can authorize counsel outside of Legislative Counsel office lawyers. Dexter Johnson has no such independent authority as he wrote in LC 4340 addressed by name to the co-chairs.

Who actually make the request to Dexter Johnson is another missing fact given it's illegality? The answer to this question will determine violations of Mason's Rule Section 797 (4) beyond the obvious legal violations already pointed out.

Another fact that would have been discovered had a real investigation been conducted. Legislative Counsel Opinion. June 12, 2014. Written to me by Dexter Johnson and Charles Cheek. Page 5. "42 USC 1983 allows any person to seek a remedy in court for a violation of federal constitutional or statutory rights conferred upon that person... The State of Oregon is not a "person" subject to suit under section 193, but a state official may be sued in a personal capacity or in an official capacity for actions taken under the color of law."

The State of Oregon is not a party to a 1983 lawsuit only the individual persons. That individual in this complaint is Floyd Prozanski. This is opposite of Mr. Johnson's political opinion issued to you on behalf of Senator Prozanski by his personal lawyer. The case is not against the State of Oregon as claimed in LC 4340 written by Dexter Johnson. Recall Mr. Johnson previously advised the exact opposite in a previous opinion. Why?

Likewise, had a proper legal investigation been done as outlined in rules, statutes, and the constitution the committee would have discovered the above previous legal opinion, among others, along with a stack of other facts including real cases from the Oregon Government Ethics Commission. While the OGEC has no authority over the legislature, the citizens deserve to know the Oregon State Senate complies with the same ethics laws it requires of cities, districts, and counties. I see nothing on OLIS?

Mr. Johnson's LC 4340 examples on page 2-3 have nothing to do with present situation. The real situation is whom is individually named in a lawsuit and who should have declared a conflict of interest. This is not about awarding a school board contract. Therefore, whom has a potential conflict of interest. This is not about a distant member of a law firm. This is about Dexter Johnson and Floyd Prozanski by name. The Oregon Government Ethics Commission has online files going back five years. No such conflict of interest advisory on legislators referenced by Mr. Johnson is listed. None. Why not? No legislative lawyer advisory was found either. Why not?

Please feel free to search the Oregon Government Ethics Commission files yourself. That is what a real investigator would have done.

Mr. Johnson's opinion fails in another manner. Mason's Manual of Legislative Procedures. In a previous legislative counsel opinion in Mr. Johnson's name states the following: "Mason's charges the presiding officer with the enforcement of the "all laws and regulations applicable to the body," thus the presiding officer is authorized to begin an investigation into conduct of a member or a legislative officer in an effort to enforce applicable laws and regulations."

So where is the full set of complaints to ensure a high ethical standard in the Oregon State Senate?

That the 'committee' failed to conduct a member investigation then used a legally conflicted lawyer to write a false political protection opinion is more than troubling.

The co-chairs should have a limited meeting to adopt the committee rules then outline the required investigation procedures in Mason's, Senate, Statute, and Constitution.

The committee members should then conduct a real investigation per Mason's, Senate, Statute, and Constitution. Since you do not know these rules, it is suggested, you may want to become acquainted with them as the elected members of a conduct committee. This is not a staff function as you are responsible and solely liable to ensure the highest ethical standards in the legislature.

Lastly, upon completing a real legal investigation then hold a public hearing. Then and only then determine if you want to conduct a work session. The goal is to establish ethical standards even if by educations rather than negative adjudication. This is why Senate Rule 3.33 should never have been passed by the Senate majority.

The President has the authority to extend the investigation deadlines on the Senate Rule 3.33 complaint.

If not, then Mason's outlines alternative procedures to place the complaint needlessly before the entire Senate on the Floor of the Chamber.

If you want to proceed then I have documents that should be submitted online under the existing rules. This would include LC Opinions and OGEC documents that the committee should already have in its possession if a real investigation had been conducted.

You may want to consider the inclement weather conditions forecasted for Friday given safety concerns as well?

Respectfully,

Brian Boquist

Oregon State Senator