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TO: Chief Clerk Bernard Dean and House Counsel Alison Hellberg
FROM: Elizabeth Van Moppes, AWI-CH
DATE: June 4, 2018
RE: Executive Summary of Report Regarding Investigation of Allegations against Washington State House Representative David Sawyer

I was asked to conduct an investigation into allegations brought by three employees of the House of Representatives regarding the conduct of Representative Sawyer (“Rep. Sawyer”). If proven, these allegations would constitute violations of the Washington House of Representatives Policies and Procedures Manual on Harassment and/or Decorum, dated 2017, and/or the Washington State Legislative Ethics Policy on the Improper Use of Public Resources. These three individuals brought forward their allegations separately over a course of time beginning on or about November 2, 2017 until approximately February 19, 2018.¹

I interviewed 24 individuals, including current and former legislative assistants (“LAs”) and staff members of the Washington State House of Representatives (“WSHOR”); the majority of these were young women who intend on careers in state or local politics. Many expressed fear of retaliation for participating in this investigation. In order to allay these fears and protect these witnesses, I am referencing them in this Report anonymously. For this same reason, identifying information, including dates of hire, reporting relationships and job titles, has not been included in this Report.

In the course of this investigation, I thus interviewed Witnesses One through Thirteen. I also interviewed the following individuals, listed here [REDACTED]: House Speaker Frank Chopp, [REDACTED] Chief Clerk Bernard Dean, Chief of Staff Orlando Cano, House Counsel Alison Hellberg, Representative Laurie Jinkins, [REDACTED] [REDACTED] Deputy Chief of Staff [REDACTED] Representative Monica Stonier, and House Majority Leader Pat Sullivan. I interviewed Representative Sawyer in the presence of his attorney, Ms. Beth Terrell. I met with some of these individuals on more than one occasion and I had follow up telephonic interviews with others.

I was provided with numerous documents to review, including the 2017 WSHOR Personnel Policy & Procedure Manual, the 2017 Legislative Ethics Manual, numerous copies of text messages, phone application messages, various timelines, handwritten notes, Facebook messages, e-mails, and correspondence. These latter documents, the Facebook messages, e-mail

¹ I also heard a number of allegations against Rep. Sawyer that pre-dated his time in the Legislature. The scope of this investigation was limited to his time as an elected member of the State House of Representatives.

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and correspondence, were provided by multiple witnesses, including but not limited to Ms. Hellberg, Mr. Cano, and Mr. Dean, and from Mr. Sawyer via his counsel, Ms. Terrell. When documents are relevant or relied upon for this Report, they are imaged here and/or included in the separately provided Attachments Production for the Report Regarding Investigation of Allegations against Washington State House of Representative David Sawyer (“Attachments Production”).

CREDIBILITY DETERMINATIONS

A number of these allegations implicate the statement of one witness versus another. Under such circumstances, the credibility of each witness must be considered. Investigators often find themselves having to weigh the credibility of one witness’s statement against another. This may occur when there are a limited number of people who observe an event, when those individuals provide divergent accounts of the events and when there is no other way to resolve competing versions. In weighing each party’s credibility and assessing competing versions of relevant events, I utilized the eight factors set out in the Equal Employment Opportunity Commission’s Guidance on Credibility. These eight factors include: (1) each witness’s consistency with other evidence, (2) the consistency of their statements, (3) the plausibility or implausibility of each witness’s account, (4) the witness’s reputation for honesty or deceit, (5) the witness’s motivation to lie, (6) the witness’s opportunity and capacity to observe, (7) the witness’s admission of untruthfulness, and (8) the witness’s demeanor while testifying. It is not necessary to use all of these and, in some investigations, no credibility determination is necessary at all.

As drawn out as this set of facts is, there are a minimal number of credibility issues to be determined in this investigation. This is largely because the documentary evidence, namely the text messages, is uncontroverted. Thus, where two witnesses assert differing accounts of an interaction, the account that is consistent with the text messages has the most credibility.

Representative Sawyer

As set forth in detail in the Report, there are a number of times where Rep. Sawyer’s testimony is contradicted by text messages and thus his veracity is left lacking. There are also instances where Rep. Sawyer’s testimony is both inconsistent and contradicted by that of other witnesses as well as the documentary evidence. As a result, I find no merit to his version of many controverted events. There are also multiple instances where his motivation to lie is clear but the witness presenting contradictory evidence has no such malfeasant motivation.

Witness One

I found the majority of Witness One’s statements to be supported by the documentary evidence. Further, her statements to Rep. Sawyer via text message are consistent with her allegations. Her stated motivation and thus her credibility are also supported by the documentary evidence which

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Rep. Sawyer admits is the extent of their communications. I was unable to ascertain any reason to impugn her trustworthiness. I therefore found her to be a believable witness.

Witness Two

I found no reason to doubt Witness Two's veracity. Her statements to me were consistent and she did not seem to have any ulterior motivations. Some of her statements had documentary evidence to support them. She was straight-forward and frank in her statements to me. I found her to have credibility as a witness

Witness Three

I found no reason to doubt Witness Three's version of events. She did not seem to have any ulterior motivations and she was consistent in her retelling. Some of her statements had documentary evidence to support them. I found her to have credibility as a witness.

SUMMARY OF DETERMINATIONS

I have determined that Rep. Sawyer violated the WSHOR Policy and Procedures Manual, Chapter 3 on The Work Environment, Harassment, in his interactions with both Witness One and Witness Two. Specifically, I find it more likely than not that Rep. Sawyer created a work environment that was intimidating and offensive to Witness One on the basis of her gender. I also find that Rep. Sawyer's conduct unreasonably interfered with Witness One's work environment. Additionally, I find it more likely than not that Rep. Sawyer's conduct created an offensive, intimidating work environment for Witness Two on the basis of her sexual orientation and that this conduct unreasonably interfered with Witness Two's work environment. I did not, however, find that Rep. Sawyer's conduct towards Witness Three created an intimidating, offensive or hostile work environment on the basis of any protected class.

I have determined it more likely that not that Rep. Sawyer's conduct also violated the Washington State Legislative Ethics Policy on the Improper Use of Public Resources, namely the use of public employees' time for personal purposes. I find that these violations occurred during Rep. Sawyer's interactions with both Witness Two and Witness Three.

I have additionally determined on a more likely than not basis that Rep. Sawyer violated the WSHOR Policy on Decorum in his interactions with Witnesses One, Two and Three. His comportment was not appropriate for an elected member of the House, nor did it reflect the dignity of the institution as required by the policy.

INVESTIGATIVE FINDINGS

Based upon the credibility determinations above, the witness interviews and the evidence

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provided, I have made the following factual findings and policy violation determinations.

REGARDING WITNESS ONE

Over a period of three months, Rep. Sawyer sent Witness One multiple inappropriate and offensive text messages. Rep. Sawyer ignored the obvious lack of interest Witness One displayed in both actions and specific words. He disregarded her stated requests that he “shut it down” and pressed her with unwanted attention. Both his conduct and his intentions were sexual in nature.

He used his position over her, and her job responsibility of coordinating and managing her Representative’s calendar, to force her to respond to him. Additionally, his close relationship with her supervisor, [REDACTED] created an intimidating situation for Witness One wherein she felt unable to consult with her supervisor about the situation. Rep. Sawyer’s attention was observed by at least one of her co-workers and had the effect of influencing her professional reputation. As such his conduct could have adversely affected her employment opportunities. I have determined that Rep. Sawyer’s unprofessional behavior created an intimidating and offensive work environment. Additionally, this conduct was neither appropriate for an elected member, nor did it reflect the dignity of the House. Thus, Rep. Sawyer’s behavior was in violation of the WSHOR policies on both Harassment and Decorum.

REGARDING WITNESS TWO

Rep. Sawyer made multiple inappropriate and offensive comments and jokes about Witness Two’s sexual orientation. These comments and implications unreasonably interfered with Witness Two’s job performance. As with Witness One, Rep. Sawyer’s friendship with Witness Two’s supervisor, [REDACTED] created an intimidating environment for Witness Two. She felt that she could not report these issues to [REDACTED]

During the relevant time frame, I find that Rep. Sawyer also utilized substantial amounts of Witness Two’s time discussing his frustrations with the impending Tacoma News Tribune investigation into allegations of sexual harassment against him. He required her to discuss with him the updates he received from personal Facebook friends who had been contacted by the Tribune reporters. He vented to her about how his name was inappropriately linked to that of other legislators on an alleged list of harassers. He contacted her after hours, on her own unpaid time, to discuss the confidential and personal details of the situation. He required that she support him with the problems he was having with his personal press.

I have determined that much of Rep. Sawyer’s disrespectful conduct was obviously directed at Witness Two because of her sexual orientation and it had the effect of creating an offensive work environment for Witness Two. Further, this conduct was inappropriate for an elected member and flouted the dignity befitting the House. Thus Rep. Sawyer’s behavior was in violation of the WSHOR policies on both Harassment and Decorum.

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I also find on a more probable than not basis that Rep. Sawyer required Witness Two to spend significant portions of her workday listening to him and strategizing with him behind closed doors while he vented about his personal press situation. I find that Witness Two extended copious energy managing the workload of Rep. Sawyer's emotional reactions to his personal problems. As a result, I find on a more probable than not basis that Rep. Sawyer violated State policy on the personal use of State resources and use of State resources for private purposes.

REGARDING WITNESS THREE

I have determined, on a more probable than not basis, that, from November 2017 through early February 2018, Rep. Sawyer improperly used significant amounts of Witness Three's time for his personal purposes, i.e. for discussing the potential negative press resulting from the Tacoma News Tribune's investigation into sexual harassment allegations against him. Rep. Sawyer called upon Witness Three to advise him on managing press inquiries to his friends and how to re-message [REDACTED]. He expressed to her his frustration that his name was on an alleged list of misbehaving legislators and explained to her the personal details of the situation that had linked his name to this list. Rep. Sawyer also used Witness Three's time to retell his political dating history. Even after being specifically told by Majority Leader Sullivan that doing so was improper, and after apologizing to her for making her uncomfortable, Rep. Sawyer asked Witness Three if she wanted to chat about the strategy being recommended by his consulting attorney and crisis manager.

As a result, I have thus determined that Rep. Sawyer violated State policy on the personal use of State resources and use of State resources for private purposes.

I have also found on a more probable than not basis that Rep. Sawyer detailed his dating and sex life within Washington State politics to Witness Three on at least one occasion, namely in [REDACTED]'s office on February 9, 2018. He also provided her with various, sometimes conflicting details about the woman who supposedly made a sexual harassment complaint about him.

However, I have determined that in so doing, Rep. Sawyer did not subject Witness Three to a hostile, intimidating or offensive working environment. As Witness Three stated to me, while she did not believe that it should be part of her job to have to "constantly" listen to someone talk about their dating or sex life, Rep. Sawyer's conduct was not sexual harassment.

If I can answer any questions or be of any further service to you, please do not hesitate to let me know.