

Meeting of the Assembly Standing Committee on Ethics and Guidance

Thursday, August 16, 2012

11:00 AM

Room 438-B CAP

Members Present: Daniel O'Donnell (Chair), Kevin Cahill, Jack McEneny, Michelle Titus, Brian Curran (Ranking Minority Member), Janet Duprey, Joseph Giglio, Tony Jordan

Also Present: Ann Horowitz, Kevin Engel

Carolyn Kearns, pursuant to subpoena, only during the portion of the meeting at which she gave testimony and produced documents pursuant to the subpoena

Pursuant to the call of the senior member of the committee and upon notice given pursuant to Rule IV §2(b) of the Assembly Rules, the meeting was duly convened in open session. Mr. McEneny made the following motion:

Because the Committee will be discussing matters which may lead to the discipline of a particular person, I hereby move—pursuant to the provisions of Public Officers Law §105—that this Committee conduct its meeting relative to this matter in executive session at which only the members of this Committee and its counsels may be present.

The motion was seconded and a vote taken thereon. The motion was approved unanimously.

The meeting was thereafter conducted in executive session.

Discussion was had, and agreement was reached, that it was unnecessary for there to be a motion regarding confidentiality of the proceedings, as the motion from the meeting of July 27, 2012 remains in effect.

Ann Horowitz advised the Committee of the investigative actions taken since the last meeting (interviews of the complainants in NYC on 8-9-12) and referred members to the new written materials provided for their review: the written response dated 8-15-12 from Mr. Lefcourt on behalf of Assemblymember Lopez, the intake notes typed by Carolyn Kearns, and the Staff Investigation Report from Ann Horowitz and Kevin Engel dated 8-15-12. Members of the Committee then read all of the new materials.

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Prior to discussion of the materials, the Chair advised Committee members of telephone conversations that he had with the attorneys for the complainants and for Assemblymember Lopez. During the Chair's conversation with Mr. Lefcourt last week, in which Mr. Lefcourt said that he would make a written submission on behalf of Assemblymember Lopez rather than having Mr. Lopez appear in person before the Committee, the Chair advised Mr. Lefcourt that he should include anything that he wanted the Committee to consider as part of his written response. The Chair also advised the Committee that he had told Mr. Lefcourt that he believed the Committee could make a decision on August 16th and that therefore any information (including witnesses to be interviewed) should be included in the written response due August 16th.

The Committee deliberated at length. In doing so, members asked questions of Ann Horowitz and Kevin Engel with respect to the Staff Investigative Report; discussed the credibility of various statements before the Committee; and discussed what additional investigation might be done to provide additional information for the Committee to consider in its deliberations.

Committee members asked the investigators about their observation of the demeanor of both complainants during the interviews that were conducted on August 9th and both Ms. Horowitz and Mr. Engel gave the Committee their individual observations, expanding on the information about demeanor in the written report, and comparing the demeanor of the two complainants. In particular, there was discussion about the demeanor of the complainant who was the subject of multiple incidents of unwelcome severe physical conduct that occurred on multiple drives between Albany and NYC: specifically, that Assemblymember Lopez put his hand on her leg, she removed his hand, and he then put his hand between her upper thighs, putting his hand as far up between her legs as he could go. Both investigators talked about the observable indicia demonstrating that she became emotionally upset when she had to describe the behavior and the contrast between her demeanor when describing these incidents and her demeanor when she was describing the substantive parts of her job that she enjoyed. There was a similar discussion of her demeanor when she was describing the trip to Atlantic City that Assemblymember Lopez required her to take with him: Assemblymember Lopez's attempt to kiss her in a hotel room and her struggle to fend him off before he stopped the unwelcome physical conduct, her telling the investigators that on the drive back from Atlantic City he again put his hand between her legs.

The Committee noted, among the documentary evidence before it, the sign-in sheet with Assemblymember Lopez's signature for Assembly Member training on sexual harassment training on May 25, 2011. All Members are required to participate in that training, and because the training is designed to heighten Assembly Members' sensitivity to sexual harassment issues, there was discussion of the credibility of the paragraph under the heading "Lessons Learned" in Assemblymember Lopez's written response. Committee members raised other questions as to the credibility of other statements in the 8-15-12 written response.

Among other possible inquiries that could be part of a further investigation, Committee members raised questions about whether anyone else working in Assemblymember Lopez's office had complained about sexual harassment and whether there was a high level of turnover among female employees in the office. They suggested that a review of Assembly personnel records would provide information as to the latter question.

Following this discussion, a motion was made and seconded to issue a subpoena duces tecum to Carolyn Kearns. A vote was taken and the motion was approved unanimously. The Chairman then signed a subpoena and it was served personally on Carolyn Kearns.

Ms. Kearns appeared before the Committee and the Chairman swore her in; she then provided the following information under oath. She stated that she was appearing pursuant to the subpoena that had been served on her. She then provided documents pursuant to the subpoena: two written complaints of sexual harassment against Assemblymember Vito Lopez made by two female employees who had previously worked in his office. The complaints are dated late December 2011 and early January 2012.

The Chair asked Ms. Kearns what happened as a result of these complaints. In response, Ms. Kearns stated that the New York State Assembly paid a lump sum of \$103,000; Assemblymember Lopez paid a lump sum of \$32,000; and Mr. Lopez and his staff were required to receive supplementary instruction concerning the Assembly Sexual Harassment/Retaliation Policy, and identification and avoidance of sex discrimination and sexual harassment in the workplace, within 90 days of execution of the agreement and that such training has been scheduled for August 23rd.

The Ranking Minority Member asked Ms. Kearns whether the settlement was public. In response, Ms. Kearns stated that it was not public; that on June 6, 2012, the Assembly and Assemblymember Lopez signed a settlement agreement with two employees in his district office with no finding of wrong-doing or any admission that any party acted improperly or unlawfully. A confidentiality agreement was included therein, which prohibited disclosure of the underlying circumstances of the dispute, the fact of the agreement, or any terms of the agreement, except in response to a court order or in response to a valid subpoena. The agreement also provided that Mr. Lopez and the employees agree that they shall not communicate or publish, or cause to be communicated or published, any disparaging remarks, comments, or statements in any form concerning any aspect, circumstance or incident involving the employees' employment in the office of Assemblymember Lopez. The agreement further provided that violation of the above terms would subject the violator to a claim for liquidated damages of \$20,000 or actual or punitive damages, whichever is greater.

The Committee thanked Ms. Kearns for her testimony given pursuant to subpoena and she left the meeting.

The Committee then discussed the documents and testimony provided by Ms. Kearns pursuant to the Committee's validly issued subpoena and continued its deliberations. At the end of the Committee's deliberations, a motion was made and seconded that based on all the information before it, the Committee find that Assemblymember Lopez violated the Assembly's Sexual Harassment Policy. A vote was taken thereon, and the motion was unanimously approved.

The Committee then discussed the actions that it would recommend be taken following its finding that Assemblymember Lopez violated the Assembly's Sexual Harassment Policy (the Policy). The Committee was advised that the attorney for the complainants had communicated that he had conferred with his clients regarding the confidentiality of the proceedings, and that

concerns about preserving the complainants' privacy should not deter the Committee from a public sanction, in the event that the Committee were to find that Mr. Lopez had violated the Policy. Individual motions were made, seconded, and unanimously approved to recommend the following actions:

1. Removal as Chair of the Housing Committee;
2. A public letter of censure and admonition;
3. A permanent ban on interns and employees under the age of 21 in Assemblymember Lopez's offices;
4. Loss of seniority;
5. Reduction of staff allocation to that of a freshman member;
6. Additional training for staff and for the Assemblymember.

The Committee also suggested that, consistent with the Sexual Harassment Policy, both the Policy itself and the regular training provided to Assembly Members and staff should be reviewed and revised as appropriate.

A motion was made, and seconded, that the Chair and the Ranking Minority Member approve the recommendation letter from the Committee to the Speaker, without need for review and approval of the letter by the full Committee. A vote was taken thereon and the motion was unanimously approved.

Upon conclusion of the discussion conducted in executive session, the meeting was reconvened in open session, a motion was made and seconded to accept the minutes of the previous meeting, the motion was approved unanimously, and the meeting was thereafter adjourned.