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HAND DELIVERED

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**SUBMITTED FOR SETTLEMENT PURPOSES ONLY<sup>1</sup>**

**VIA HAND DELIVERY**

Ms. Letizia Tagliaferro, Esq.  
Executive Director  
New York State  
Joint Commission on Public Ethics  
540 Broadway  
Albany, New York 12207

Re: JCOPE-13-168

Dear Ms. Tagliaferro:

As you know, we represent Former Assemblyman Dennis Gabryszak ("Mr. Gabryszak") in the above-referenced New York State Joint Commission on Public Ethics ("Commission") matter. We received your February 5, 2014 letter (the "15-Day Letter") informing Mr. Gabryszak of allegations levied against him by his former employees. Mr. Gabryszak appreciates the opportunity to respond to those allegations.

While these allegations were both plentiful and sensational, it is our hope that the Commission will take a step back and examine these allegations without the glare of the media and political frenzy. It is true that some of the former Assemblyman's conduct was inappropriate, it is also true that many of the allegations are exaggerated, stale, out of context, and in some cases contradicted by other evidence.

Mr. Gabryszak is, and over the past two decades of his career has always been, a dedicated public servant. He first served as a trustee on the Board of Trustees for Depew, New York starting in 1981. In 1984, Mr. Gabryszak was elected to the Cheektowaga Town Board, and he later served as the town's Supervisor from 1993 to 2006. Then Mr. Gabryszak was

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<sup>1</sup> This submission is based on counsel's factual and legal investigation and is confidential pursuant to §94 (9-a) of the Executive Law. Furthermore, this submission is made pursuant to CPLR § 4547 and Federal Rule of Evidence 408, and its submission is not intended to waive any such privileges. We also hereby request confidential treatment of this document under any other state or federal freedom of information or other similar law or regulation.

elected New York State Assemblyman for New York's 143rd District, where he served until his retirement on January 13, 2014.

When Mr. Gabryszak was first made aware of the allegations against him, and well before the Commission delivered their 15-Day Letter, Mr. Gabryszak retired. Mr. Gabryszak's retirement<sup>2</sup> was a public acknowledgment that he understands that his behavior was inappropriate and that his vulgar attempts at humor were unbecoming of a public servant. He also understands that he supervised and managed an office which facilitated back-and-forth inappropriate banter, which should not have been condoned. It was his responsibility as the Assemblyman to stop the inappropriate banter and control the office environment. Mr. Gabryszak did not, however, engage in any inappropriate physical conduct, and his actions were neither willful nor intentional violations of the public trust or his obligations under Section 74 of the Public Officers Law.

In response to the specific allegations contained in the Commission's 15-Day Letter, Mr. Gabryszak responds as follows:

**ALLEGATION # 1**

- To the allegation that Mr. Gabryszak "engaged in an unethical course of conduct as a member of the Assembly through inappropriate actions and offensive comments of a sexual nature with certain female legislative staff members under [his] supervision and professional employment," Mr. Gabryszak admits that he engaged in some behavior that, in hindsight, was inappropriate given his position within New York State government.

Mr. Gabryszak admits that he engaged in conversations with staff members and employees on several levels, including discussions that, at times, included exchanges of a sexual nature. Mr. Gabryszak, however, always believed that these were mutual conversations with assent from both sides and, at the time, it did not register with him as inappropriate. He now understands that his belief was incorrect.

For example, one afternoon, Mr. Gabryszak, an employee, and several other people went to lunch in New Windsor, NY in conjunction with a "Salute to Veterans" visit to the National Purple Heart Hall of Honor. At the end of the lunch, a waitress asked Mr. Gabryszak whether he and the employee were "together" for the purposes of the check. Mr. Gabryszak responded by asking the employee "does that mean we are getting one room tonight?", and the employee replied "[n]o, she was talking about the bill." Everyone at the table accepted Mr. Gabryszak's quip as a joke and laughed. Although Mr. Gabryszak denies that he meant the comment as anything more than a poor attempt at humor, he admits and understands now that the joke was inappropriate, especially given his position.

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<sup>2</sup> Mr. Gabryszak's retirement was followed by his formal resignation on January 14, 2014.

With another employee, Mr. Gabryszak was asked by a constituent at a holiday party if he and the employee were married, to which Mr. Gabryszak responded "not yet." With this response, Mr. Gabryszak was again trying to humorously respond to an inquiry by a constituent. He certainly never intended anything beyond a flip response. Once again, in hindsight, Mr. Gabryszak realizes that comment was inappropriate.

As another example, Mr. Gabryszak had promised his employees that he would provide them with a video clip for a town hall meeting with his constituents. But his hectic schedule precluded him from providing the video in a timely manner. As a result of Mr. Gabryszak's delay, his employees repeatedly contacted him throughout the day, asking over and over for him to respond to their request. By late afternoon, Mr. Gabryszak was using a restroom when he received the last such request from his staff and, in admittedly bad taste, Mr. Gabryszak took a short video from the waist up in the restroom feigning a bowel movement. The video ended with Mr. Gabryszak flushing the toilet and, speaking into the camera, asking "[i]s this what you wanted?" To be clear, the video was not sexual in nature. It was, without question, a crude attempt at humor that Mr. Gabryszak now understands was completely inappropriate.

Another example involved a text message conversation between Mr. Gabryszak and an employee. At the time, the employee was on her way to an event where she was meeting Mr. Gabryszak. But she spilled a mocha coffee on herself, which caused her to return home for a change of clothes. The employee texted Mr. Gabryszak to let him know that she had spilled mocha on herself and that she would be late. Mr. Gabryszak replied "[o]k, might want to [lick] you. LOL<sup>3</sup>", to which the employee responded "[y]a. Like that will ever happen. LOL". Here, the exchange speaks for itself. Mr. Gabryszak intended to make an off-color joke and it appears the employee acknowledged it for what it was.

Although Mr. Gabryszak understands his behavior was, at times inappropriate, it is also important to note that the banter with his employees went back-and-forth, and Mr. Gabryszak engaged in the banter with that understanding. For example, after a social event in late 2011, a former employee, unprompted, sent a text message to Mr. Gabryszak saying "[n]ice to see you", and Mr. Gabryszak responded "[i]t was nice seeing you. Let's do it again." The former employee then replied "[u] looked cute?" and "[l]et's go do something fun!" Right or wrong, Mr. Gabryszak understood this banter as being mutual. Thus, he never understood that his comments were unwelcome and inappropriate at the time.

Moreover, on January 4, 2012, Mr. Gabryszak and a different employee attended a social event with a Western New York developer and businessperson. During the evening, they discussed current developments in Buffalo and the surrounding region. Before the night ended, and again unprompted, the employee sent a text message to Mr. Gabryszak saying "[y]ou should totally ask her out!! She's like sexing the air..shes in a great mood." Again, Mr. Gabryszak understood these messages as a joke and another example of the back-and-forth

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<sup>3</sup> Lol, being a standard text message abbreviation for "laugh out loud" a known indication that the declarant is expressing sarcasm or a joke that otherwise might be lost via text message.

banter. Therefore, at the time, he truly believed the sophomoric humor and office culture was acceptable to everyone.

Finally, on September 19, 2013, just months before the employees came forward with their allegations, Mr. Gabryszak reached out to a former employee after his Salute to Veterans Trip. Mr. Gabryszak said “[m]iss you on our veterans trip”, and the employee responded “[m]iss you too, Gabba Dabba do.” The employee, out of affection for Mr. Gabryszak, nicknamed him “Gabba Dabba Doo”, which is a play on his last name and two children’s animated television shows, *Yo Gabba Gabba* and *The Flintstones*. This text message exchange is further evidence that the back-and-forth banter did not appear unwelcome, and it did not appear to create a hostile work environment. What is more, this same employee brought Mr. Gabryszak inappropriate and off-color cards from Las Vegas, Nevada as a gift when she went on vacation. The employee presented Mr. Gabryszak with the cards in front of the rest of the office as a joke and everyone laughed about it.

The fact is, over eight (8) years, Mr. Gabryszak only received one complaint from an employee, and he immediately adjusted his behavior with respect to the employee. Other than that one complaint, which was in 2013, Mr. Gabryszak never heard any complaints regarding his office behavior. Furthermore, no employee ever complained to the Assembly, which they were trained to do in such a situation. Mr. Gabryszak did not, until the recent allegations arose, believe that his sense of humor and banter were inappropriate, and he had no idea it made his employees uncomfortable. Please note, Mr. Gabryszak is not attacking his former employees and he is not blaming them for his actions. But it is important for the Commission to understand his mindset and the complete picture when reviewing his conduct.

In the end, Mr. Gabryszak acknowledges that his failure to maintain a level of professionalism within his office that any workplace – especially a public office – requires, constituted a lack of judgment that fell far short of the obligation to his constituents, his family, and, most importantly, his employees. Mr. Gabryszak’s recognition of wrongdoing and his immediate retirement from his position lends proof to his position that he did not realize that a line had been crossed until it was too late and that his actions were neither willful nor intentional.

## **ALLEGATION # 2**

- To the allegation that Mr. Gabryszak “engaged in an unethical course of conduct in violation of the public’s trust as a member of the Assembly by subjecting certain female legislative staff members under [his] supervision and professional employment to unwanted physical contact,” Mr. Gabryszak wholly denies this allegation.

Mr. Gabryszak never inappropriately touched or came into inappropriate or unwanted physical contact with any of his employees. What is more, no employee ever complained to Mr. Gabryszak regarding any issues with respect to physical boundaries. Had any employee

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raised a concern, Mr. Gabryszak would have addressed the concern at that time and adjusted his personal boundary space immediately.

To the allegation that Mr. Gabryszak grabbed and attempted to kiss an employee while she was at his apartment in Albany, Mr. Gabryszak vehemently denies it because it never happened. Moreover, this particular employee never raised any issues with him or with the Assembly Human Resources Department at the time of the alleged incident. In fact, this employee continued to work with Mr. Gabryszak for an entire year after the date that this incident was alleged to have occurred, and she raised the allegation more than four (4) years later.

Thus, Mr. Gabryszak never touched any of his employees in an inappropriate way.

### **ALLEGATION # 3**

- To the allegation that Mr. Gabryszak “used or attempted to use [his] official position to secure unwarranted privileges, includ[ing] but not limited to offering raises as incentives and threats of adverse employment action to comply with inappropriate requests made by [him],” Mr. Gabryszak denies this allegation.

Mr. Gabryszak never used his power to hire/fire employees or to adjust their compensation as a tool to secure unwarranted privileges. It is common practice for legislative members to adjust employee compensation during the year to ensure that employee salaries remain within budget allocations set by the Assembly. Assemblymember’s human resource allocations are a “use it or lose it” budget, which means, if the member does not spend all of the money they are allocated in a given fiscal year, they lose the left over amount. In some years, if there are funds remaining, this may result in an increase in staff salaries. Furthermore, Assemblymembers generally spend a greater percentage of their budget during the first six (6) months of the year because that time reflects the fact that the members are in “session”, and thus have greater staff needs. Accordingly, at the beginning of a year, when session employees are hired, members often adjust salaries to ensure that there are sufficient dollars to pay for session employees and, consequently, an employee’s salary may be decreased to stay within budget.

Because Mr. Gabryszak was a fairly junior Assemblyman, in terms of seniority and because he did not chair a committee, his annual allotment for salaries was extremely limited. Thus, like other Assemblymembers, an employee may be hired, or receive a salary increase, later in the year with the understanding that they may very well be compensated at a different, lower rate when the new session begins. During his tenure in the Assembly, Mr. Gabryszak utilized this strategy for conserving fiscal resources in this manner, applying it to both male and female employees, including his Former Chief of Staff Adam Locher. Mr. Gabryszak fully explained this to his employees who were subject to such adjustments. The decision regarding such adjustments, and the amounts of such adjustments, were never used in an inappropriate way or in a way that is not customary among the members.

A text message exchange with an employee on May 3, 2013, illustrates this perfectly. After a conversation between Mr. Gabryszak and an employee regarding a possible switch from part-time to full-time employment for the upcoming year, the employee sent a text message to Mr. Gabryszak explaining “[s]o I feel better about 42 after our talk- [i]f theres some flexibility in the second half the year, Id be willing to risk a slight pay cut because I think it’s the right fit. If you are still interested, I would like to do the full time position for 42 and see if we could set a start date so I can give my other job notice.” Here, Mr. Gabryszak offered an employee, who was on his staff for over two years as a part-time session employee, a switch to full-time and a salary increase from \$22,000 to \$42,000. The “slight pay cut” she refers to in her text message is with respect to her job as a waitress, which she would have to give up if she moved to full-time. Ultimately, the employee decided to take the “slight pay cut” because she enjoyed her job with Mr. Gabryszak and because it was the “right fit.” As you can see, rather than use his position to secure unwarranted privileges, Mr. Gabryszak would bend over backwards to stretch his budget and keep his employees happy. Simply put, this message does not indicate inappropriate behavior by Mr. Gabryszak such as a *quid pro quo* offer or a threat. Instead, the employee extended her gratitude to Mr. Gabryszak for their conversation because she felt “better” and she felt a job with him was “the right fit.” It is also important for the Commission to note that this text message was sent only a few months before this employee came forward with the allegations against Mr. Gabryszak.

Also, interestingly, one of the other employees that alleged Mr. Gabryszak retaliated against her for declining his alleged sexual advances (by decreasing her salary) made a political contribution to Mr. Gabryszak’s campaign last year. Specifically, the employee donated to his campaign in July 2013 – less than six (6) months before that employees came forward with allegations. Certainly someone who felt harassed and violated would not make voluntary political contributions years later to her harasser or accept a “pay cut” to work for her harasser.

With respect to a specific allegation, Mr. Gabryszak denies that he, directly or through his chief of staff, ever seriously offered an employee \$100,000 salary to move away from her fiancé. Rather, he joked about it once and, at the time, the employee laughed and accepted it as such. Mr. Gabryszak invites the Commission without hesitation to review his available human resources budgets for the relevant period, as even a cursory review will show that Mr. Gabryszak never had the funds to even make such an offer.

Accordingly, Mr. Gabryszak never used his human resources budget or his position to incentivize or penalize any of his employees in any inappropriate manner.

#### **ALLEGATION # 4**

- To the allegation that Mr. Gabryszak “misappropriated legislative time and resources with respect to the above conduct, including but not limited to requiring a legislative employee to accompany [him] to a massage appointment when there was no legitimate governmental purpose to do so,” Mr. Gabryszak denies this allegation.

Mr. Gabryszak never instructed or required his employees to accompany him to a massage appointment. Some background regarding common practice among legislators is useful here. As anyone who has worked for a State legislator will attest, legislators and their staff work together for long hours, especially when legislative sessions and other meetings run into the evening. As noted previously, because resources, particularly for legislators with limited seniority like Mr. Gabryszak, are limited, legislative staff members are paid extremely low salaries. It is also common practice to hire staff who are from the area represented by the legislator which, as in the case with Mr. Gabryszak, is located several hours away from Albany in Buffalo. Thus, under these circumstances, it is commonplace for a legislator to dine with members of his staff and, if the staff member does not have transportation, it is common for a legislator to provide transportation from the office or dinner to the staff member's hotel.

Mr. Gabryszak freely acknowledges that, on a regular basis, he went to a licensed masseuse for a massage. Over the last several years, Mr. Gabryszak sought treatment for his lower-back pain and his fractured ankle, and the massages brought him relief and assisted his recovery. On one or two occasions, Mr. Gabryszak was transporting one of his employees to her hotel which happened to be nearby the facility where Mr. Gabryszak went for massages. With no ill or improper intent, Mr. Gabryszak asked the employee whether she enjoyed massages and, if so, since he was going to a massage appointment himself, offered that she could also receive a massage at the facility. The employee voluntarily accepted and received a massage in a separate room. Mr. Gabryszak never made any inappropriate advances or otherwise took advantage of the situation, and no legislative time or resources were misused.

Mr. Gabryszak, therefore, denies ever misappropriating legislative time or resources on any occasion including massage appointments.

## CONCLUSION

In hindsight, Mr. Gabryszak now realizes many of his comments and actions were not only sophomoric, but also reflected substantial insensitivity to the type of conduct that is appropriate in the workplace. He further acknowledges that he attended training sessions on sexual harassment and watched the Vito Lopez matter unfold firsthand. Nevertheless, it never occurred to him that his misguided attempts at humor and camaraderie rose to the level of prohibited conduct. Right or wrong, Mr. Gabryszak truly believed, based on the back-and-forth banter and office culture, that his actions were accepted, harmless, and reciprocated. Again, other than the one complaint in 2013 which Mr. Gabryszak addressed immediately, Mr. Gabryszak and the Assembly never received any complaints regarding his actions or the office culture. That silence made it even more difficult for him to discern that his actions were inappropriate and crossed the line. To be clear, Mr. Gabryszak does not and will not blame his employees for any of his actions, and he is not trying to avoid any of his responsibility. But it is important for the Commission to understand the complete picture of the situation when reviewing his conduct and determining whether to proceed with an investigation.

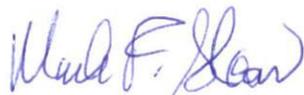
Put plainly, Mr. Gabryszak's failure to recognize that his behavior was inappropriate brought him shame, approbation, and caused him to give up his proudest achievement –

representing the constituents of the 143rd Assembly District. He is deeply sorry that his employees, many of whom he holds in high regard, were hurt by his actions. Mr. Gabryszak will have to live with the consequences of his actions for the rest of his life.

Mr. Gabryszak thanks the Commission for the opportunity to respond to these allegations, and welcomes the opportunity to work with the Commission in resolving this matter as soon as possible.

Very truly yours,

GREENBERG TRAURIG, LLP



Mark F. Glaser

MFG/ldb

cc: Terrence M. Connors, Esq.  
Connors & Vilardo, LLP

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