



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

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CHARLES D. LAVINE  
Assemblyman 13<sup>th</sup> District

CHAIR  
Ethics and Guidance Committee

CO-CHAIR  
Legislative Ethics Commission

March 8, 2016

Honorable Carl E. Heastie  
Speaker  
New York State Assembly  
Legislative Office Building Room 932  
Albany, New York 12248

Dear Speaker Heastie:

As you know, the Ethics Committee has jurisdiction over, and is responsible for, investigating complaints that the New York State Assembly Policy Prohibiting Harassment, Discrimination, and Retaliation (Policy) was violated. We are writing to summarize the results of a recent investigation and to make our findings and recommendations to you, in accordance with the Policy.

On July 2, 2015, Charles D. Lavine, the Chair of the Standing Committee on Ethics and Guidance (Ethics Committee) learned of allegations that a Buffalo area assemblywoman had sexually harassed her male employee. That same day, Chair Lavine requested that Rossein Associates, the Ethics Committee's independent neutral investigator and counsel ("investigator") commence an investigation. Rossein Associates began making inquiries immediately.

On August 3, 2015, based on his initial inquiries, Mr. Rossein notified Assembly Member Wozniak that he was conducting an investigation concerning allegations that she violated the Policy. He sent her a letter informing her that an interview would be scheduled to investigate the allegations and to learn the facts from her perspective, while instructing her to keep the investigation confidential. The letter included: 1) a Notice to Preserve Evidence, Direction to Refrain from Discussing Matter with Potential Witnesses, and Representation, and 2) a Document Request.

On August 28, 2015, in accordance with the Policy, Chair Lavine sent Assembly Member Wozniak a written plan to prevent retaliation against the complaining party and witnesses. Mr. Rossein sent a copy of that plan to the attorneys who had advised they were representing Assembly Member Wozniak in this matter. Among other things, the plan directed Assembly Member Wozniak to: keep the matter entirely confidential, refrain from discussing the matter with

anyone other than her counsel, avoid harming the complaining party's reputation and not allow third parties to carry out such activities on her behalf.

The Policy states, in relevant part, that, "The New York State Assembly ("Assembly") believes all employees, interns and Members have the right to be treated with dignity and respect, and is committed to maintaining a workplace free from unlawful discrimination and harassment. \*\*\* *In order to assure that violations of this Policy are promptly reported and properly addressed, this Policy also prohibits retaliation against anyone who reports violations....*" (emphasis added).

The Policy further informs Assembly staff and members that, "All information will be handled with the highest degree of confidentiality possible under all circumstances, recognizing that there are circumstances where complete confidentiality may not be possible." It also states that, "The outside counsel will conduct an investigation, which shall be maintained confidential to the extent reasonably possible...."

The policy makes clear that, "Disciplinary sanctions will be enforced against any Member or employee who is found to have violated this Policy, the New York State Human Rights Law or other applicable laws."

Rossein Associates conducted a thorough investigation, including interviewing 19 witnesses and reviewing hundreds of documents, including text messages, emails, photos, tape recordings, personnel files, phone records and calendars. In its Report to the Committee, Rossein Associates made recommended findings of fact and conclusions of law. The Committee met on December 21, 2015 to review the Report and evidence.

On January 7, 2016, in accordance with the Policy, the Ethics Committee issued a notice to Assembly Member Wozniak, providing her with details supporting the allegations that she had engaged in *quid pro quo* sexual harassment, created a sexually hostile work environment for her Director of Legislation, constructively discharged him and retaliated against him, all in violation of the Policy. On February 2, 2016, Assembly Member Wozniak's attorney submitted to the Committee a statement sworn to on February 2, 2016, summarizing Assembly Member Wozniak's defenses to the allegations. On February 9, 2016, Assembly Member Wozniak appeared before the Ethics Committee and gave testimony under oath, including answering questions from the Ethics Committee's members.

The Committee carefully reviewed and considered the evidence, including the 164-page Rossein Associates Report and its exhibits; the transcript of Assembly Member Wozniak's interview with the investigator; her attorney's affidavit; and her sworn testimony before the Committee. Based on all the evidence before it, the Ethics Committee unanimously makes the following findings:

1. Beginning in June 2015, Assembly Member Wozniak and her male Director of Legislation entered into a sexual relationship, which continued into late June 2015. Both parties agree that the relationship began as consensual but the Director of Legislation alleged that in June, he objected to, and attempted to terminate, the sexual component of the relationship, while Assembly Member Wozniak continued to pursue a sexual relationship with him. Assembly Member Wozniak claimed that the relationship continued to be consensual until she told her husband of the affair on June 28, 2015, at which time she terminated the relationship with her Director of Legislation.
2. The sexual relationship had a negative impact on the functioning of Assembly Member Wozniak's District Office.
3. Shortly after disclosing the affair to her husband, Assembly Member Wozniak prohibited her Director of Legislation from working in the District Office or attending community meetings while she was present.
4. After the Director of Legislation complained of Assembly Member Wozniak's alleged sexual harassment, Assembly Member Wozniak made false statements that reflected poorly on the employee's job performance to one of the people who had served as a reference for him. In addition, after receiving the August 28, 2015 written plan to prevent retaliation, Assembly Member Wozniak's counsel told the press the name of the Director of Legislation who had made the sexual harassment allegations and used the press to further tarnish his reputation by telling the reporter that Assembly Member Wozniak would take action against anyone who maliciously defamed her. These statements were published.
5. The inconsistencies between the stories told by both parties, together with some credibility issues, caused the Ethics Committee to be unable to reach a consensus as to whether Assembly Member Wozniak engaged in *quid pro quo* sexual harassment or hostile work environment sexual harassment in violation of the Policy.
6. The Ethics Committee unanimously agrees that Assembly Member Wozniak exercised incredibly poor judgment in engaging in a sexual relationship with a member of her staff.
7. The Ethics Committee unanimously agrees that Assembly Member Wozniak retaliated against her Director of Legislation by tarnishing his reputation to the person who had recommended him, and through her counsel identifying him by name to the press as the complaining party, as well as making other statements to the press that are reasonably likely to harm the Director of Legislation's reputation in express violation of the

Ethics Committee's explicit notice to refrain from any breach of confidentiality.

8. The Policy's prohibitions on retaliation and publication of information about the investigation are critical to the proper functioning of the Policy and to assuring that future victims of sexual harassment or sex discrimination will not be deterred from making good faith complaints because they fear retaliation and/or adverse publicity that could ruin their future employability.
9. Assembly Member Wozniak's conduct and her counsel's conduct which is attributed to the Member violated the Assembly's Policy.
10. Assembly Member Wozniak's conduct and her counsel's conduct which is attributed to the Member is unbecoming of a Member of the Assembly and reflects poorly on the entire body.


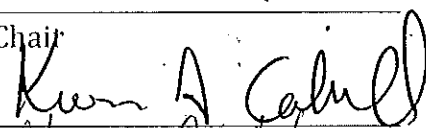
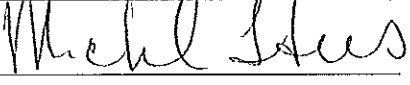
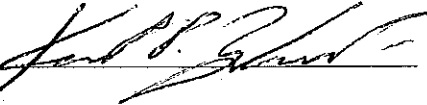
It is the Committee's considered judgment that Assembly Member Wozniak's violations of the Policy warrant a response which is designed to stop her from continuing to engage in unlawful retaliation.

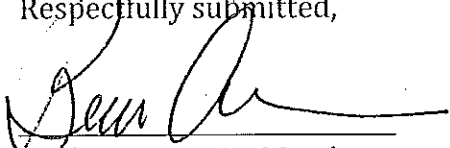

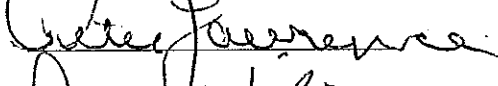
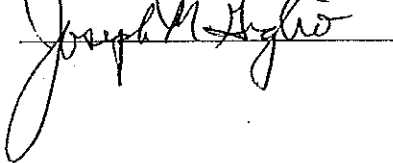
The Committee recommends the following actions:

1. That a letter of admonition be issued publicly to Assembly Member Wozniak by the Speaker on behalf of the Assembly, enumerating the findings of the Committee, and indicating that Assembly Member Wozniak's conduct violated the Assembly's Policy as it pertains to retaliation and is inconsistent with the standards of conduct to which Members of the Assembly should be held;
2. That Assembly Member Wozniak is hereby directed to cease publicizing details of the investigation and to cease making disparaging statements against her former Director of Legislation, unless reasonably necessary to defend herself in the event of any claims brought against her in an administrative agency or a court of law.
3. That the Assembly will make efforts to place Assembly Member Wozniak's former Director of Legislation into a comparable job with comparable pay and benefits and until such placement has been made, he shall receive pay at the same rate at which he was earning during his employment, beginning February 9, 2016 through and including February 8, 2017, or the end of Assembly Member Wozniak's term, whichever is sooner. All such pay is to be allotted solely from Assembly Member Wozniak's staff budget, and her staff budget shall not be increased from its current amount;

4. That Assembly Member Wozniak is precluded from having any interns working in her Assembly office or her District Office; this prohibition applies to interns assigned by the Assembly as well as any interns that might be engaged through unofficial channels;
5. That an independent investigator conduct climate surveys of all of Assembly Member Wozniak's Assembly employees at least semi-annually to ensure that there is no repeat of the conduct; and
6. That Assembly Member Wozniak be required to attend immediate and comprehensive supplemental sexual harassment and retaliation prevention training.

Respectfully submitted,

  
Chair  
  
  


  
Ranking Minority Member  
  
  


Cc: Hon. Brian M. Kolb