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September 26, 2019

Via Email and Federal Express

Laurie Eby
Executive Director, Legislative Ethics Commission
420 Stratton Office Building
Springfield, IL 62706
lebylec@ilga.gov

Re: Timothy Mapes, Case 18-021

Dear Executive Director Eby:

This letter is in response to the Legislative Ethics Commission's decision to publish the Summary Report of the Office of the Legislative Inspector General ("LIG"). On behalf of Timothy Mapes, this Commission is requested to reconsider its decision to publish the findings of the LIG and to reject the findings and recommendations of the LIG for the following reasons.

The allegations raised in the LIG Summary Report are baseless and untrue. Timothy Mapes ("Mapes") served the people of the State of Illinois in the Illinois State Legislature for over forty years. Since 1992 until his retirement, Mapes worked as the Chief of Staff to the Illinois Speaker of the House of Representatives. During this time, he handled all matters in government with a sense of urgency and always placed the needs of good government above all other concerns. It is undeniable that the many challenges facing Illinois required hard-work, determination, and commitment. In his role as Chief of Staff, he held staff to the highest standards and demanded that staff members share these expectations to meet the many demands confronting our state on a daily basis. Mapes would not compromise his own expectations to improperly sexually harass Ms. Garrett. In sum, the LIG's Summary Report improperly maligns Mapes' entire career with spurious allegations and disregards the honorable contributions that Mapes made on behalf of the State of Illinois.

Moreover, the LIG's conclusions rely, in large substance, on information obtained from three unidentified witnesses, and the LIG's reliance on these witnesses demonstrates a fundamental violation of Mapes' due process rights. The fact that the LIG relied on three unidentified witnesses portrays an inherent lack of credibility and reliability to its findings in its Summary Report. Given the extent to which the LIG's conclusions unfairly malign Mapes' reputation without his ability to confront the biases, veracity, or motives of these witnesses, it would only be consistent with due process to keep the LIG's Summary Report unpublished.

Furthermore, the LIG's conclusion that Mapes sexually harassed Ms. Garrett is not supported by the alleged evidence in its Summary Report. Under Section 5-65(b) of the State Officials and Employees Ethics Act, 5 ILCS 430/5-1, *et seq.* ("the Act"), "sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. For purposes of this definition, the phrase "working environment" is not limited to a physical location an employee is assigned to perform his or her duties and does not require an employment relationship.

Title VII provides the federal analog to Section 5-65(b) of the Act. Under Title VII, a plaintiff must prove hostile work environment sexual harassment by showing conduct that is so severe or pervasive as "to alter the conditions of [her] employment and create an abusive working environment." *Meritor Sav. Bank, FSB v. Vinson,* 477 U.S. 57, 67 (1986). In determining whether the harassment rises to this level, a court considers the totality of the circumstances, including the "'frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Gentry v. Export Packaging Co.,* 238 F.3d 842, 850 (7th Cir. 2001, quoting *Harris v. Forklift Sys., Inc.* 510 U.S. 17, 23 (1993).

In evaluating the severity of harassment, the courts compartmentalize sexual harassment in two ways:

> On one side lie sexual assaults; other physical contact, whether amorous or hostile, for which there is no consent express or implied; uninvited sexual solicitations; intimidating words or acts; obscene language or gestures; pornographic pictures. On the other side lies the occasional vulgar banter, tinged with sexual innuendo, of coarse or boorish workers.

Baskerville v. Culligan Int'l Co., 50 F.3d 428, 430–31 (7th Cir.1995)(internal citations omitted).

The courts assess the impact of the harassment on the plaintiff's work environment from both a subjective and objective viewpoint; "'one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so.'" *Gentry,* 238 F.3d at 850, quoting *Faragher v. City of Boca Raton,* 524 U.S. 775, 787 (1998). Title VII does not impose a "general civility code" in the workplace, and that "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." *Faragher,* 524 U.S. 775, 788 (1998)(internal quotation marks and citation omitted); *see also McPherson v. City of Waukegan,* 379 F.3d 430, 438 (7th Cir. 2004).

The LIG findings do not demonstrate that Mapes sexually harassed Ms. Garrett through a hostile work environment because the five discrete alleged incidents occurring over a six-year period do not amount to severe or pervasive sexual harassment affecting the material terms and conditions of her employment. In fact, the LIG erroneously relied on three discrete incidents

allegedly occurring in 2013, 2014, and 2015 in order to conclude Mapes engaged in sexual harassment. The LIG's reliance on these alleged incidents between 2013 through 2015 is misplaced because these events occurred prior to the Act's enactment on November 16, 2017, and the substantive terms of the sexual harassment provision are only applied prospectively thereafter. *Moshe v. Anchor Org. for Health Maint.*, 199 Ill. App. 3d 585, 599 (1990).

Notwithstanding the fact that these alleged incidents predate the Act, these alleged incidents occurring between 2013 and 2015 should be disregarded as barred by the statute of limitations under Section 25-20 of the Act. Under Section 25-20, "an investigation may not be initiated more than one year after the most recent act of the alleged violation or of a series of alleged violations except where there is reasonable cause to believe that fraudulent concealment has occurred." Here, the LIG does not assert that Mapes fraudulently concealed any information regarding the incidents occurring between 2013 and 2015. Also, the alleged events occurring between 2013 and 2015 do not arise to a "series of alleged violations" as they were not cumulative.[1] Thus, any alleged incidents a year or more prior to the LIG's purported initiation in May 2018 should be disregarded as untimely.

Despite the timeliness issues of those alleged incidents occurring prior to 2017, the events allegedly occurring between 2013 through 2018 do not legally support a finding of sexual harassment against Mapes for the following reasons.

First, the 2013 incident documenting Ms. Garrett's alleged encounter with Representative Dunkin is wholly irrelevant on claims of sexual harassment against Mapes. Ms. Garrett's allegations of inappropriate conduct concern only Representative Dunkin. Though Mapes allegedly was apprised of this incident, Ms. Garrett acknowledges that Mapes promptly addressed the conduct of Representative Dunkin where he later informed Ms. Garrett that "she did not need to worry about Representative Dunkin anymore." To be sure, Mapes contacted the House Ethics Officer to report this alleged incident where the matter was quickly responded to. Following this single incident, the LIG Summary Report does not mention any other incidents between Ms. Garrett and Representative Dunkin after Mapes allegedly intervened. The LIG Summary Report fails to acknowledge that the House Ethics Officer prepared a memorandum on this issue and should have been made available to the LIG.

Any other information Ms. Garrett provided related to the 2013 incident should be omitted and disregarded as it constitutes hearsay and speculation as to Mapes' conversations or responses to this situation because Ms. Garrett did not witness these events. Also, any information cited by the LIG related to "Witness No. 1" should be omitted and disregarded as well because this witness' anonymity lacks sufficient reliability to be cited as a source by the LIG. (Note: Despite the inherent unreliability of these unidentified witnesses throughout the LIG report, Witness No. 1 plainly

[1] Under Title VII, the courts will only consider incidents occurring beyond the statute of limitations where they demonstrate a continuing violation. "The concept of *cumulation* suggests a critical limiting principle. Acts ... so discrete in time or circumstances that they do not reinforce each other cannot reasonably be linked together into a single chain, a single course of conduct, to defeat the statute of limitations." *Tinner v. United Ins. Co. of Am.*, 308 F.3d 697, 708 (7th Cir. 2002)(internal citation and quotation omitted). *See Selan v. Kiley*, 969 F.2d 560, 565 (7th Cir. 1992)(finding that a two-year gap between incidents does not constitute a continuing violation).

stated she "did not think that Mapes acted in a sexually provocative way with the women staff members.").

Second, the LIG's reference to an incident in 2014 where Ms. Garrett accused Mapes of making a comment regarding a "pink bra" does not show severe or pervasive sexual harassment. Mapes disputes the veracity of this statement altogether because he never commented about Ms. Garrett wearing a "pink bra;" but rather, Mapes merely commented to all staff that professional dress is expected from the men and women. Mapes referenced a "pink bra" in the context of an earlier incident involving another staff person's inappropriate dress. While Ms. Garrett's recollection of this event mischaracterizes the true nature of Mapes' comment regarding professional attire, the LIG's Summary Report does not demonstrate that this statement arises to "sexual harassment" that is "severe or pervasive" to the point of affecting Ms. Garrett's terms and conditions of employment. Notably, despite the presence of "other [unidentified] people," the LIG attempted to corroborate this incident through a single unidentified "Witness No. 1;" however, as discussed *supra*, this anonymity raises serious reliability concerns and should be disregarded altogether. While the use of unidentified sources is patently unfair against Mapes, it should be noted that another unidentified "Witness No. 3" present on this occasion never heard Mapes comment on Ms. Garrett's bra in any way which underscores the lack of severity or pervasiveness of any alleged comment.

Third, the LIG's discussion of an alleged 2015 incident related to an unidentified female worker and unidentified representative is inapposite on the issue of whether Mapes sexually harassed Ms. Garrett. The LIG's report fails to specify the conduct transpiring between the female worker and the representative though Ms. Garrett apparently formulated the conclusion that this female worker was being sexually harassed. According to the LIG, Ms. Garrett did not inform Mapes that she felt that the unidentified female worker was the victim of sexual harassment; but rather, Ms. Garrett merely told Mapes that "something sounded off and that this young lady was very concerned about what the representative wanted from her." In response, according to the LIG, Mapes stated: "So are you upset because this Representative isn't paying attention to you?" It is inconceivable that, without more, a reasonable person would conclude that Mapes' response constituted sexual harassment against Ms. Garrett.

Fourth, the LIG's discussion of the events in April 2018 where Mapes wore a blue suit to the House floor are irrelevant as to whether Mapes engaged in sexual harassment. While the LIG clearly imputes nefarious motives to Mapes' choice of suits, this discussion is woefully deficient of evidence supporting workplace harassment toward Ms. Garrett. Also, Mapes was responsible for creating proper anti-harassment workplace training for all staff on behalf of the Speaker and would have no reason to discredit this training. Notwithstanding, Mapes' attitude regarding anti-harassment workplace training is irrelevant on the issue of Ms. Garrett's claims of sexual harassment.

Fifth, the LIG's discussion of the events in May 2018 are similarly irrelevant on the issue of Mapes' alleged sexual harassment. According to the LIG, Mapes allegedly discussed another worker as having been married and "would not do something." Though the LIG does not clarify what "not do something" means, from the context of the remaining discussion, the LIG apparently implies that Mapes commented on another worker's apparent lack of marital infidelity. The LIG

further alleges that Mapes commented that "we know around here that doesn't matter, does it?" and "It's not that I'm implying that you're running around on [your husband]." Mapes' alleged comments do not connotate any sexual innuendo or support a finding of "sexual harassment." (In fact, Mapes' alleged comments demonstrate Mapes' disinterest in discussing marital issues in the workplace.)

Lastly, the LIG's conclusion on sexual harassment under Section 5-65 of the Act is erroneously based, in part, on Mapes' lack of cooperation during the LIG investigation. Although the enabling statute of the LIG under Section 25-10(c) defines the scope of the LIG's jurisdiction to include "current and former" employees, this section does not require former employees, such as Mapes, to participate in investigations after leaving the employment of the State. Instead, the specific statutory authority controlling the issue of whether Mapes is required to cooperate under the Act is Section 25-70 of the Act. Under the plain language of Section 25-70, former employees are not specifically required to participate in LIG investigations:

> It is the duty of every officer and employee under the jurisdiction of the Legislative Inspector General, including any inspector general serving in any State agency under the jurisdiction of the Legislative Inspector General, to cooperate with the Legislative Inspector General and the Attorney General in any investigation undertaken pursuant to this Act.

5 ILCS 430/25-70.

Mapes was not an employee at the time of the LIG's investigation, and thus, Mapes in not required to participate in any post-employment investigations. Section 25-70 applies only to current employees – not former employees – because the term "employee," as defined by Section 1-5 of the Act, means "(i) any person employed full-time, part-time, or pursuant to a contract and whose employment duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed or (ii) any appointed or elected commissioner, trustee, director, or board member of a board of a State agency, including any retirement system or investment board subject to the Illinois Pension Code or (iii) any other appointee." 5 ILCS 430/1-5. The exclusion of the term "former employees" from Section 25-70 or Section 1-5 (especially where "former employee" has been previously contemplated under 25-10(c)) must be construed to exclude "former employees" from the scope of Section 25-70. Tellingly, based on the tenuous findings in the LIG Summary Report, it seems evident that the cooperation of Mapes would have had little impact on the LIG's result-oriented findings. Accordingly, Mapes' lack of participation with the LIG does not permit the LIG to draw adverse inferences against him or serve as basis to find a violation of the Act.

CONCLUSION

Based on the foregoing, Mapes did not commit sexual harassment under Section 5-65 of the Act, and under Section 25-70, Mapes was not required to participate in any LIG investigation. This Commission should reconsider its decision to publish the LIG's Summary Report because the LIG Summary Report is inaccurate or without merit.

Moreover, because the evidence of sexual harassment is grossly insufficient, Mapes should not receive any post-employment sanction from the State of Illinois, including a personnel letter documenting the LIG's finding that Mapes violated the Act. The LIG's recommendation that Mapes is disqualified from future work as an employee or contractor should be denied as well.

If you should have any questions, please do not hesitate to contact me at (312) 899-9090.

Respectfully submitted,

James C. Pullos

Cc: Robert A. Clifford
Timothy Mapes