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CHARLES D. LAVINE
Assemblyman 13th District

CHAIR
Ethics and Guidance Committee

CO-CHAIR
Legislative Ethics Commission

December 17, 2014

Via FCM and Email

Speaker Sheldon Silver
Legislative Office Building
Albany, New York 12248

Dear Speaker Silver:

On December 17, 2014, the Ethics Committee held a second hearing in executive session to review allegations that Assembly Member Micah Kellner had engaged in sexual harassment in 2012 and 2013. These allegations arose as a result of the climate survey performed in Assembly Member's District Office on May 20, 2014, in accordance with your December 30, 2013 Determination finding Assembly Member Kellner engaged in sexual harassment in 2009 and 2011.

The Committee held the December 17, 2014 hearing in response to your letter of November 13, 2014, in which you referred the sexual harassment allegations back to the Ethics Committee to consider whether further proceedings should be considered to address the concerns stated in Judge Levine's decision of November 10, 2014. On December 1, 2014, Chair Lavine wrote you to advise that the Committee had already issued a new notice of hearing to Assembly Member Kellner (in accordance with the newly adopted Assembly Policy Prohibiting Harassment, Discrimination and Retaliation ("Assembly Harassment Policy")) and that a hearing was scheduled for December 15, 2014, but might be moved to accommodate the schedule of Assembly Member Kellner's counsel, Arnold Kriss.

The Committee did adjourn the private hearing to accommodate Mr. Kriss, but ultimately, Assembly Member Kellner decided not to appear before the Committee or submit an affidavit, which the Notice of Hearing also permitted. Instead, he had his counsel write to Chair Lavine on December 8, 2014 and state, "Please be advised that Assembly Member Kellner has no reason to appear before the Assembly Standing Committee on Ethics and Guidance on Tuesday, December 17, 2014 at 10:30 a.m."

Having met to consider the evidence developed by the Ethics Committee's independent neutral investigator, Rossein Associates, the Committee finds that in 2012 and 2013, Assembly Member Kellner violated the Assembly Harassment Policy and New York State law by creating a sexually hostile work environment for one of his female employees. The Ethics Committee also finds that Assembly Member Kellner engaged in inappropriate conduct of a sexual nature toward another female employee.

Although Assembly Member Kellner defaulted in response to the Notice of Hearing issued by the Ethics Committee, the Committee nevertheless carefully reviewed and considered this matter, including reviewing the Report of Rossein Associates and the summary of all of the witness interviews that Rossein Associates conducted. Based on all the evidence before it, the Committee unanimously makes the following findings:

1. Throughout 2012 and 2013, Assembly Member Kellner created a sexually hostile work environment through a pattern of repeated and inappropriate conduct that included but was not limited to making unwelcome and offensive comments of a sexual nature.
2. That conduct violated the Assembly's Sexual Harassment Policy, which is predicated upon applicable laws.
3. That conduct 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 Kellner's conduct constituted a violation of the Assembly Harassment Policy and that such conduct warrants a response that assures the public that the Assembly does not tolerate sexual harassment and reminds Members that such conduct will result in swift and appropriate punishment. Since Assembly Member Kellner's offices have already been closed, we recommend, as a sanction for the creation of a hostile work environment that you issue to Assembly Member Kellner and publicly release a letter of further admonition and severe reprimand, stating that Assembly Member Kellner has, after a second hearing, again been found to have engaged in sexual harassment in 2012 and 2013, in violation of the Assembly's Harassment Policy; that such conduct was unbecoming of a Member of the Assembly and reflects poorly on the entire body; and that such conduct will not be tolerated in the NYS Assembly.

Respectfully submitted,

Charles Lavine

Paul A.

Michael A. Masterson

Robert D. DePrey

Joseph M. Hughes

Kevin L. Zehner

Michael L. Luss

Kevin A. Cahill