

*Special Committee on Professional Conduct in the Matter of
Representative Paul McMurtry*

EXECUTIVE SUMMARY

*In Re: Incident of Alleged Inappropriate Conduct at the Academy for New
Legislators at UMass Amherst on December 13, 2018*

March 13, 2019

The Special Committee on Professional Conduct appointed by the Speaker and the Minority Leader of the House of Representatives (hereinafter the Special Committee or Committee) has been tasked with investigating and resolving certain allegations against Representative Paul McMurtry, as required by the House Rules and House Order, No. 5010 (2018).¹ The allegations against Representative McMurtry were made in two forums: privately, to the Speaker of the House of Representatives (hereinafter the Speaker) and other Members and employees of the House of Representatives (hereinafter the House); and publicly, to the Boston Globe and other media outlets.² The Special Committee has investigated whether Representative McMurtry violated House Rule 88, and specifically whether Representative McMurtry engaged in sexual harassment as defined in House Rule 88.

The complaint against Representative McMurtry generally alleges that while attending a cocktail party on Thursday, December 13, 2018 at the 2018 Academy for New Legislators held at the University of Massachusetts Amherst campus, Representative McMurtry intentionally and inappropriately touched the backside of a female Representative-elect (hereinafter the Alleged Incident).³

The Special Committee must specifically address two threshold matters relevant to its investigation: the nature of the “complaint” against Representative McMurtry; and the fact that the Alleged Recipient of the contact from Representative McMurtry has neither made a complaint nor exercised her option to participate in this investigation.

Three Members-elect to the House reported to the Speaker, with varying degrees of detail, that the Alleged Incident occurred at the Academy for New Legislators. Each Member-elect represented either that the Alleged Recipient had not consented to the Member-elect identifying the Alleged Recipient or that they knew so little in regards to detail about the Alleged Incident that they could not identify the Alleged Recipient. Nevertheless, the Members-elect chose to make these reports. Each Member-elect was informed that such a report to the Speaker required further review and action, and was asked to provide all available information regarding the Alleged Incident. Based on the available information and the intent of the House Rules, these reports have been construed as a complaint.⁴ The Special Committee recommends that a full-time Equal Employment

¹ The Special Committee was appointed pursuant to House Rule 99 and constituted as provided in House Rule 96. The Speaker appointed five members and the Minority Leader appointed two members.

² See e.g., Andrea Estes and Matt Stout, Top state representative grabbed incoming lawmaker’s backside, colleagues say (January 16, 2019) available at <https://www.bostonglobe.com/metro/2019/01/16/top-state-representative-grabbed-incoming-lawmaker-backside-colleagues-say/H59SxP5ebVbD6srQLowyTP/story.html>.

³ The nature of this alleged contact has been described in varying terms by the media and individuals reporting second-hand knowledge of the alleged contact. For the purposes of this executive summary, the Special Committee will refer to the alleged contact as “the Alleged Incident” and differentiate, where needed, the reported nature of the contact.

⁴ EEO Officer Cynthia Farquhar, when conducting a plausibility assessment of the Alleged Incident, stated the following: “I have determined, based on my conversations with multiple Members of the House, that the complaint is plausible and requires investigation. I would like to note, however, that while I have construed the information received to date as a ‘complaint’ for purposes of the House Order and House Rules 88 to 100, I recommend that the

Opportunity Officer (hereinafter EEO Officer) specifically address reports of this nature in the written policies anticipated by the House Rules and give particular consideration to whether such reports should in fact be considered a complaint in the future.⁵

Additionally, although the Special Committee has been able to identify the Member the Committee believes to be the Alleged Recipient of contact by Representative McMurtry, that identification was made on the basis of interview testimony and video footage.⁶ The Special Committee is acutely cognizant of the fact that the Member herself has not come forward to participate in this investigation and, by all accounts, does not wish to do so.⁷ However, the Special Committee also notes that the House Rules contemplate a process in which complaints may be made by individuals other than the alleged victim or recipient of conduct that may violate House Rule 88. Therefore, the Committee has investigated this matter in the same manner in which it would have investigated a complaint filed directly by the recipient of the Alleged Incident.

The Special Committee contracted with EEO Officer Cynthia Farquhar of EEO Solutions, Inc., to conduct the investigation. After thorough investigation, involving 19 in-person interviews, and the review of video footage⁸ and other materials, the Special Committee has concluded that Representative McMurtry did not violate House Rule 88.

The Special Committee recognizes that the House Rules protect the confidentiality of investigations, complainants and witnesses to the fullest extent possible. The House Rules are silent, however, as to how the Special Committee should properly resolve allegations against a Member of the House when those allegations are not exclusively within the purview of a confidential internal investigation and are the topic of a front page article in the Boston Globe. The Special Committee believes that the House Rules governing confidentiality when conducting and concluding its investigation are clearly and explicitly predicated on the expectation that the matter would remain confidential unless and until a Member was found to have violated House Rule 88; and the violation led the Special Committee to recommended that a Member be reprimanded,

House continue to review and refine its definition of the term complaint. It is my understanding that written policies for receiving, assessing and investigating complaints will be developed under the House Rules. Such policies can address and clarify any needed distinction between a complaint and a report that, while not rising to the level of a complaint, may still require review and action by the House. Regardless, in the absence of any such policies at this time, I recommend that the House treat the information received as a complaint.”

⁵ House Rules 88 through 100 contemplate the appointment of a full-time EEO Officer to receive and investigate complaints alleging a Member of the House has violated House Rule 88. The House has been unsuccessful, to date, in its efforts to appoint a full-time EEO Officer, despite multiple public postings. The Rules Committee first posted the EEO Officer position in May 2018. The Committee made an offer to a candidate in July 2018, however that candidate declined the position. The Committee reposted the position in September 2018, but was unable to identify a suitable candidate in response to that posting. The position is currently publicly posted.

⁶ Hereinafter, the Member will be referred to as the Alleged Recipient.

⁷ The Boston Globe expressly recognized in its January 16, 2019 article that the “legislator...allegedly grabbed declined to comment through an attorney.” See *Estes and Stout supra* note 2. The Boston Globe nonetheless published its article on the basis of reports from three legislators who reported some knowledge of the incident.

⁸ Approximately 40 hours of video was reviewed. While the cocktail hour lasted only from approximately 5:00 p.m. to 6:15 p.m., security video from 4:00 - 9:00 p.m. was provided from 8 different cameras.

censured, removed from position as a chair or other position of authority, or expelled from the House.⁹ The Special Committee understands that resolving alleged violations of House Rule 88 confidentially protects the privacy interests of complainants, witnesses and, in certain instances, the subject of the complaint. However, the Rules, in form, and the Special Committee, in practice, must weigh these privacy interests against the public interest and recognize that a Member of the House of Representatives is answerable to the public and their constituents.

House Rules currently identify one threshold at which the balancing of those interests shifts in favor of public disclosure, i.e., when a Special Committee recommends certain discipline. In that instance, the Rules also identify methods by which the Committee can continue to protect the privacy of certain parties, even when the report of the investigation is made public. The Special Committee believes that the balancing of interests also requires a public response in this instance, where the “complaint” and allegations were made public by multiple unnamed legislators, including at least one unnamed Member of the House. These circumstances are not contemplated by the House Rules and as such require unique consideration and resolution.

House Order, No. 3595 was therefore adopted, authorizing the Special Committee to release this executive summary of its comprehensive written report in an effort to balance the privacy interests of those individuals involved in the investigation with the public interests of transparency and fairness. The Special Committee strives both to ensure public confidence in the conduct of this investigation and to protect the identities of those who participated, or were asked to participate, in this investigation. As required by House Order, No. 3595, this executive summary therefore does not identify any witness or party to the investigation who has not consented to be identified in this summary.

The New Legislator Academy at UMass

From Wednesday, December 12 to Friday, December 14, 2018, the 2018 Academy for New Legislators (hereinafter the New Legislator Academy) was held at the University of Massachusetts Amherst campus (hereinafter UMass). The New Legislator Academy included a “Made in Massachusetts” cocktail reception beginning at 5:00 p.m. on Thursday, December 13, 2018 (hereinafter the cocktail party). Along with other legislators, Representative McMurtry was present at the cocktail party and other events at the New Legislator Academy.

Initial Reports to House Counsel and the Speaker

Between Monday, December 17, 2018 and Friday, December 28, 2018, the House received four reports from individuals claiming to have knowledge of the Alleged Incident.¹⁰ On Monday, December 17, 2018, House Counsel received a call from Senate Counsel. Senate Counsel informed

⁹ See House Rule 96(d).

¹⁰ There is some overlap between communications related to the initial reports and communications related to the plausibility assessment conducted by the EEO Officer.

House Counsel that she had received “third hand” information that an employee of the Senate observed a sitting male Member of the House inappropriately touch a female Member-elect of the House at the cocktail party.¹¹

Following the initial report to House Counsel, three Members-elect reported information, with varying degrees of detail, directly to the Speaker of the House which related to the Alleged Incident. The first Member-elect (hereinafter Member One)¹² reported on Wednesday, December 19, 2018 that there had been “sexual harassment” at the New Legislator Academy; specifically that she had been told that a sitting Member of the House inappropriately touched another Member-elect’s backside at the cocktail party.¹³ When asked for any further details that could aid an investigation into the matter, Member One told the Speaker she would have to check with the Alleged Recipient before she would be comfortable sharing any additional information.¹⁴

A second Member-elect (hereinafter Member Two) reported to the Speaker on Thursday, December 27, 2018 that she wished to talk to the Speaker about the culture at the New Legislator Academy. Member Two also generally conveyed that she knew someone else had reported the Alleged Incident to the Speaker. Member Two confirmed that she was not the Alleged Recipient and that she had not witnessed anything directly. Member Two also declined to identify the Alleged Recipient.¹⁵

A third Member-elect (hereinafter Member Three) reported to the Speaker on Friday, December 28, 2018 that he had heard a “story,” which Member Three generally characterized as a rumor of sexual harassment during the New Legislator Academy. Member Three told the Speaker he had no details, stating that he only heard about it, did not know the individuals involved, and did not see the Alleged Incident.¹⁶

¹¹ Senate Counsel characterized the report as “third hand” in that the individual who reported the information was not the alleged witness but had been informed of the Alleged Incident by the alleged witness. During a follow-up call, Senate Counsel reported that there were multiple people associated with the Senate who witnessed the Alleged Incident; however, the existence of witnesses was later refuted by Outside Counsel retained by the Senate.

¹² Although the initial reports to the Speaker were made by three Members-elect, this summary will use their titles in effect on the date of this summary, as all three have since been duly sworn-in as Members of the House.

¹³ Member One characterized the inappropriate touch as an “ass grab” and identified the Alleged Recipient as female.

¹⁴ The Speaker’s Deputy Chief of Staff, who was present for the meeting, told Member One she believed there was a responsibility under House Rules to act on this information. The Deputy Chief of Staff also made clear she would follow up with Member One after discussing the information with House Counsel.

¹⁵ The Speaker’s Deputy Chief of Staff, who was present for the meeting, informed Member Two that she would be referring the matter to House Counsel and the EEO Officer. On December 20, 2018, House Counsel contracted with an external EEO Officer to assess the reports received by the House prior to December 20, 2018. Therefore, the Speaker’s Deputy Chief of Staff informed Member Two of the anticipated referral to the EEO Officer as well as the report to Counsel.

¹⁶ The Speaker told Member Three he would be referring the report to House Counsel and the EEO Officer, to which Member Three responded that he would have nothing to add, because he did not see the Alleged Incident. Member Three specifically requested that the Speaker’s Deputy Chief of Staff leave the room so that Member Three and the

The House Rules and House Order, No. 5010

House Rule 88 expressly prohibits harassment, which the Rule defines to include both discriminatory harassment and sexual harassment. Sexual harassment is defined in relevant part as follows:

“Sexual harassment”, sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

(1) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions, or as a term, condition or basis for the support of certain policy objectives, political aspirations or business before the House; or

(2) such advances, requests or conduct have the purpose or effect of unreasonably interfering with a member, officer, intern or employee’s work performance or official duties by creating an intimidating, hostile, humiliating or sexually offensive work environment.¹⁷

Sexual harassment is further defined through examples of prohibited conduct. The following prohibited conduct, as defined in House Rule 88, is relevant to this investigation:

Conduct that, if unwelcome, and depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness, may constitute sexual harassment includes, but is not limited to, the following:

(i) unwelcome sexual advances, flirtations or propositions, whether they involve physical touching or not; [and]

...

(viii) uninvited physical contact, such as touching, hugging, purposely brushing against the body, patting or pinching[.]¹⁸

House Rules 88 through 100 contemplate the appointment of a full-time EEO Officer to receive and investigate complaints alleging a Member of the House has violated House Rule 88. The House has been unable to appoint a full-time EEO Officer, despite multiple public postings.¹⁹ House Order, No. 5010 was adopted to authorize House Counsel to contract for the services of an EEO

Speaker could speak privately; therefore, the Speaker’s Deputy Chief of Staff was not present as she had been for the reports from Members One and Two.

¹⁷ See House Rule 88(a).

¹⁸ See House Rule 88(c)(3).

¹⁹ See discussion of House search for an EEO Officer *supra* note 5.

Officer. The Order requires that all complaints alleging harassment be referred to an EEO Officer for plausibility assessment.²⁰

The Order supplements but does not supplant House Rule 99. House Rule 99 – itself a transition rule – gives a Special Committee on Professional Conduct exclusive authority and discretion to retain outside consultants to assist the Special Committee with the investigation of a complaint against a Member. Additionally, House Rule 99 provides that a Special Committee on Professional Conduct shall conduct itself pursuant to House Rule 96, except as modified by House Rule 99.²¹ A Special Committee “may summon witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in connection with its” duties.²²

The process is further informed by House Rules that encourage reporting and thorough investigation, including a directive for mechanisms to investigate complaints made by witnesses or third parties.²³

Contracting with the EEO Officer and Assessing Plausibility

Following the December 19, 2018 report from Member One, House Counsel informed Speaker DeLeo and his staff that, under House Rules 93 and 94, the Speaker would be required to refer the matter to the EEO Officer.²⁴ As noted above, the House adopted House Order, No. 5010, authorizing House Counsel to contract for an EEO Officer on December 20, 2018.²⁵ The order was drafted and filed pursuant to a December 4, 2018 vote of the House Committee on Rules. On December 20, 2018, House Counsel contracted with Cynthia Farquhar, President of EEO Solutions, Inc., to serve as the Contract EEO Officer in this matter.²⁶

²⁰ Under House Order, No. 5010, the receipt and investigation of a complaint against a Member of the House proceeds as follows: “[A]ll complaints received by any member, officer or employee of the House alleging a violation of House Rule 88, the House Anti-Harassment Policy, or the House Equal Employment Policy, including, but not limited to complaints alleging harassment, as defined in House Rule 88 or the House Anti-Harassment Policy, or retaliation by or against a member, officer, intern or employee of the House, or by or against a third party, as defined in House Rule 88, shall be immediately referred to the EEO Officer for assessment[.]” If the EEO Officer determines that a complaint is plausible and requires investigation, the EEO Officer then informs Counsel. Counsel notifies the Speaker and the Minority Leader, “who shall appoint a Special Committee on Professional Conduct, which shall conduct itself pursuant to House Rule 96 except as modified by House Rule 99 and [House, No. 5010].”

²¹ And now, by House Order, No. 5010.

²² See House Rule 96(b).

²³ For example, House Rule 94(b) states: “The EEO Officer shall assess complaints and conduct investigations pursuant to written policies and procedures, which...shall ensure that all assessments, investigations and reports are confidential to the fullest extent practicable under the circumstances and shall include, without limitation, the following: trauma-informed techniques; mechanisms for investigating complaints made by witnesses or third parties; standards for collecting and maintaining evidence; consideration of interim measures; and methods to tailor each investigation to the specific needs of the complainant and particular circumstances of the complaint.”

²⁴ See House Rule 93(a)(1) & (a)(2); see also House Rule 94(a).

²⁵ See discussion of the House search for an EEO Officer *supra* note 5.

²⁶ Ms. Farquhar has over 20 years of experience working in the fields of equal employment opportunity and affirmative action. EEO Solutions, Inc., has provided professional equal employment opportunity and human resource services – including investigating discrimination and sexual harassment complaints, reviewing EEO

As required by the Order, the EEO Officer conducted a plausibility assessment. A plausibility assessment is a limited threshold screening for feasibility (i.e., could it have possibly happened) and does not involve any determination of credibility. All information received prior to December 20, 2018 was forwarded to the EEO Officer, and all reports made to the Speaker after December 20, 2018 were relayed immediately to the EEO Officer.

Attempts to Contact Member One

Multiple attempts were made on and after December 20, 2018 to contact Member One to gather more detail about the Alleged Incident and provide Member One with the EEO Officer's contact information; including two calls, a text and two emails from the Deputy Chief of Staff. The Deputy Chief of Staff received no response until December 28, 2018.²⁷ The EEO Officer also attempted to contact Member One directly, to which Member One did not respond until January 7, 2019.

Attempts to Contact Member Two

Multiple attempts were made to contact Member Two, after her report to the Speaker on December 27, 2018. The Deputy Chief of Staff emailed Member Two on December 28, 2018 to follow-up on her report. The EEO officer also attempted to contact Member Two directly. Member Two did not respond to any communications from the EEO Officer until January 18, 2019.

Attempts to Contact Member Three

Following Member Three's report to the Speaker on December 28, 2018, the EEO officer attempted to contact Member Three. Member Three did not respond to any communications from the EEO Officer until he arrived for an interview on January 23, 2019.²⁸

Additional Reports

On January 4, 2019, a Member of the House (hereinafter Member Four) informed the Deputy Chief of Staff that he had been contacted by another Member (hereinafter Member Five) regarding a call Member Five received from a reporter with the Boston Globe. Member Four relayed to the Deputy Chief of Staff that the reporter asked Member Five if he knew anything about a male Member inappropriately touching a female Member-elect at the New Legislator Academy; and the reporter identified Representative Paul McMurtry as the alleged actor.²⁹

On January 8, 2019, the EEO Officer attempted to contact each of the twenty-five Members of the House sworn in on January 2, 2019 to whom she had not already spoken. Given the extremely limited detail of the reports to the Speaker, the EEO Officer sought to determine whether these

policies and procedures, and training on diversity and inclusion and sexual harassment/sexual assault – for many organizations, including UMass Boston, UMass Dartmouth, Brandeis University and Harvard University.

²⁷ Member One contacted the Deputy Chief of Staff on an unrelated matter and confirmed the EEO Officer had attempted to contact her.

²⁸ As explained further below, Member Three refused to participate in that interview.

²⁹ On January 7, 2019, the EEO Officer spoke directly with Members Four and Five, both of whom reported that they had no first-hand knowledge of Alleged Incident.

Members had knowledge of the Alleged Incident, could identify the Alleged Recipient, or could confirm the identity of the Member alleged to be the subject of the complaint. The EEO Officer spoke with two Members who reported knowledge of the Alleged Incident. One Member (hereinafter Member Six) reported that while riding in an elevator with a group on December 13, 2018, the Alleged Recipient reported to him that her “ass was grabbed” by a member of “leadership” that evening.³⁰ The second Member (hereinafter Member Seven) reported that she was aware of the Alleged Incident, but had been asked by the Alleged Recipient not to discuss it.³¹

Plausibility Determination³²

On January 10, 2019, the EEO Officer informed House Counsel that the information received to date should be construed as a complaint,³³ and the complaint was plausible and required investigation.

The plausibility determination triggered the appointment of a Special Committee on Professional Conduct pursuant to House Order, No. 5010. House Counsel proceeded under the Order and, on Thursday, January 10, 2019, notified the Speaker and the Minority Leader of their obligation to appoint a Special Committee.

Investigation

The Special Committee on Professional Conduct

The Speaker and Minority Leader then appointed a Special Committee on Professional Conduct.³⁴ The Committee utilized its broad investigatory authority to conduct a full and detailed investigation of the Alleged Incident, as summarized below.³⁵

The Committee reviewed all available information at its initial meeting on January 16, 2019 and established the process by which the investigation would proceed. The Committee voted unanimously to accept the EEO Officer’s plausibility determination and retain Ms. Farquhar as an EEO Officer to conduct the investigation and assist the Committee.³⁶ The Committee directed that

³⁰ Member Six declined to identify the Alleged Recipient unless and until the Alleged Recipient approved his doing so. Member Six never identified the Alleged Recipient.

³¹ Member Seven declined to identify the Alleged Recipient unless and until the Alleged Recipient wished to come forward. Member Seven never identified the Alleged Recipient.

³² A plausibility assessment is a threshold assessment for feasibility and does not involve any determination of credibility. See discussion of assessing plausibility *supra* page 6.

³³ See discussion of plausibility assessment *supra* note 4.

³⁴ See bipartisan structure of the Committee *supra* note 1.

³⁵ The Special Committee has broad investigative powers under House Rules 96 and 99.

³⁶ The Special Committee also voted unanimously to have House Counsel assist the Committee in the investigation pursuant to House Rule 99.

the investigation commence immediately and voted to have the EEO Officer request all video of the cocktail party and dinner from UMass, if any video was available.³⁷

The EEO Officer regularly reported the progress of the investigation to the Committee. The Committee in turn made a number of requests or approvals related to the investigation, the majority of which the Committee considered routine or administrative.³⁸ The Committee was at all times committed to establishing a process whereby the EEO Officer could conduct an independent investigation and the Committee could fulfill its distinct duty to review and resolve an alleged violation of House Rule 88 by a Member of the House. The Committee sought to fairly balance the interests of all parties and witnesses involved in this matter.

The Boston Globe Article

On Wednesday, January 16, 2019, the Boston Globe published a story online alleging that Representative McMurtry “walked up behind an incoming legislator and grabbed her backside” during the cocktail party at UMass.³⁹ This article was published hours after the Special Committee met. As evidenced by the procedural history outlined herein, the article did not impact the establishment of the Special Committee.

While the details of the allegation and witness accounts reported by the Globe are not irrelevant to this investigation, they did not influence or materially inform the investigatory process. The findings of the Special Committee are based exclusively on the investigatory findings. The Committee finds it prudent to discuss those allegations, however, given their highly public nature and the Committee’s investigatory findings and conclusion.

The January 16, 2019 Globe article states:

The Globe spoke to three legislators, two of whom said the alleged victim told them McMurtry, 53, grabbed her. A third said she witnessed it directly. The Globe generally does not identify alleged victims of sexual assault, and the legislator McMurtry allegedly grabbed declined to comment through an attorney.

...

During the ‘Made in Massachusetts’ cocktail reception, several legislators gathered in one corner of the room to take a photo. As the female lawmaker walked toward the group,

³⁷ The Committee also discussed the confidentiality of its existence and the identities of its Members. Representative McMurtry has not asked to know the membership of the Special Committee and does not, to the Committee’s knowledge, know the identity of any Member on the Committee. *See* House Rule 96.

³⁸ For example, at various points, the Committee voted unanimously to have the EEO Officer: initiate follow-up communications to unresponsive individual; respond to communications directed to the EEO Officer; or request interviews of external parties.

³⁹ *See Estes and Stout supra* note 2.

McMurtry grabbed her backside, according to two lawmakers who said the woman told them afterward.

‘She told us immediately upon joining the group gathering to take the photo,’ one legislator said. ‘She told us a person had just grabbed her [backside].’ The woman then identified that person as McMurtry, the lawmaker said.

The Globe article also referenced a Member who purported to be an eyewitness:

A third person, a state representative, said she witnessed McMurtry grab the woman’s “behind.” “He walked up behind her and grabbed it. She was upset,” said the representative.⁴⁰

EEO Officer Investigation

Over the course of eight weeks, the EEO Officer conducted an extensive investigation consisting of 19 in-person interviews: eleven Members and one staff person were interviewed once; two Members were interviewed twice; and Representative McMurtry⁴¹ was interviewed three times.^{42,43} The EEO Officer reviewed security video footage from the event and other relevant materials produced by UMass, as well as Facebook messages between the Alleged Recipient and other Members discussing the Alleged Incident, and a written statement from an anonymous “Senate source.”

Six interviewees provided material information in the investigation: Member One, Member Two, Member Six, Member Seven, a Member from whom the EEO Officer had not previously received

⁴⁰ This investigation has identified no eyewitness to the Alleged Incident. Specifically, no Member of the House interviewed in the course of this investigation claimed to have witnessed the Alleged Incident. *See Summary of Investigatory Findings infra* page 14.

⁴¹ Representative McMurtry was permitted to have his attorney present during these interviews, however his attorney was not permitted to participate.

⁴² The Director of House Human Resources was also present during each interview. It is common practice to have two interviewers present to conduct a thorough and well-documented interview. It was agreed that the HR Director was the most appropriate second interviewer. During each initial interview, the EEO Officer collected diagrams from the interviewee marking his or her movements through the cocktail party and dinner at UMass, by using floorplans of the cocktail party and dinner event spaces in the Old Chapel Building. Each interviewee was informed that the investigation was confidential and that the information they provided to the EEO Officer would be maintained as confidential to the fullest extent possible. Each interviewee was also: (1) advised that House Rule 88 prohibits retaliation for cooperating in the investigation, (2) encouraged to report any concerns regarding a breach of confidentiality or potential retaliation immediately, and (3) provided with information about (i) the House Employee Assistance Program counseling benefits and (ii) external agencies to whom the interviewee could report, including the Massachusetts Commission Against Discrimination. Additionally, the EEO Officer requested that interviewees provide “any notes, emails, text messages, social media posts, photos or other material possibly relevant” to the investigation.

⁴³ The EEO Officer interviewed the Speaker to confirm and clarify the reports that he received from Members One, Two and Three. The Speaker described the initial reports in a manner consistent with the contemporaneous reports relayed to the EEO Officer by House Counsel.

information (hereinafter Member Eight) and Representative McMurtry. Other interviewees reported no relevant knowledge of the Alleged Incident.

Additionally, Member One produced a group photo (hereinafter Group Photo) and identified it to be the Group Photo referenced in the Boston Globe article.

The Senate

The EEO Officer requested to interview anyone affiliated with the Senate who may have relevant information regarding the Alleged Incident; and specifically requested to interview five Senators and the individual who first reported the matter to Senate Counsel.⁴⁴

The Senators declined to participate in live interviews. However, on February 6, 2019, Senate Counsel reported:

[N]one of the senators identified [by the EEO Officer] is aware of having witnessed the alleged misconduct at issue in the House’s investigation. In a similar vein, only one Senate source is known to have received contemporaneous information that a sitting male House of Representatives member inappropriately touched an incoming female House member... [and] this source wishes to remain anonymous. In light of the limited information and the aforementioned request for anonymity by the source identified as having second-hand knowledge, the Senate respectfully submits this written response as its answer in this matter.⁴⁵

After further requests from the EEO Officer, the “Senate source” who reported receiving contemporaneous information regarding the Alleged Incident submitted an anonymous written statement.⁴⁶

Subpoena and Video Footage

The Committee subpoenaed from UMass: all security video footage, photos taken by UMass employees, a list of all UMass employees present at the cocktail party and any other relevant materials. The subpoena was issued on Wednesday, February 6, 2019. UMass provided the responsive video footage on February 11, 2019 and produced all other materials by February 27, 2019.⁴⁷

⁴⁴ All requests went through Senate Counsel. In total, the EEO Officer sent seven emails to Senate Counsel and made multiple calls requesting interviews and information.

⁴⁵ Senate Counsel also reported that none of the Senators identified by the EEO Officer identified any photographs, social media posts or other materials relevant to the Alleged Incident.

⁴⁶ The Senate “source” is the individual who first reported the matter to Senate Counsel. The Special Committee reluctantly accepted this anonymous statement, recognizing that written responses are of particularly limited utility and value to an investigator. Unlike live interviews, they do not allow for follow-up questions or clarifications.

⁴⁷ The Committee notes that UMass cooperated fully with the Committee’s request for responsive video footage, and produced responsive video prior to the February 6, 2019 subpoena. The Committee nonetheless elected to subpoena the video footage and additional materials, in order to ensure an exhaustive investigation.

UMass produced approximately 40 hours of video footage.⁴⁸ The video footage shows a single exchange between the Alleged Recipient and Representative McMurtry in a group conversation.

Authentication of Video Footage

At the request of the Special Committee, the EEO Officer contracted with Legal Audio Video (LAV), a company with expertise in video forensic engineering, to authenticate and analyze the video.⁴⁹ LAV confirmed that the video footage did not appear to have been edited or manually changed; and that skips in the video footage occurred at random intervals. LAV also reported that the random skips in the footage were very likely caused by motion settings in the video security system or other quality settings which cause the system to be sluggish.

House Member Cooperation

Regrettably, certain Members of the House refused or resisted cooperation with the EEO Officer and the Special Committee in the course of this investigation.⁵⁰

Member Three

Member Three, one of the Members who made an initial report to the Speaker, refused to participate in an interview with the EEO Officer. Member Three did not allow the EEO Officer to ask any questions; he instead read from a prepared statement in which he informed the EEO Officer that he believed the investigatory process was flawed.⁵¹

The EEO Officer subsequently communicated with Member Three via email on three occasions, wherein she reiterated her desire to speak with him about the events of the cocktail party. Member Three declined a second time, via email on February 11, 2019, to sit for a scheduled interview with the EEO Officer. In this email, Member Three suggested for the first time that the Alleged Recipient informed him of the Alleged Incident very shortly after it occurred; and that in December he shared with the Speaker “what [he] had heard from a colleague immediately following the alleged incident in question.”^{52,53} The EEO Officer responded to the email, highlighting her

⁴⁸ See discussion of video footage *supra* note 8.

⁴⁹ LAV has been retained and consulted on issues relating to the inspection, analysis, authentication, and enhancement of audio and video recordings by, among other entities, the United States Attorney’s Offices for the Southern and Eastern Districts of New York, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Legal Aid Society in Manhattan. Frank Piazza, who performed the analysis on the UMass video footage qualified as an expert witness in the area of audio and video forensic analysis in both state and federal court on behalf of governmental entities.

⁵⁰ The Special Committee would like to thank all House Members and employees, and all other individuals who cooperated fully.

⁵¹ Member Three arrived for a scheduled interview on Wednesday, January 23, 2019 but refused to participate. He also refused to provide a copy of his statement to the EEO Officer.

⁵² Member Three also asked that the EEO Officer direct any further correspondence to his counsel, but refused to identify his counsel when asked.

⁵³ This statement conflicts with the report Member Three made to the Speaker, which is further discussed in Witness Credibility.

interest in hearing this information directly from Member Three since it could be quite significant for her investigation. Member Three refused to respond to the EEO Officer.

The Alleged Recipient

The EEO Officer was able to identify the Alleged Recipient of contact by Representative McMurtry. However, the Alleged Recipient declined to exercise her option to deny or confirm the allegations or to participate in the investigatory process in any way.⁵⁴

Despite multiple attempts to contact her attorney, multiple recommendations for methods by which the Alleged Recipient's identity could be protected, and specific requests for information crucial to the investigation, the Alleged Recipient's attorney never responded to the EEO Officer. Therefore, the Committee has not received a first person account of the Alleged Incident from the Alleged Recipient.

Member One

Member One, who made the most detailed initial report to the Speaker, also reported at one time that she would no longer cooperate with the investigatory process. The EEO Officer responded to Member One via email, explaining the House Rules requiring and directing the investigation in great detail and reiterating the importance of her cooperation. Member One ultimately participated in a follow-up interview.

Additionally, Member One refused to provide the EEO Officer with redacted copies of a Facebook message thread between herself, the Alleged Recipient and Member Seven, in which the three discussed the Alleged Incident and the Alleged Recipient's desire not to proceed with a complaint.⁵⁵

Member Two

Member Two, who made an initial report to the Speaker, initially declined to participate in a follow-up interview with the EEO Officer. However, after the EEO Officer responded to Member Two via email, explaining the House Rules requiring and directing the investigation in great detail and reiterating the importance of her cooperation, Member Two participated in a follow-up interview and shared relevant information regarding the Alleged Incident.

Summary of Investigatory Findings

Member Two described a group conversation during the cocktail party (hereinafter Group Conversation) and reported that the Alleged Recipient told her that the Alleged Incident occurred

⁵⁴ The Alleged Recipient was scheduled for an interview with the EEO Officer who, at that point, did not know the Member to be the Alleged Recipient. When the time arrived for the interview, the EEO officer instead received an email from the Alleged Recipient's attorney, wherein the attorney effectively identified her client as the Alleged Recipient and conveyed a number of reasons why the Alleged Recipient was declining to participate.

⁵⁵ Member Seven produced heavily redacted copies of the Facebook messages.

during that conversation. Member One reported that the Alleged Recipient described her positioning in a Group Conversation wherein the Alleged Incident occurred. The video footage shows a Group Conversation that matches the descriptions provided by Members One and Two. The video footage shows a group in seemingly uneventful conversation until Representative McMurtry briefly exits the Group Conversation and walks behind the Alleged Recipient.

As Representative McMurtry passes behind the Alleged Recipient, his right arm and shoulder move back and down in his stride. At this point, the video footage skips a fraction of one second.⁵⁶ Representative McMurtry is then visible just past the Alleged Recipient; his arm moves back up in stride as he continues to walk. There is no visible contact. The Alleged Recipient makes slight movements that the EEO Officer found to be consistent with an accidental touch, and further found that the movement was not unusual or an indication of distress.⁵⁷ Representative McMurtry rejoins the Group Conversation and the Group Conversation continues without incident until the Alleged Recipient exits the Group Conversation approximately two minutes later. Member Two subsequently exits the Group Conversation.

Member One told the EEO Officer that the Alleged Recipient is very expressive. However, the video footage does not show any contemporaneous reaction or concern from anyone in the Group Conversation in response to the Alleged Recipient's face or movement when Representative McMurtry passes her. All House Members in the Group Conversation, except the Alleged Recipient, were interviewed and no one reported that the Alleged Recipient expressed any surprise or concern. Member Two, who was present in the Group Conversation, reported that she believed the Alleged Incident happened after she left the Group Conversation; noting that the Alleged Recipient didn't make any exclamations during the Group Conversation. However, the video footage shows that the Alleged Recipient left the Group Conversation before Member Two. Additionally, although present in the Group Conversation, a Senator denied having any knowledge of the Alleged Incident.⁵⁸

No Representative, Senator, House staff member, nor the anonymous "Senate source" claimed to have witnessed the Alleged Incident first-hand. The EEO Officer interviewed all House Members in the Group Photo provided by Member One and qualified as the photo referenced in the Boston Globe article, except the Alleged Recipient. All denied witnessing the Alleged Incident. The anonymous "Senate source" also reported that they heard only a second-hand report. The Special Committee is therefore unaware of any eye-witness to the Alleged Incident.

⁵⁶ LAV confirmed that the video footage did not appear to have been edited or manually changed; and that skips in the video footage occurred at random intervals. *See Authentication of Video Footage supra* p. 12.

⁵⁷ The EEO Officer recorded similar movements from the Alleged Recipient occurring three times in four minutes before Representative McMurtry passed behind the Alleged Recipient.

⁵⁸ As discussed above, Senate Counsel responded on behalf of certain Senators and stated that no identified Senator was aware of having witnessed the alleged misconduct at issue.

Members One, Two, Six and Eight reported to the EEO Officer that they received a “contemporaneous” report of the Alleged Incident from the Alleged Recipient. However, the details of those reports varied significantly. Member Seven also told the EEO Officer she received a report from the Alleged Recipient, but that it occurred days after the Alleged Incident.

Representative McMurtry recalled speaking to a number of individuals at various points during the cocktail party; but did not remember speaking with any of the House Members in the Group Conversation, including the Alleged Recipient. Representative McMurtry adamantly denied making intentional contact with the Alleged Recipient, and reported that he did not believe he could have accidentally brushed or touched the Alleged Recipient either.⁵⁹

Conclusions of Fact

Timing of Contact

The Committee finds that if the Alleged Incident occurred, it could have only occurred in the Group Conversation. It is the only visible conversation between the Alleged Recipient and Representative McMurtry. Members One and Two both stated that there was only one conversation between the Alleged Recipient and Representative McMurtry during the cocktail hour and the Alleged Incident occurred during that conversation. Member One specifically reported that the Alleged Recipient described her position in a group conversation during which the Alleged Incident occurred, and that description is consistent with the Alleged Recipient’s position during the Group Conversation.

Member Two reported that the Alleged Recipient informed her of the Alleged Incident no more than five minutes after the Group Conversation. The video footage supports Member Two’s recollection and shows a conversation between the Alleged Recipient and Member Two within five minutes of the Group Conversation.

The Alleged Recipient remains visible on the video footage for the majority of the cocktail party, during which she has no further interaction with Representative McMurtry.

Nature of Contact

The Committee accepts the EEO Officer’s finding that it is more likely than not that there may have been contact between Representative McMurtry and the Alleged Recipient, but that the contact, if any, was accidental or incidental rather than intentional. The Committee unanimously concurs in this finding. Although the video footage does not show the entire sequence of frames during which Representative McMurtry passes behind the Alleged Recipient, the video footage shows a reaction from the Alleged Recipient that is consistent with an accidental touch rather than an intentional grab.

⁵⁹ Representative McMurtry said that if he had bumped into the Alleged Recipient he would have apologized.

No one in the Group Conversation interviewed said that the Alleged Recipient demonstrated any surprise or concern during the conversation. Further, Member Two presumed that the Alleged Incident happened after Member Two left the conversation, since she observed nothing of note. Video footage confirms, however, that the Alleged Recipient left the conversation first.

The Committee recognizes that Members One, Two and Four, and the anonymous “Senate source,” reported that the Alleged Recipient told them that she experienced a “grab” rather than an incidental touch. However, Member Eight reported that she heard the Alleged Recipient say, “I think someone touched my butt...I really think he touched my butt.” Member Eight, Member One and the anonymous “Senate source” were all in the same area of the room and would have heard the statements within moments of one another.⁶⁰ The Committee does not discount that Members One, Two and Four heard the Alleged Recipient say that she was “grabbed.” However, the Committee finds that Member Eight’s testimony is the most consistent with the Alleged Recipient’s reaction on the video footage.

On balance, the totality of the evidence before the Committee supports a finding that, if any contact occurred between Representative McMurtry and the Alleged Recipient, that contact was accidental or incidental rather than intentional.

Witness Credibility

The Committee did not find Member Three credible and did not consider his statement to the Speaker or his February 11, 2019 email to the EEO Officer in making their findings. His statement to the Speaker that he heard a story and had no knowledge of the Alleged Incident was in direct conflict with his email to the EEO Officer reporting that he heard about the Alleged Incident from a colleague immediately following the Alleged Incident. Further, his refusal to answer questions to clarify the contradiction or otherwise participate in the investigation in any meaningful manner left the Committee unable to discern any facts from Member Three’s statement to the Speaker or his February 11, 2019 email.

House Rule 88 Finding

House Rule 88, in relevant part, defines sexual harassment as “conduct that, if unwelcome, and depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness, may constitute sexual harassment.” Such conduct includes “uninvited physical contact, such as touching, hugging, purposely brushing against the body, patting or pinching.” The Committee finds that this is the most analogous language in the definition of sexual harassment under which to consider the allegations made against Representative McMurtry.

The Committee does not find, by a preponderance of the evidence, that Representative McMurtry made intentional contact with the Alleged Recipient, which is the threshold criteria established by

⁶⁰ These statements occurred approximately half an hour after the Alleged Incident.

the definition of sexual harassment in House Rule 88. Therefore, the Committee unanimously finds insufficient evidence to support a finding that Representative McMurtry violated House Rule 88.

Conclusion

The Committee voted unanimously that the matter be concluded with no action against Representative Paul McMurtry.