

BEFORE THE HEARING SUBCOMMITTEE  
OF THE INTERIM LEGISLATIVE ETHICS COMMITTEE

In re: Representative Carl Trujillo,

Respondent.

**FINAL ORDER OF DISMISSAL**

THIS MATTER came before the Hearing Subcommittee of the Interim Legislative Ethics Committee on the motion of the Charging Party<sup>1</sup> recommending dismissal of the charges pending against Representative Carl Trujillo relative to allegations of violations of the Legislature's Anti-Harassment Policy. After consideration of the matter, the Hearing Subcommittee makes the following determinations.

1. The investigation of Representative Trujillo occurred pursuant to the Anti-Harassment Policy and Subsection H of Legislative Council Policy No. 16, which recognizes that the filing of a sworn complaint with the Legislative Council Service is not the only basis for the Legislature to discharge its constitutional function of investigating one of its members for potential ethical misconduct. Subsection H of Legislative Council Policy No. 16 acknowledges that the Speaker of the House of Representatives and the Majority and Minority Caucus Leaders may refer any ethics matter that might require investigation to the Interim Legislative Ethics Committee. Similarly, the Anti-Harassment Policy does not require a written sworn statement as a triggering event for an ethics investigation, but does require that the Speaker and leaders confer with outside counsel in determining whether any alleged harassment matter should be referred for investigation.

2. Although the investigation itself may be commenced without the filing of a formal, sworn statement by the complainant, Legislative Council Policy No. 16 contemplates that all

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<sup>1</sup> Special Counsel for the Investigative Subcommittee served as the Charging Party to present the matter at hearing.

witnesses supporting or refuting the charges shall submit themselves to cross-examination under oath. The Report and Recommendations of the Special Counsel, dated July 25, 2018, recognized this protective requirement and explicitly stated that anonymous sources who declined to testify would be given no weight in assessing the existence or absence of probable cause for the charges against Representative Trujillo.

3. On July 27, 2018, the Investigative Subcommittee of the Interim Legislative Ethics Committee adopted the Report and Recommendations of the Special Counsel and determined that the matter should proceed to hearing with respect to the charges for which Special Counsel recommended a finding of probable cause. With respect to those recommendations, the Investigative Subcommittee found the existence of probable cause and advised the Hearing Subcommittee to initiate a formal hearing pursuant to Subsection J of Legislative Council Policy No. 16.

4. On September 26, 2018, the Hearing Subcommittee, through a scheduling order, adopted the determinations of the Investigative Subcommittee and issued a written finding of probable cause, consistent with the Report and Recommendations of the Special Counsel, and also initiated a formal hearing pursuant to Subsection J of Legislative Council Policy No. 16. The scheduling order contemplated that, consistent with Legislative Council Policy No. 16, all witnesses identified by Special Counsel (who also became the Charging Party to present the case against Representative Trujillo) and Representative Trujillo would submit themselves to cross-examination through depositions and at the hearing scheduled for December 3 and 4, 2018. In accordance with the scheduling order, all witnesses identified by the Charging Party, with the exception of the complainant, submitted themselves to depositions under oath, answered interrogatories under oath and submitted documents pursuant to the process agreed to by the

parties. Likewise, Representative Trujillo submitted himself to a deposition under oath, answered interrogatories under oath and submitted documents pursuant to the scheduling order.<sup>2</sup>

5. The Charging Party, counsel for Representative Trujillo and counsel for the complainant, Ms. Bonar, attempted to schedule Ms. Bonar's deposition on two separate occasions. Counsel for Representative Trujillo also served Ms. Bonar with interrogatories and document requests, consistent with the scheduling order entered by the Hearing Subcommittee. A few days prior to the first scheduled date for Ms. Bonar's deposition, her counsel informed the Charging Party and counsel for Representative Trujillo that she found certain subject matters set forth in the interrogatories to be objectionable and that she would not answer them or appear for her deposition. The Parties thereafter referred the matter to Special Master Wendy York, who issued rulings narrowing the subject matters of the interrogatories and also allowed the Parties to reschedule Ms. Bonar's deposition. The Parties attempted to do so but were unsuccessful. Ms. Bonar, through her counsel, indicated again that she would not appear for the subsequently scheduled deposition for a variety of reasons, including the potential that she would be compelled to disclose the names of women with whom she had spoken about her allegations and who likewise had experienced incidents of sexual harassment.

6. Given that Ms. Bonar has declined to present herself for deposition and testify under oath, the Hearing Subcommittee cannot make any determinations concerning alleged violations of the Anti-Harassment Policy. Pursuant to Legislative Council Policy No. 16, Representative Trujillo has the right to cross-examine the complainant under oath. Because the complainant has declined to testify, the Hearing Subcommittee concurs with the Charging Party's

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<sup>2</sup> It is noted that Representative Trujillo refused to answer certain questions at his deposition regarding his participation in the investigation and that Special Master Wendy York subsequently issued an order requiring Representative Trujillo to return for an additional deposition, under oath, to answer those questions, if this matter were to proceed to hearing.

recommendation that the charges should be dismissed because Ms. Bonar will not be subject to cross-examination and it is therefore not possible to satisfy the requirements of Legislative Council Policy No. 16. In making this determination, the Hearing Subcommittee is constrained to observe that the protections afforded by Legislative Council Policy No. 16, i.e., requiring all witnesses to submit to cross-examination under oath, are particularly important in situations where, as here, the charges against Representative Trujillo were initiated pursuant to Subsection H of Legislative Policy No. 16, without a sworn complaint.

Having made the foregoing determinations, the Hearing Subcommittee enters the following conclusions:

1. Legislative Council Policy No. 16 requires that the charged legislator has the right to cross-examine all witnesses presented against her or him.
2. Because the complainant has declined to testify under oath, the Hearing Subcommittee cannot make any determinations or conclusions regarding alleged violations of the Anti-Harassment Policy by Representative Trujillo.
3. As a result, the recommendation of the Charging Party to dismiss the charges for which probable cause has been found is hereby adopted.
4. The charges against Representative Trujillo for which probable cause has been found are hereby dismissed.

HEARING SUBCOMMITTEE OF THE INTERIM  
LEGISLATIVE ETHICS COMMITTEE

Dated this 3<sup>rd</sup> day of December, 2018.



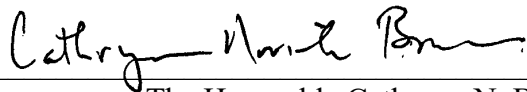
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The Honorable D. Wonda Johnson, Co-Chair



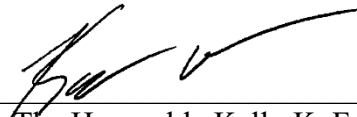
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The Honorable Gail Armstrong, Co-Chair



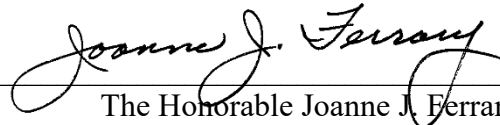
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The Honorable Cathrynn N. Brown



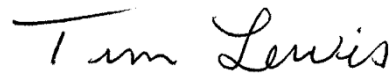
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The Honorable Kelly K. Fajardo



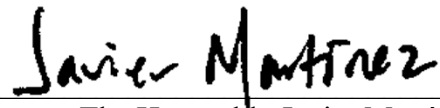
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The Honorable Joanne J. Ferrary



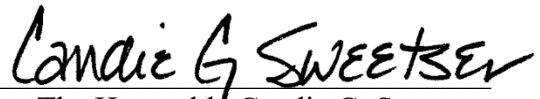
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The Honorable Tim D. Lewis



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The Honorable Javier Martínez



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The Honorable Candie G. Sweetser