

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

IN THE MATTER OF AN INVESTIGATION OF
ASSEMBLYMEMBER DENNIS GABRYSZAK,

Respondent.

Alleged Violations of §§74(3)(d), (f), and (h)
of the Public Officers Law

**SUBSTANTIAL BASIS
INVESTIGATION REPORT**

JCOPE No. 13-168

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I. SUMMARY OF INVESTIGATION

From December 2013 to January 2014, seven former employees of then Assembly Member Dennis Gabryszak (“Gabryszak”) filed Notices of Claim against him in the State of New York Court of Claims or filed complaints with the Speaker of the Assembly.¹ Collectively, the complaints allege that Gabryszak sexually harassed the complainants and created a hostile and offensive work environment which resulted in the constructive discharge of six former employees. In sum, the allegations against him include: sending two female staff members a video of himself in which he appeared to be receiving oral sex; asking his female employees to accompany him to massages; commenting about his female employees’ clothes and bodies; threatening them with termination based on their physical appearance; making sexually charged comments involving prostitutes, strip clubs, and private body parts; asking his female employees to stay in his apartment; and subjecting employees to photographs of scantily clad women. There are also allegations that Gabryszak retaliated against those female employees who did not acquiesce and/or objected to his behavior by limiting their responsibilities and travel, publicly berating them, and ignoring them. He repeatedly suggested that their employment might be in jeopardy by reminding them that they “serve at the pleasure of the member” and could be fired for any reason, including appearance. On January 12, 2014, Gabryszak announced his resignation as Assembly member.

In light of these events and other information, on February 15, 2014, in accordance with Executive Law §94(13), the Commission sent Gabryszak a 15-Day Letter notifying him of allegations that may constitute violations of Public Officers Law §§74(3)(d), (f), and (h).² On March 18, 2014, the Commission commenced an investigation of this matter. Eleven witnesses were interviewed during the investigation, including all seven complainants, four additional former staff members, and Gabryszak’s Chief of Staff, Adam Locher. Subpoenas were issued to obtain documents and the testimony of Chief of Staff Locher and Gabryszak

In brief, the investigation confirmed that Gabryszak used his position as an Assembly member to create and perpetuate an environment in which he could engage in sexually inappropriate behavior with the female members of his staff. Witnesses gave consistent accounts establishing that Gabryszak used gender as criteria in making hiring decisions and openly admitted that the primary criteria for female staffers’ employment was whether or not he thought they were “pretty.” Gabryszak regularly engaged in inappropriate conduct inside the office or outside the office during work events, thereby making his female staff a captive audience. Most of Gabryszak’s misconduct was sexual in nature and included: sending two female staff members a video of himself in which he appeared to be receiving oral sex; asking his female employees to accompany him to massages and strip clubs; commenting about their clothes and bodies; showing them photographs of scantily clad women; invading the personal

¹ See Exhibit A: State of New York, Court of Claims, Notices of Claim filed by: Female Staff Member 1, Female Staff Member 2 and Female Staff Member 7 on December 19, 2013; State of New York, Court of Claims, Notices of Claim filed by Female Staff Member 4 on December 24, 2013; and two letters addressed to Speaker Silver, the first of which is dated January 2, 2014 and pertains to the complaints of Female Staff Member 5 and Female Staff Member 6, and the second of which is dated January 6, 2014 and pertains to the complaint of Female Staff Member 3.

² See Exhibit B: 15-day letter, dated February 5, 2014.

space of his female employees by hovering directly over them at their desks to the point they had to lean out of his way; openly discussing his sexually named fantasy football teams; and offering them gifts inappropriate for a supervisor/subordinate professional relationship.

Gabryszak also used the authority of his office to overcome resistance to his sexually inappropriate behavior through manipulation and intimidation. Gabryszak marginalized those female employees who were not receptive to his advances and/or complained about his behavior by limiting their responsibilities and assuming a cold demeanor. Gabryszak actually told a number of the female employees that they “served at the pleasure of the member,” and could be fired for any reason, including if he disapproved of their appearance. A number of the female staff members complained about Gabryszak’s offensive behavior, both directly and through his Chief of Staff. Gabryszak ignored his staff’s complaints and requests to stop his behavior. Many of the complainants explained that the environment was so unbearable that they quit, in some instances without another job. Still, Gabryszak took no action to change his behavior or enforce the established and mandated sexual harassment policy. Gabryszak’s inaction in the face of these complaints further demonstrates his belief that the power of his public office insulated him from any care or concern regarding his ongoing misconduct.

The investigation also revealed that Gabryszak abused the power of his office by using State resources in his re-election campaign. Multiple witnesses confirmed that District Office phones, computers, and printers were used to prepare campaign fundraising material. Witnesses stated that the District Office conference room was used for the campaign, including stuffing envelopes and storing campaign fundraising material. The investigation also confirmed that members of the District Office staff were required to do campaign work during official business hours. Some staffers worked on campaigns more than others. Witnesses stated that they spent from 20% to 80% of their time during election season on campaigning. Practically all aspects of the campaign were run out of the conference room in the District Office rather than a campaign office or the Erie County Democratic Party office.

Based upon the evidence developed through the investigation, the Commission finds that Gabryszak used the powers and perks of his position as a member of the Assembly to engage in knowing, intentional, and targeted mistreatment of female members of his Assembly staff. By this conduct, Gabryszak breached the public trust and thereby violated the Public Officers Law. The Commission also finds that Gabryszak improperly used State resources for his campaign and thereby violated the Public Officers Law.

This substantial basis investigation report shall be presented to the Legislative Ethics Commission for their consideration pursuant to Executive Law §§94(14) & (14-a) and Legislative Law §§80(9) & (10).

Pursuant to Executive Law §94(14) & (14-a), the Commission’s Findings and Conclusions of Law are set forth below.

II. PROCEDURAL HISTORY

A. JCOPE Authority and Process

The Commission has authority to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of the Public Officers Law by legislative branch officers and employees has occurred as set forth in Executive Law §§94(13) & (14). The statute provides that prior to commencing a full investigation the subject of the allegations must be provided notice and 15 days to respond to the allegations (known as a “15-Day Letter”). The matter must then be presented to the Commission. The Commission must vote to commence an investigation to determine whether a substantial basis exists to conclude that a violation of law has occurred. When the subject of such investigation is a member of the Legislature, legislative employee, or a candidate for the Legislature, Executive Law §94(13) requires that at least two of the eight or more members who vote to authorize the investigation must have been appointed by a legislative leader from the major political party in which the subject of the proposed investigation is enrolled. After an investigation is completed, the Commission must determine whether there is a substantial basis to conclude that a violation of law has occurred. If at least eight members of the Commission agree applying the same special voting requirements referenced above if applicable, it shall issue a substantial basis investigation report, pursuant to Executive Law §94(14) & (14-a). Commission findings against legislative branch officers, employees, and candidates must be referred to the Legislative Ethics Commission for enforcement, pursuant to Executive Law §94(14-a). With limited exceptions, Legislative Law §§80(9) & (10) requires the Legislative Ethics Commission to make a substantial investigation report public, in its entirety, within 45 days of receiving it.

B. Substantial Basis Investigation

In accordance with Executive Law §94(13), on February 5, 2014, the Commission sent Gabryszak a 15-Day Letter notifying him of allegations that he violated various provisions of Section 74 of the Public Officers Law. Specifically, the 15-Day Letter alleged that Gabryszak violated Public Officers Law §§74(3)(d), (f), and (h) by:

- engag[ing] in an unethical course of conduct as a member of the Assembly through inappropriate actions and offensive comments of a sexual nature with certain female legislative staff members under [his] supervision and professional employment;
- engag[ing] in an unethical course of conduct in violation of the public's trust as a member of the Assembly by subjecting certain female legislative staff members under [his] supervision and professional employment to unwanted physical contact;
- us[ing] or attempt[ing] to use [his] official position to secure unwarranted privileges, include[ing] but not limited to offering raises as incentives and threats of adverse employment action to comply with inappropriate requests made by [him]; and

- misappropriate[ing] legislative time and resources with respect to the above conduct, include[ing] but not limited to requiring a legislative employee to accompany [him] to a massage appointment when there was no legitimate governmental purpose to do so.³

On February 28, 2014, Gabryszak, through his attorney, submitted his response. Gabryszak admitted that his conduct was inappropriate and “that his vulgar attempts at humor were unbecoming of a public servant” but claimed his actions were not knowing, willful, or intentional. Gabryszak denied that there was any inappropriate physical contact with his employees and denied that he used his official position to secure unwarranted privileges.⁴

On March 18, 2014, the Commission voted to commence a Substantial Basis Investigation, pursuant to Executive Law §94(13), to determine whether a substantial basis exists to conclude that Gabryszak violated §§74(3)(d), (f), and (h) of the New York State Public Officers Law, the relevant portions of which are excerpted below:

§74(3)(d). No ... member of the legislature ... should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others

§74(3)(f). A[]... member of the legislature ... should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

§74(3)(h). A[]... member of the legislature ... should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

On March 21, 2014, the Commission sent Gabryszak a Notice of Substantial Basis Investigation that detailed the alleged violations of the provisions of the Public Officers Law discussed above.⁵

The Commission interviewed twelve individuals and reviewed numerous documents relating to its investigation. The witnesses interviewed included the seven complainants, Gabryszak’s Chief of Staff, and four additional former staff members.

³ See Exhibit B: 15-day letter, dated February 5, 2014.

⁴ See Exhibit C: Response of Mark F. Glaser, dated February 28, 2014.

⁵ See Exhibit D: Notice of Substantial Basis Investigation, dated March 21, 2014.

On December 31, 2014, Gabryszak waived, in writing, the notification requirements under Executive Law §94(13)(a) as they relate to the alleged misappropriation of state resources by Gabryszak in connection with his campaign activities from on or about 2007 to about 2014.

Gabryszak was issued a subpoena for his testimony but he refused to appear. After repeated efforts to secure his appearance Gabryszak communicated through his attorney that he would not be appearing because, were he to appear, he would invoke his Fifth Amendment right against self-incrimination.⁶

III. FINDINGS

A. Gabryszak and His Treatment of Female Staff Members

1. Gabryszak's Assembly Position

Gabryszak was a member of the New York State Assembly representing the 143rd District from January 1, 2007 until his resignation on January 12, 2014. Similar to many State legislators, he has two offices, one in Albany and a District Office in Cheektowaga, New York. The Albany office was generally staffed by one person and the District Office was staffed by approximately four people. The staff employees were all female with the exception of his Chief of Staff Adam Locher.

2. Environment for Female Staff in Gabryszak's Office

The Commission staff interviewed eleven witnesses, including all seven complainants, the Chief of Staff, and other former staff members. The testimony from staff confirms that Gabryszak used his position as an Assembly member to create, and perpetuate, an environment which enabled him to subject his female employees to sexually inappropriate behavior. Such conduct included: sending two female staff members a video of himself in which he appeared to be receiving oral sex; asking his female employees to accompany him to massages; commenting about his female employees' clothes and bodies; threatening them with termination based on their physical appearance; making sexually charged comments involving prostitutes, strip clubs, and body parts; asking his female employees to stay in his apartment; and subjecting employees to photographs of scantily clad women. Gabryszak marginalized those female employees that did not acquiesce and/or objected to his behavior by limiting their responsibilities and travel, publicly berating them, and ignoring them. He repeatedly suggested that their employment might be in jeopardy by reminding them that they "serve at the pleasure of the member" and could be fired for any reason, including appearance. Many of the complainants explained that the environment was so unbearable that they quit, some without another job.

a. Female Staff Member 1, Director of Communications

Female Staff Member 1 served as Gabryszak's Director of Communications in the Cheektowaga District Office from December 2010 to March 2013. Female Staff Member 1 stated that Gabryszak regularly asked her to get massages with him, despite the fact that neither

⁶ See Exhibit E: Letter from Mark F. Glaser dated October 7, 2015.

she, nor any other female member of his staff, ever accepted his offer. He told her that she aroused him and talked about going to strip clubs. He would ask her to get information on his cell phone or iPad, knowing she would see pictures of naked women and escort service information. Gabryszak told her that he only hired her because she was “pretty”, and he would make negative comments about her appearance if he didn’t like the way she looked. He would require her to accompany him when there was no apparent professional purpose for her doing so, leaving her with the impression he was simply parading her around. He would remind her that she was employed “at the pleasure of the member” and could be dismissed at any time. He sent her a video of himself in a bathroom in which he was receiving or pretending to be receiving oral sex. At one event in Albany, hundreds of miles from Female Staff Member 1’s home, he told her she could either stay at his apartment or sleep in the office. At another event, when she spilled mocha on her dress and notified Gabryszak she would be late, he texted her back saying he wanted to “lick her.” Female Staff Member 1 said that Gabryszak would require her to attend events with him under circumstances that suggested she was there as his date. Gabryszak asked Female Staff Member 1 to “talk dirty to him.” Female Staff Member 1 stated that she felt that she “had to play along or lose [her] job.”⁷

b. Female Staff Member 2, Senior Legislative Analyst

Female Staff Member 2 worked in Gabryszak’s Albany Office from June 2010 to December 2013, where she first served as an Intern, then as an Administrative Assistant, and finally as Senior Legislative Analyst. Female Staff Member 2 described behavior that was strikingly similar to the behavior described by the female staff members in the Cheektowaga office. Gabryszak repeatedly asked Female Staff Member 2 to accompany him to get a massage; a request that she, too, always declined. He sent her the same video he sent to Female Staff Member 1 of himself in a bathroom stall appearing to receive oral sex. He made the same inappropriate sexual comments, including mentioning strip clubs and prostitutes. He would become upset if she declined his advances. Gabryszak would, on almost a daily basis lean over to be close to her while she worked at her desk, forcing her to push her chair backward to nudge him away. Gabryszak also regularly asked her to move from Albany to Western New York. When she told him she had become engaged, he told her that she did not need a fiancé and offered her a \$100,000 salary to move to the Buffalo area. One day, when she was wearing glasses, Gabryszak said he could fire her if he did not like the way she looked. Gabryszak also required Female Staff Member 2 to accompany him with no apparent professional purpose for doing so. Gabryszak never required the male members of his staff to accompany him. Female Staff Member 2 was left with same impression as Female Staff Member 1; that Gabryszak was simply parading her around.⁸

c. Female Staff Member 3, Communications Coordinator

Female Staff Member 3 served as Gabryszak’s Communication Coordinator in the Cheektowaga District Office from October 2008 to May 2009. Gabryszak made comments

⁷ Interview of Female Staff Member 1 on May 13, 2014.

⁸ Interview of Female Staff Member 2 on May 26, 2014.

about her physical attributes as well, and spoke in sexual innuendo. He showed her photographs of women in various stages of undress, and frequently invited her to join him for a massage. One time, Gabryszak took her to his apartment in Albany, and while she was there, he pointed out a flat roof area and told her that she could use the area “to sunbathe topless.” Gabryszak also suggested that Female Staff Member 3 and another former staff member join him for a Christmas photograph and said that they should “dress in sexy elf costumes and that he should be Santa” with the two women sitting on his lap.⁹

d. Female Staff Member 4, Community Relations Director

Female Staff Member 4 served as Community Relations Director from September 2013 to December 2013, in the Cheektowaga District Office. Female Staff Member 4 stated that Gabryszak requested that she and another woman “touch butts” for a holiday photo. He frequently requested her presence for couples massages, invited her to strip clubs, but she, too, always declined. He made sexually charged comments involving prostitutes, strip clubs, oral sex, female genitalia, including a statement that “if workers in the sex trade were to unionize, he would no longer be able to afford their services.” On one occasion Gabryszak stated to Female Staff Member 4 “you look hot, you should dress like that at the office.” Female Staff Member 4’s also indicated that Gabryszak would make references to his participation in a “disgusting fantasy football league where the names were related to oral sex.”¹⁰

e. Female Staff Member 5, Director of Communications

Female Staff Member 5 served as Gabryszak’s Director of Communication from June 2009 to December 2010, in the Cheektowaga District Office. Female Staff Member 5 stated that Gabryszak repeatedly suggested that she stay in his apartment when traveling to Albany. On one occasion, Gabryszak insisted that she come to his apartment while she was in Albany to look over some documents, and while she was at the apartment, Gabryszak grabbed her and tried to kiss her. On another occasion, Gabryszak would not leave her hotel room to allow her to change clothes. When Female Staff Member 5 went into the bathroom to change her clothes, she came back into the room to find that Gabryszak had his shirt undone. Female Staff Member 5 testified that Gabryszak continued to pursue her and that Female Staff Member 5 knew she had to keep her distance. Gabryszak threatened to not support her travel in any way after she told him that she would not work with him without others around. Female Staff Member 5 also stated that Gabryszak was “comfortable at being inappropriate.” On occasion Female Staff Member 5 provided Gabryszak with resumes of men seeking employment in response to which he stated, “Absolutely not, I want women in these positions.” On more than one occasion Gabryszak stated to Female Staff Member 5 “you work at the pleasure of the assembly member.”¹¹

⁹ Interview of Female Staff Member 3 on May 13, 2014.

¹⁰ Interview of Female Staff Member 4 on May 15, 2014.

¹¹ Interview of Female Staff Member 5 on May 19, 2014.

f. Female Staff Member 6, District Office Administrator

Female Staff Member 6 served as Gabryszak's District Office Administrator from August 2007 to March 2008. Female Staff Member 6 stated that Gabryszak discussed a number of lewd and inappropriate topics in her presence, such as watching pornographic movies on Cinemax and hanging up sexually charged photographs of women in his office. She also stated that throughout her employment, Gabryszak would regularly lean over her while she was at her desk to the point of interfering with her personal space.¹²

g. Female Staff Member 7, Director of Communication

Female Staff Member 7 served as Gabryszak's Director of Communication from May 2013 to October 2013, in the Cheektowaga District Office. Female Staff Member 7 stated that Gabryszak asked her to join him for a massage the first week she started her job, but she declined. He invited her to sleep with him and made numerous sexually charged comments, including: stating that he was "more of a butt guy than a boobs guy."; joking that he had a tattoo on his penis; asking her if she would like to be tied up to a set of train tracks; and once telling her that he was hoping to get a "happy ending" massage. He also repeatedly told her and a co-worker to wear bikinis to his events.¹³

h. Female Staff Member 8, Legislative Director

Female Staff Member 8 served as Gabryszak's Legislative Director from January 2009 to December 2012, and worked in both the Cheektowaga District Office and the Albany office. Female Staff Member 8 stated that Gabryszak constantly spoke of strippers, showed lewd photos of women, and made indirect dirty comments about women. She recalled one occasion while in the Assembly, when he said that "she could stand in front of this window naked." Female Staff Member 8 stated that it was her impression that Gabryszak was only interested in young, good looking women applying for positions within the office. Female Staff Member 8 indicated that she had discussed her concerns with Gabryszak's Chief of Staff Adam Locher, who laughingly replied, "That's how Dennis is." Female Staff Member 8 advised that she was present when fellow staff members received the video of Gabryszak in the men's room appearing to receive oral sex, and that they all agreed that his conduct was disgusting.

3. Gabryszak's Response to Internal Complaints

As a member of the Assembly, Gabryszak was obligated to ensure that he, and the members of his staff, understood and complied with the Assembly's sexual harassment and retaliation policies. Gabryszak demonstrated his contempt for these policies on a daily basis through both his actions and inaction. The members of his staff, including his Chief of Staff, consistently described Gabryszak as engaging in highly inappropriate behavior with female staff members, mostly sexual in nature. He persisted in this course of conduct despite the obvious discomfort of some, and the actual complaints of others. Even more troubling are the staff

¹² Interview of Female Staff Member 6 on May 14, 2014.

¹³ Interview of Female Staff Member 7 on May 13, 2014.

members' accounts of the manner in which Gabryszak used the power of his office to retaliate. Gabryszak reduced the duties, travel, and in some instances, the work hours of female members of the staff who complained about, or simply did not acquiesce to, his sexually inappropriate behavior. This conduct, when considered together with his repeated reminder to staff that they "serve at the pleasure of the member," are indicative of someone who believes his office places him above the law, and reflects a willingness to use the power of that public office to silence those who dissent.

Female Staff Member 8 stated that Chief of Staff Locher dismissed her concerns regarding Gabryszak by stating "[t]hat is how Dennis is" and failed to take any action to address the behavior. Female Staff Member 8 was aware that others had spoken to him about Gabryszak's inappropriate behavior as well, but she did not make a complaint against Gabryszak for fear of losing her job and causing embarrassment to her family.¹⁴

Female Staff Member 1 stated that she complained to the Chief of Staff, and on more than one occasion, but "Locher continued to cover for Dennis." Female Staff Member 1 also discussed Gabryszak's inappropriate behavior with other staff and considered filing a joint complaint with another employee, Female Staff Member 10. Female Staff Member 1 discussed the issue of filing a complaint against Gabryszak with Female Staff Member 2 as well, but did not file due to the fear of being fired.¹⁵

Female Staff Member 3 stated that she had conversations with both Gabryszak and his Chief of Staff in which she stated that Gabryszak's inappropriate behavior could not continue.¹⁶

Female Staff Member 4 stated that the Chief of Staff was present on at least three occasions when Gabryszak made inappropriate remarks to her and other staff members and, "he did nothing. He didn't stop it, and he is just as dangerous as Dennis." Female Staff Member 4 also stated she was not provided sexual harassment training, but she recalled seeing a book in the office.¹⁷

Female Staff Member 7 stated that she had a conversation with Chief of Staff Locher in which she advised him that Gabryszak was very inappropriate, and pointed out that the Chief of Staff had witnessed it. Chief of Staff Locher advised Female Staff Member 7 to speak to Gabryszak about it, but when she made an appointment with Gabryszak to discuss his inappropriate behavior, he never showed up. One week later, Female Staff Member 7 resigned from her position.¹⁸

Female Staff Member 6 stated that on one occasion Gabryszak made an inappropriate comment to staff and Chief of Staff Locher said to him "you shouldn't say this." Female Staff

¹⁴ Interview of Female Staff Member 8 on June 21, 2014.

¹⁵ Interview of Female Staffer 1 on May 13, 2014.

¹⁶ Interview of Staff Member 3 on May 13, 2014.

¹⁷ Interview of Female Staff Member 4 on May 15, 2014.

¹⁸ Interview of Female Staff Member 7 on May 13, 2014.

Member 6 also stated that there were no office rules or training, and the only presence of sexual harassment training was a book that the Assembly published.¹⁹

Female Staff Member 2 stated that on one occasion, in the presence of Female Staff Member 7, she advised Gabryszak that he was inappropriate and asked him, “Why would you act this way.” Gabryszak never responded. Female Staff Member 2 stated that she had received sexual harassment training during her internship, but never attended training after that time. Female Staff Member 2 also stated that she discussed Gabryszak’s inappropriate behavior with the Chief of Staff, but he never said much in return.²⁰

Female Staff Member 5 stated that she told the Chief of Staff that Gabryszak acted inappropriately towards her to which he responded, “That’s Dennis, just deal with it.” On another occasion Chief of Staff Locher advised Female Staff Member 5 “[That is] just the way it is, find another job.” Female Staff Member 5 concluded that “Locher allowed him [Gabryszak] to get away with this.”²¹

Chief of Staff Locher testified that Female Staff Member 7 and Female Staff Member 1 came to him sometime in late 2012 or early 2013 complaining of Gabryszak’s sexual harassment, advising him that Gabryszak acted inappropriately towards them.²² Mr. Locher recalled responding to Female Staff Member 1 that, “job prospects in Buffalo are tough.” He did not recall if he had mentioned this conversation to Gabryszak.²³ Mr. Locher stated that he recalled the phone conversation he had with Female Staff Member 7; it was on a Saturday and Female Staff Member 7 advised him of a conversation between Gabryszak, Female Staff Member 7, and Female Staff Member 10 that was so inappropriate that Female Staff Member 7 finally had to say something.²⁴ Mr. Locher expressed concern about getting involved in a sexual harassment complaint and suggested that Female Staff Member 7 talk to Gabryszak directly.²⁵ Mr. Locher spoke to Gabryszak, advising him of Female Staff Member 7’s complaint, and in “typical Gabryszak fashion he said nothing.”²⁶ Mr. Locher set up an appointment for Female Staff Member 7 to discuss her complaint with Gabryszak, but he failed to attend the meeting.²⁷ Female Staff Member 7 resigned from her position, and Mr. Locher indicated that he did not blame her.²⁸ Mr. Locher testified that on several occasions before and after the complaints he advised Gabryszak that he had to stop the sexual comments.²⁹ Mr. Locher stated that Gabryszak

¹⁹ Interview of Female Staff Member 6 on May 14, 2014.

²⁰ Interview of Female Staff Member 2 on May 26, 2014.

²¹ Interview of Female Staff Member 5 on May 19, 2014.

²² See Exhibit F, at 44.

²³ See Exhibit F, at 45-52.

²⁴ See Exhibit F, at 55-56.

²⁵ See Exhibit F, at 55-57.

²⁶ See Exhibit F, at 57-58.

²⁷ See Exhibit F, at 59- 61.

²⁸ See Exhibit F, at 61.

²⁹ See Exhibit F, at 56, 62.

thought it was funny to make inappropriate jokes and conversation with the staff.³⁰ On many occasions Mr. Locher raised his concerns about Gabryszak's inappropriate conversations with the staff, but Gabryszak told him he was in the "no-fun league."³¹

B. Misuse of State Resources

There was also consistent testimony from staff, including Chief of Staff Locher, that Gabryszak used State resources, including printers, computers, phones, and office space, for campaign purposes.³² The evidence shows that Gabryszak's campaign activities were essentially run out of his Assembly district office rather than a separate campaign office or the Democratic Party Office. The witnesses stated that the District Office conference room and phones were frequently used for campaign activities, and that the office computers and printers were used to prepare campaign literature. Staff gave consistent testimony that they were required to do campaign work in the District Office and that Gabryszak was aware of the use of State resources.³³

For example, Female Staff Member 8 estimated that 60% of her time was spent on campaign work. During campaign season, staff utilized the office conference room, office supplies, and office computers for stuffing envelopes, mailings, and fundraising. They conducted fundraising activity from the office that included working on the annual Friends of Dennis Gabryszak Golf Fundraiser.³⁴

Female Staff Member 1 stated that Chief of Staff Locher directed the campaign from within the District Office. Female Staff Member 1 made political calls from office phones, stuffed envelopes in the conference room, and used office computers for campaign needs and obtaining petition signatures. Campaign letters were sent using state mailing labels, computers, printers, paper, and were written during State time. During a campaign year, 20% of the time was spent on Assembly work and the remaining 80% on campaigning. She spent most of her time in 2012 on campaigning.³⁵

Female Staff Member 9 served as Gabryszak's Legislative Aid from December 2007 to June 2008. Female Staff Member 9 stated that during campaign season Gabryszak's District Office and conference room were used for campaigning, including phone calls, writing letters, and stuffing envelopes. Female Staff Member 9 spent approximately 30% of her time doing campaign work. Both Gabryszak and his Chief of Staff were aware of her activities and neither expressed concern that she was doing those activities in the District Office.³⁶

³⁰ See Exhibit F, at 62.

³¹ See Exhibit F, at 54.

³² See Exhibit F, at 109-119.

³³ Interviews of Female Staff Member 1, Female Staff Member 3, Female Staff Member 5, Female Staff Member 8, and Female Staff Member 9.

³⁴ Interview of Female Staff Member 8 on June 21, 2014.

³⁵ Interview of Female Staff Member 1 on May 13, 2014.

³⁶ Interview of Female Staff Member 9 on June 18, 2014.

Most significantly, Chief of Staff Adam Locher confirmed that the campaign used State printers, computers, phones, paper, and office space.³⁷ The campaign did not have a separate campaign office nor did they use the Erie County Democratic Party Office. Gabryszak's campaign was run out of the Assembly office. He testified that Gabryszak was aware that campaign work was being conducted out of the Assembly office.³⁸ Mr. Locher testified that 25% of his time was spent campaigning. The Commission also received information from the Legislature that Members are on notice that the Assembly does not permit the use of state offices for political campaigns as occurred here.

IV. VIOLATIONS OF THE PUBLIC OFFICERS LAW

A. Substantial Basis to Conclude Violation of Public Officers Law

The Commission finds that Gabryszak used the powers and resources of his position as a member of the Assembly to engage in knowing, intentional, and prolonged mistreatment of certain female members of his Assembly staff. Gabryszak's conduct involved misuse of his public office and political power to serve his personal interests. Therefore, the Commission finds a substantial basis to conclude that he violated the Public Officers Law.

The core purpose of Section 74 of the Public Officers Law is to ensure that public officers act and use public resources in furtherance of the public interest. It is well recognized that a "public office is a public trust,"³⁹ and that "[p]ublic trust and confidence in elected and appointed public officials are fundamental and necessary conditions for a strong and stable democratic government."⁴⁰ Further, "[f]avoritism and the potential for conflicts of interest, as well as the mere appearance of such, serve to weaken and erode the public's trust and confidence in government."⁴¹ The public "[is] entitled to expect from their public servants a set of standards set above the morals of the market place."⁴²

Section 74 of the Public Officers Law protects against conflicts of interest or other misconduct involving a public official's use of the office or public resources to further his or her own personal interests. Such personal interests are not confined to financial interests. Indeed, in this instance, Gabryszak engaged in a pattern of abuse of public office and resources, not for a personal financial gain, but for his personal gratification and desires. By this conduct, Gabryszak clearly breached the public trust and thereby violated the Public Officers Law.

³⁷ See Exhibit F, at 112-113.

³⁸ See Exhibit F, at 111.

³⁹ *People v. Caban*, 258 A.D.2d 87, 88 (1st Dep't 1999).

⁴⁰ Governor's Program Bill Memorandum to the Ethics in Government Act (Bill Jacket, L 1987, ch. 813), at 5 (quoted in *Kelly v. New York State Ethics Commission*, 161 Misc. 2d 706, 713 (N.Y. Sup. Ct. 1994)).

⁴¹ *Id.*

⁴² Laws 1954, ch 696, §1.

The Commission's investigation was for the purpose of determining whether there was a substantial basis to conclude that Gabryszak violated any one of the following three subsections of Section 74:

§74(3)(d). No ... member of the legislature ... should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others

§74(3)(f). A[]... member of the legislature ... should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

§74(3)(h). A[]... member of the legislature ... should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

The Commission finds a substantial basis to conclude that Gabryszak violated Public Officers Law Sections 74(3)(d), (f), and (h). These findings are explained below.

B. Public Officers Law §74(3)(d): Conduct with Respect to Female Employees

Based on the facts gathered in the course of the Commission's investigation, there is a substantial basis to conclude that Gabryszak violated Section 74(3)(d) of the Public Officers Law by using his official position to compel his female employees to submit to his inappropriate requests and sexual behavior. Gabryszak coupled his sexually inappropriate behavior with reminders that his position permitted him to fire them for any reason, including appearance. When the women on his staff did not meet his expectations, Gabryszak used the power of his position to create an environment in which his employees feared reprisal if they complained or otherwise resisted. Gabryszak removed their responsibilities, publicly berated them, and ignored them, leaving them marginalized simply for refusing to acquiesce.

C. Public Officers Law §74(3)(d): Misuse of State Resources

The facts revealed that Gabryszak, in violation of Section 74(3)(d), misappropriated State resources by using his District Office and State equipment for his campaign.

The Commission received information from the Legislature that Members are on notice that the Assembly does not permit the use of state offices for political campaigns as occurred here. There was consistent testimony from staff, including the Chief of Staff, that the District Office's printers, computers, and conference room were used for campaigns. Some staffers worked on campaigns more than others, but almost all of them testified that they had to stuff envelopes or do something else for the campaign in the District Office at one time or another. The Gabryszak campaign was essentially run out of the conference room in the District Office. The witnesses interviewed stated that they spent from 20% to 80% of their time during election season on campaigning, which was headquartered in the District Office.

D. Public Officers Law §74(3)(f)

The Commission’s investigation found there to be a substantial basis to conclude that Gabryszak violated Section 74(3)(f) of the Public Officers Law by engaging in conduct that provides a reasonable basis for the impression that a person can “unduly enjoy his favor in the performance of his official duties.”⁴³ As described above, Gabryszak created and oversaw an office environment where employees who tolerated his conduct and acceded to his demands enjoyed his favor. In contrast, employees who complained about his inappropriate remarks or were unwilling to meet his demands were denigrated and marginalized.

E. Public Officers Law §74(3)(h): Conduct with Respect to Female Employees

Since at least January 2001, Gabryszak treated his office not as a “public trust,” but instead used it to reward female employees who submitted to his inappropriate and offensive behavior, and to bully those employees who refused to acquiesce to his improper demands. Gabryszak relied on rewards and threats derived from his position and power as a public official to manipulate the female members of his staff to behave in ways that would gratify his sexual desires or desire to demean these employees. In so doing, there is a substantial basis to conclude that Gabryszak pursued a course of conduct that did not merely raise a “suspicion” that he was engaging in acts in “violation of his trust,” but that such conduct did, in fact, violate the public trust.⁴⁴

Gabryszak’s demeaning comments about his female employees’ clothes and bodies; his refrain to staff that they “serve at the pleasure of the member”; the pressure he exerted on several women to share an apartment with him; his bathroom stall video; the forced physical intimacy; his conduct in publicly berating female staff when they refused to accept his behavior; his displeasure with his staff dating or having relationships with other men; and his exploitation of opportunity and acquiescence to his conduct, both separately and collectively, constitute a “violation of his trust” in willful and knowing disregard for his obligations under Section 74(3)(h) of the Public Officers Law.

Gabryszak’s response that the conduct was only an attempt at humor is unavailing. The current and former employees interviewed all presented credible information, much of which was corroborated by his Chief of Staff, Adam Locher. The pattern of conduct and comments—such as requesting employees to get massages with him, asking them to share an apartment with him, pressuring them to break off relationships, making remarks about clothing and appearance, and subjecting them to forced physical intimacy—described by many of the witnesses paint a picture that cannot be explained away through claims of unknowing and unintentional conduct. Simply put, Gabryszak’s conduct was beyond the pale, and his claim of ignorance strains credibility. Even if one were to assume his sense of decorum and decency was so lacking as to initially be unaware that his behavior offended most, if not all, female members of his staff, such a claim must be rejected in light of numerous witnesses who confronted him about his behavior. By words and deeds, Gabryszak made it clear to the female members of his staff that he considered himself, as a member of the Assembly, to be immune from the consequences of

⁴³ Public Officers Law §74(3)(f).

⁴⁴ Public Officers Law §74(3)(h).

his actions, and left little room for doubt that he was willing to use the powers of his office to punish those who refused to oblige him.

F. Public Officers Law §74(3)(h): Misuse of State Resources

The facts revealed that Gabryszak, in violation of Section 74(3)(h), misappropriated State resources by using his District Office and State equipment for his campaign, thereby raising suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

As noted above, the Commission received information from the Legislature that Members are on notice that the Assembly does not permit the use of state offices for political campaigns as occurred here. The members of Gabryszak's staff were interviewed and consistently stated that they spent from 20% to 80% of their time during election season on campaigning, which was headquartered in the District Office. They all indicated that his campaign was essentially run out of the conference room in the District Office and that Gabryszak required the majority of his staff to work on his campaign in the District Office using the equipment and supplies that were supposed to be reserved for official business only. Gabryszak's misuse of state resources, which were available to him solely due to his status as a state official, constitutes a violation of the public trust.

V. CONCLUSION

Based upon evidence established by the investigation, there is a substantial basis to conclude that Gabryszak used his office to pursue a course of conduct that was in violation of his public trust, to secure unwarranted benefits, and to give a reasonable basis for the impression that one could unduly enjoy his favor in the performance of one's official duties. There is therefore a substantial basis to conclude that Gabryszak violated Public Officers Law §§74(3)(d), (f), and (h) through knowing and intentional conduct. This substantial basis investigation report shall be presented to the Legislative Ethics Commission for their consideration pursuant to Executive Law §§94(14) & (14-a) and Legislative Law §§80(9) & (10).

Dated: November 16, 2015

NEW YORK STATE COMMISSION ON PUBLIC ETHICS

Approved: Daniel J. Horwitz
Chair

Hon. Joseph Covello
Marvin E. Jacob
Seymour Knox, IV
Hon. Eileen Koretz
Gary J. Lavine
David A. Renzi
Michael A. Romeo, Sr.
Dawn L. Smalls
George H. Weissman

Absent: David Arroyo
Hon. Mary Lou Rath
Hon. Renee R. Roth
Michael K. Rozen

Members