

Legislative Ethics Board

BOARD MEMBERS:
REP. LAURIE DOLAN
EUGENE GREEN
TOM HOEMANN
SEN. JIM HONEYFORD
JUDGE TERRY LUKENS (ret.)
PAMELA MADSON
DAN McDONALD
SEN. JAMIE PEDERSEN
REP. LUANNE VAN WERVEN



101 LEGISLATIVE BUILDING
PO BOX 40482
OLYMPIA, WA 98504-0482
360-786-7343
www.leg.wa.gov/leb

JENNIFER STRUS - COUNSEL
Jennifer.Strus@leg.wa.gov

COMPLAINT 2020 – No. 3

In re Morgan
June 30th, 2020

ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE; LACK OF SUBJECT MATTER JURISDICTION

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated the Ethics in Public Service Act (Act) when she sent a text to another constituent criticizing the Respondent and his business. The Complaint also alleges that Respondent, in doing so, slandered his name and otherwise defamed him. Although the Complaint does not cite a provision of the Act alleged to have been violated by Respondent, the Board has analyzed the complaint as alleging a violation of RCW 42.52.070 (special privileges).

II. JURISDICTION

The Board has personal jurisdiction over the Respondent and subject matter over the allegations asserting a violation of special privileges. The Board lacks subject matter jurisdiction over the allegations of defamation and slander.

III. PROCEDURAL HISTORY

The complaint was received by Board counsel on February 25, 2020 and was the subject of discussion at the regularly scheduled Board meeting on June 22, 2020.

IV. FINDINGS OF FACT

There is reasonable cause to believe the following are the pertinent facts of the case:

1. Respondent is a member of the House of Representatives representing the 29th legislative district.
2. The Complainant is a resident of the 29th legislative district in Tacoma.
3. Complainant is the owner of Awodi Drumming. Awodi Drumming provides Afro Caribbean and traditional African drum and song lessons and performances. It has also previously provided

services for youth residing in facilities operated by the Juvenile Rehabilitation Administration (JRA).

4. In October 2019, Complainant contacted Respondent about including a proviso in the supplemental operating budget to allow JRA to contract with a cultural-based education, rehabilitation and positive identity formation program that hosts music, dance, therapeutic African drumming and cultural awareness workshops at Naselle Youth Camp.
5. On November 18, 2019, Complainant met with Respondent to discuss the proposed proviso. He was accompanied by the Director of Sales and Development at Awodi Drumming, who was, at that time, his girlfriend.
6. Respondent agreed to seek a proviso in the operating budget as requested by Complainant.
7. In the period between Complainant's request for a proviso and early February 2020, he and his girlfriend parted ways.
8. On or about February 15, 2020, Complainant received a call from Respondent who told him "never to contact her staff or anyone working for her again."
9. Complainant believes that, as a result of this message he received from Respondent, the caucus staff who had been working with him on the proviso, discontinued returning his calls.
10. As a result, he sought the services of a local pastor, who had also worked with Respondent in the past, to facilitate their relationship. According to Respondent, the pastor scheduled a meeting with the Respondent and Complainant.
11. At some point, the pastor told Complainant that he had received a text message from Respondent which, according to Complainant, slandered his name and committed libel, defaming his character.
12. Respondent did send a text to the pastor which read, "I need to talk to you about a situation of potential violence with [Complainant.] Can you talk about 3:45 pm?"
13. Although Complainant alleges this text went to multiple people, there is neither any indication that it went to anyone other than the pastor nor that the pastor shared it with anyone.
14. According to the caucus and non-partisan staff assigned to work on the proviso for Respondent, Respondent never instructed them to discontinue working on the proviso or talking to Complainant.
15. As a result of the phone call from Respondent, Complainant also became concerned that Respondent would withdraw the proviso that she had agreed to request.
16. The 2020 Supplemental Budget, as enacted, includes a \$100,000 appropriation to JRA for the 2020 and 2021 fiscal years to contract with a cultural-based education, rehabilitation and positive identity formation program that hosts music, dance, therapeutic African drumming and cultural awareness workshops at Naselle Youth Camp. This is the exact proviso Respondent agreed to sponsor for Complainant.

V. CONCLUSIONS OF LAW AND ANALYSIS

A. Special Privileges

RCW 42.52.070 provides in pertinent part as follows:

(1) Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

(2) For purposes of this section, and only as applied to legislators and employees of the legislative branch, "special privileges" includes, but is not limited to, engaging in behavior that constitutes harassment. As used in this section:

(a) "Harassment" means engaging in physical, verbal, visual, or psychological conduct that:

(i) Has the purpose or effect of interfering with the person's work performance;

(ii) Creates a hostile, intimidating, or offensive work environment; or

....

The question the Board must answer before determining whether Respondent's conduct amounted to harassment under the statute is whether the complainant, a constituent, is included in the phrase "work environment." While the term "work environment" is not defined in the Act, the Board believes that term encompasses more than just the employer-employee relationship. There are many people involved in the legislative work environment, e.g. lobbyists; constituents; agency personnel. If the Board were to interpret the term "work environment" narrowly to include only legislators and legislative staff, that interpretation would exclude from the reach of the statute many people not employed by the legislature but who are an integral part of the legislative work environment. Therefore, the Board interprets the term "work environment" broadly to include more than just legislators and legislative staff but rather other people who are involved in the legislative work environment. RCW 42.52.070(2)(a) does apply to Complainant as Respondent's constituent.

Having determined that the Act does apply in this matter, the next question is whether the Respondent did in fact harass Complainant. To constitute harassment, Respondent's text to the pastor or her instruction to Complainant not to call her or her staff anymore must have had the "purpose or effect of interfering with the Complainant's work performance" or "created a hostile, intimidating or offensive work environment for the Complainant." The facts do not support that Respondent harassed Complainant. There is no indication that the text to the pastor interfered with Complainant's work performance; rather, the proviso that Respondent requested was fully funded in the budget that passed in March. Furthermore, although the Complainant believes that Respondent's text to the pastor was shared with multiple people, thus hurting his professional reputation, the facts do not support Complainant's belief as the text was sent to only one person.

B. Subject Matter Jurisdiction

RCW 42.52.320 limits the jurisdiction of the Board to the enforcement of chapter 42.52.RCW, the Ethics in Public Service Act and states in pertinent part as follows: The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

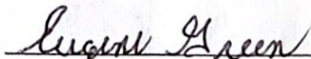
In several cases, the Board has determined it did not have subject matter jurisdiction over a complaint. *See e.g., In re Haigh*, 2000 – No. 8 (no jurisdiction over constitutional allegations involving a person's property); *In re Roach*, 2003 – No. 2 (no jurisdiction over allegations involving the Public Records Act); *In re West*, 2003 – No. 3 (no jurisdiction over personnel matters); *In re Sims*, 2005 – No. 4 (no jurisdiction over allegation alleging a crime); *In re Cody*, 2014 – No. 01 (no jurisdiction over alleged violation of various laws).

The Complainant alleges that he was slandered and defamed by the Respondent. Slander and defamation are civil wrongs handled by the court system not the Board. The Board lacks subject matter jurisdiction over these allegations.

VI. CONCLUSION AND ORDER

The Board finds no reasonable cause to believe the Respondent violated RCW 42.52.070. Furthermore, the Board lacks subject matter jurisdiction over the allegations of slander and defamation.

ON BEHALF OF THE MAJORITY OF THE BOARD, IT IS HEREBY ORDERED that this complaint be dismissed.



Eugene Green
Chair

DATE: 6-30-2020

Complaint 2020-No. 3

In re Morgan

Opinion Concurring in the Result – Judge Terry Lukens (ret.)

I agree that there is no factual evidence of any harassment of the Complainant and that the Board lacks subject matter jurisdiction over the tort claims. For those reasons, I concur with the dismissal of the Complaint.

I do not, however, agree with the broad interpretation of RCW 42.52.070 given by the Board. The language “work environment” in subsection (2)(a)(ii) of RCW 42.52.070 is not broad enough to sweep up innumerable interactions between legislators and third parties outside of a traditional work environment. Rather, it only covers settings in which legislators and employees work with each other, either directly or indirectly. While that may be a narrow definition, any expansion must come from the Legislature, not the Board.