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May 18, 2017

**ATTORNEY-CLIENT COMMUNICATION
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VIA EMAIL ONLY

Kathryn A. Short
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Portland, OR 97204
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Re: Commissioner Loretta Smith Investigation / Report

Dear Ms. Short:

I. INTRODUCTION

As you know, Multnomah County is governed by a five-person Board of County Commissioners (the "Board"). Each of these commissioners maintain a small staff of employees to assist them in carrying out their obligations as elected officials.

Loretta Smith is the Commissioner who represents the County's District Two. She was elected to her current position in 2010 and has consistently served her constituents since then. She has also served and continues to serve or assist numerous organizations within the County. Nothing in this report addresses the merits of her community service. While staffing levels and titles may change periodically, Commissioner Smith's office is normally comprised of a Chief of Staff, Policy Advocate/Analyst, Policy Director, Executive Assistant, and "Summer Works Coordinator."

On January 22, 2017, Policy Analyst MeeSeon Kwon submitted an email to Commissioner Smith raising various allegations of inappropriate conduct by the Commissioner. On February 10, 2017, former Executive Assistant Saba Saleem submitted her own email raising similar allegations of inappropriate conduct. Generally, these assertions overlap and fall into four categories – misuse of County resources/funds, misuse of County staff, unprofessional conduct towards staff, and discriminatory/harassing conduct.

I was asked to confidentially investigate the allegations and report my findings to the Office of Multnomah County Attorney. The scope of my investigation expressly excludes the issue of whether Commissioner Smith used County staff inappropriately for campaigning. I was asked to

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do an initial assessment of whether any of the County's rules were violated. Commissioner Smith is an elected official, and I defer to the County Attorney regarding the applicability of the County's various rules to her. For purposes of the investigation, I assume that the County rules may apply to Commissioner Smith.

I interviewed a total of eleven individuals, including the Commissioner. Many of those interviewed raised concerns regarding possible retaliation from Commissioner Smith for having participated in the investigation and one person declined to be interviewed. At the request of the County Attorney, this report does not list the names of the various individuals interviewed unless that information is absolutely necessary to place an event or allegation in context.

In her interview, Commissioner Smith made it clear that she does not believe that she ever engaged in inappropriate behavior. She also indicated that the investigation is unwarranted because (1) the County reached a settlement with Ms. Kwon, and (2) Ms. Saleem is not a current employee with a current issue. Commissioner Smith also noted that she believes that there is a stigma against her based on her background, has been accused of being "an angry Black woman," and has very high standards for her staff that they do not always understand or appreciate.

Here are the demographics of the individuals interviewed:

| Name | Race | Gender | Ethnicity/Cultural Identifier | Position Held | Employment Status ¹ |
|---------------|-------------|--------|----------------------------------|--|---------------------------------------|
| Loretta Smith | Black | Female | African American | Commissioner | 2 nd District Commissioner |
| Jimmy Brown | Black | Male | African American | Chief of Staff and various policy/budget positions | On-call |
| Witness One | White | Male | Caucasian | Chief of Staff | Former Employee |
| MeeSeon Kwon | Asian | Female | Korean | Policy Analyst | Former Employee |
| Witness Two | Black | Male | African American | Policy Analyst and Summer Works Coordinator | Current Employee |
| Witness Three | Black/Mixed | Female | African American/Native American | Policy Analyst | Former Employee |

¹ "Employment Status" references whether an individual is currently employed in Commissioner Smith's office. A "former employee" could be employed in another office or department within the County.

| | | | | | |
|------------------|-------|--------|------------------|--|--------------------------------|
| Saba Saleem | White | Female | Muslim | Executive Assistant/ Constituent Relations | Former Employee |
| Witness Four | Black | Female | African American | Executive Assistant/ Constituent Relations | Former Employee |
| Witness Five | White | Male | Caucasian | Summer Works Coordinator | Former Employee |
| Patrick Williams | White | Male | Caucasian | Finance Manager | Department of County Assets |
| Karin Lamberton | White | Female | Caucasian | HR Manager | Department of County Assets |

II. DISCUSSION

A. Misuse of County Resources/Funds

The initial emails from Mss. Kwon and Saleem (the "Complaints") assert that Commissioner Smith misused County resources by (1) directing staff to take vacation days to "work/staff her" for campaign events, (2) using County equipment for personal use, and (3) making personal purchases through the County's purchasing cards.

1. Directing Staff to Take Vacation Days to Work Campaign Events

Commissioner Smith denies that employees were required to staff her at political events and to use their vacation/personal time for such work. She says she delegated staffing issues to her Chiefs of Staff and expected them to know when staff should or should not be assigned to events. She believes she never required staff to attend such events and believes that those who did work such events did so as volunteers. However, Commissioner Smith never expressly communicated her expectations in writing to her staff with regard to this issue.

Her version is supported by Witness Two, who asserts that Commissioner Smith would, at staff meetings, tell employees that they could chose to take vacation time or leave if they wished to assist at such events. He and others volunteered their time. Jimmy Brown does not recall employees ever staffing Commissioner Smith at fundraising activities.

In contrast, Witness One noted that when he was Chief of Staff, Commissioner Smith expected the same level of staffing at campaign events (such as the "Women in Equity Lunch") that she received for other events. Nothing was "express"; instead, it was assumed that staff would use their personal time. Witness Four remembers being told by Witness One to send an email to staff for one of the Women in Equity Lunches from her personal email address informing staff to use vacation to cover the event. Witness Five believes that staff was required to work campaign events such as the "MLK fundraiser" and Women in Equity Lunch. This is also consistent with the

various allegations raised by Mss. Kwon and Saleem.

Overall, I believe that the Commissioner and/or her Chiefs of Staff likely wanted to have consistent staffing for events irrespective of whether they were related to her campaign, that staff knew not to charge their time for such events to the County, and that there was an expectation in the office that those in attendance would use vacation or other personal time. While no one was expressly ordered to use vacation time, it was assumed that this was part of their responsibilities as staff for a public servant. There was no intentional misconduct, but there was no real effort to clear up any ambiguity.

Under County Rule 3-12-040, supervisors are generally responsible for ensuring that time records are accurate. Commissioner Smith likely violated this rule because neither she nor her Chiefs of Staff were clear in their communications that staffing events, like the Women in Equity Lunch, were truly not required of employees as part of their jobs in assisting the Commissioner.

2. Using County Equipment for Personal Use

Mss. Kwon and Saleem assert in their Complaints and/or follow up interviews that Commissioner Smith used County equipment (cameras, laptops, iPads, etc.) at campaign events or for personal use. Witness One has “no reason to dispute that Commissioner Smith may have had the staff use the County camera/equipment at one or more fundraising events.” Other staff recall being asked to take photos at such events.

Under the County’s Code of Ethics, “[a]n employee may not use the county’s equipment . . . for personal use when the use is more than brief and infrequent.” Rule 3-30-020(C). Here, the allegations are not clear and there is nothing to suggest that any use at non-work events was “more than brief and infrequent.” See *id.* While the rule concerning the responsibilities of County employees prohibits individuals from “us[ing] . . . county property for personal gain . . . or to . . . conduct personal business,” Rule (Employee Responsibilities) 3-10-020(M)², there is no evidence of an intentional violation given the ambiguity noted above regarding how Commissioner Smith would be staffed at such events.

3. Making Personal Purchases Through the County Purchasing Card

The County allows staff and elected officials to use County issued credit cards to purchase items needed to conduct County business (travel, training, etc.). These purchase cards (“P-cards”) are never to be used for personal items. There are various types of P-cards; some are assigned to specific individuals and some are assigned to a specific department or office. Cardholders are required to maintain adequate supporting documentation (such as receipts and invoices) for all transactions. Under FIN-3.IV.J,³

Fraudulent or personal use of a County Purchasing Card will result in disciplinary action, possibly including dismissal. Employees will be required to immediately

² See also Rule 3-10-020(D).

³ The application form allows for a 30-day window to make any reimbursement payments.

reimburse the County for any unauthorized or fraudulent charges made by the employee or a family member.

Here, Commissioner Smith expressly acknowledged the guidelines surrounding the use of the P-cards:



MAR 24 2014

MASTERCARD PURCHASING CARD INDIVIDUAL RENEWAL AGREEMENT

Required signatures: Applicant, applicant's authorizing manager, and department fiscal manager.

I, Loretta Smith, hereby acknowledge that I am a permanent county employee and have been directed to use the Multnomah County MasterCard Purchasing Card only for authorized Multnomah County transactions. Authorized transactions are those which have previously been approved by Multnomah County and are allowable under the guidelines of the Multnomah County Administrative Procedures and department/office policies, rules or regulations. I also acknowledge reading, and understanding the Purchasing Card User Manual and all relevant County Administrative Procedures and I agree to follow all such procedures.

I understand that this card is to be used for pre-approved authorized business related expenses for which I may not exceed County's small purchase limit of \$5000.00 per transaction, and that I must save ALL receipts/invoices for each transaction (to be attached to the monthly statement from Bank of America).

I understand that I must NOT charge any transaction on the card at a vendor which has an open purchase order (PO) or a contract with Multnomah County. Transactions at vendors with open purchase orders or contracts should be charged against the PO or contract.

I acknowledge that I have been directed to surrender the card upon separation of employment with Multnomah County. I have also been directed to notify Bank of America and the Multnomah County Purchasing Card Administrator immediately if the card is lost or stolen.

I understand that fraudulent use of the card may result in revocation of Purchasing Card privileges and will result in disciplinary action, possibly including dismissal.

I understand that I will be required to reimburse Multnomah County for any unauthorized or fraudulent charges on the card made by me or a family member. I understand that unauthorized or fraudulent charges may be deducted from my paycheck if not reimbursed to Multnomah County within 30 days.

Loretta Smith 3/21/14
Signature of Card Applicant* Date

CHANGES IN CREDIT LIMIT AND DEFAULT COST
ALLOCATION MAY ONLY BE REQUESTED VIA EMAIL**

Loretta Smith

Name of Card Applicant (please print)

Last 4 digits SS#

CURRENT CREDIT LIMIT**

CL \$1,000 (SPL \$1,000) OK CLM

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While the County only retained records for three years, Patrick Williams was able to identify the following disallowed purchases up through March 9, 2017:

| | A | B | C | D | E | F | G | H | I |
|----|-------------|-------------------|-----------------|-----------|------------|----------|----------|---|---|
| 1 | Fiscal Year | Purchase Date | Rcpts Submitted | Card Used | Reimb Date | Reimb by | Amount | Vendor | |
| 2 | 2011 | 5/17/2011 | Archived | Unknown | 6/28/2011 | | \$14.02 | Aircell GOGO INFIGHT (flight internet service) | |
| 3 | 2012 | 5/1/2012 | Archived | Unknown | 6/2/2012 | | \$19.57 | Unknown | |
| 4 | 2013 | 1/17/2013 | Archived | Smith | 2/19/2013 | | \$478.75 | Safeway | |
| 5 | 2014 | 7/19/2013 | Archived | DTC | 8/6/2013 | | \$183.86 | Various (Papa John's, SPONDIVITS, Paradies) - food purchases while in travel status | |
| 6 | 2014 | 6/18/2013 | Unknown | Smith | 8/1/2013 | | \$33.84 | Chevron | |
| 7 | 2014 | 3/6/2014 5/7/2014 | | Smith | 7/31/2014 | J Brown | \$47.55 | Churchill Hotel | |
| 8 | 2014 | 7/22/2013 | Unknown | DTC | 10/1/2013 | | \$75.07 | Whiskey & Rye/Wine Thief | |
| 9 | 2014 | 9/18/2013 | Unknown | DTC | 10/22/2013 | | \$500.00 | ATM - Used card to take cash advance for per diem | |
| 10 | 2014 | 7/20/2013 | Unknown | DTC | 10/21/2013 | | \$281.00 | ATM - Used card to take cash advance for per diem | |
| 11 | 2014 | 3/5/2014 | Archived | Smith | 7/31/2014 | J Brown | \$36.00 | Unknown - Connected to Wash DC travel event in 3/14 - can request archives if necessary | |
| 12 | 2015 | 7/3/2014 8/5/2014 | | DPC | 11/21/2014 | J Brown | \$250.00 | Naim Hasan Photography | |
| 13 | 2015 | 7/1/2014 8/5/2014 | | Smith | 11/21/2014 | J Brown | \$20.85 | City of Portland (parking meter) | |
| 14 | 2016 | 12/1/2015 | Unknown | DPC | 12/16/2015 | | \$90.00 | Columbia Building Trades | |
| 15 | 2017 | 7/19/2016 | Unknown | Smith | 10/1/2016 | | \$7.25 | Starbucks | |

The Department of County Assets, "Administrative Hub," also indicates that Commissioner Smith routinely submitted/submits "P-card Missing Receipts" forms to cover expenses. In fiscal year 2017 (through March), Commissioner Smith submitted documentation claiming that she lost 27 out of a total of 47 receipts:

July - 6 missing receipts/9 transactions
August - 0 missing receipts/1 total transactions
September - 4 missing receipts/5 total transactions
October - 13 missing receipts/18 total transactions
November - 1 missing receipts/2 total transactions
December - 2 missing receipts/4 total transactions
January - 1 missing receipt/3 total transactions
March - 1 missing receipts/8 total transactions

Overall, there is no identifiable violation of the County's current P-card policies and practices. The County's policies and P-card application form acknowledge that there may be disallowed purchases and that such purchases must be reimbursed to the County. It appears that Commissioner Smith repaid every disallowed purchase and periodically did so outside the 30-day window allowed for under the P-card application and County practice. To the extent per diem advances may have been an issue, these were apparently allowed and processed by the Department of County Assets.⁴ However, to the extent the County Attorney believes the very nature of attempts to make purchases later disallowed is a violation of some standard, there is certainly evidence to support such belief.

It is concerning that, as noted above, at least four of the disallowed purchases were actually repaid by Mr. Brown while he was on staff and not by Commissioner Smith.

⁴ There is an allegation that Commissioner Smith improperly used the P-card to purchase gift cards. While she indicated in her interview that the P-card may have been used to buy gift cards to purchase food for staff or events, the Department of County Assets did not find any documentation regarding the purchase of gift cards. Thus, this could not be substantiated. Gift card purchases for employee gifts would be inappropriate under FIN 4.

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Mr. Brown literally wrote personal checks to cover the disallowed expenses, and these checks were accepted and processed by the County:

| MULTNOMAH COUNTY | | TRAVEL MISCELLANEOUS REQUEST FORM | |
|--|---|---|----|
| Refer to Administrative Procedure FIN-2 for Additional Information | | | |
| TRAVELER: | Department: | Destination: | |
| Loretta Smith | District 2 | Greater Portland Inc. - The Portland Building | |
| Travel Coordinator & Phone#: | | Actual Event Date(s): | |
| | | 6/30/14 and 7/1/14 | |
| 1. ORIGINAL RECEIPT(S) UNAVAILABLE ** (see FIN-2 sec VIII) (Every effort should be made to obtain original receipts. Use additional copies of this form if needed.) | | | |
| Vendor Name: | Purchase date: | Amount: | |
| | 6/30/14 | \$ 10.95 | |
| Detail of Purchase: Parking in Portland | | | |
| Vendor Name: | Purchase date: | Amount: | |
| | 7/1/14 | \$ 10.00 | |
| Detail of Purchase: Parking in Portland | | | |
| 2. COMBINING PERSONAL TRAVEL WITH COUNTY BUSINESS - (see FIN-2 section II) | | | |
| (Record as:) | of airfare originally paid by County: | | |
| Airfare Count: | SAP Transaction: F-52 vendor | | |
| Reference: | 1715002319 | | |
| Doc Header Text: | dup reimb of park exp | | |
| Text: | Check 1052 dtd 11/20/14 Jimmy Brown for | | |
| Loretta Smith | | | |
| GL: | 10810 | | |
| \$20.85 | | | |
| Type of expense: | Vendor#: EE13473 | | |
| Transportation: | P1515000224 processed 112114 sm | | |
| Ground Tra: | | | |
| Per Diem: | \$ | \$ | \$ |
| Lodging: | \$ | \$ | \$ |
| Registration: | \$ | \$ | \$ |
| Other: | \$ | \$ | \$ |
| Total: | \$ | \$ | \$ |
| 4. COMPETITIVE FA Airfare must be paid. Attach a copy of the | | | |
| 5. Additional Info: | | | |
| 6. I, the traveler, certify authorized. **Every effort FIN-2 requirement. | | | |
| Traveler Signature: | | Date: | |
| [Signature] | | 8/4/14 | |
| County Director / Manager / Elected Official / Designee | | Date: | |

1052

JIMMY BROWN

11/20/14

\$20.85

Twenty and 85/100

point west

1715002319

Mr. Brown and Commissioner Smith claim that she was likely out of town traveling when the County insisted that a payment should be made for the expense at issue and that Mr. Brown volunteered to personally make each payment in question. Mr. Brown and Commissioner Smith indicate that she has reimbursed him for all payments he made on her behalf. Since there

apparently is not a FIN rule preventing staff from paying disallowed reimbursement requests, the personal payments were processed.

Notwithstanding the absence of a FIN rule, allowing a staff person to pay for disallowed expenses arguably amounts to at least a potential, if not actual, conflict of interest under Rules 3-30-015 and 3-30-020 of the Code of Ethics. Please note that Rule 3-30-020(B)(3) does exclude "[r]eimbursement of expenses," but I defer to the Office of Multnomah County Attorney as to whether that carve-out applies when a subordinate personally pays the expenses for his/her superior as an apparent extension of their job.

B. Misuse of County Staff

Mss. Kwon and Saleem assert that Commissioner Smith improperly worked her staff long hours, used her employees to take care of personal errands or needs, and had her staff make personal purchases for her.

1. Improper Working Hours

The County classifies the staff of a commissioner as salaried exempt irrespective of what tasks they perform. While there is a general expectation that the staff be accessible during normal business hours, the work of a commissioner and their staff often extend beyond "9 to 5."

Mss. Kwon and Saleem contend that Commissioner Smith worked them well beyond 40 hours per week, calling them and other staff at all hours of the day and night to discuss work and her personal life. Witness One noted that Commissioner Smith would often blur the distinction between her personal and professional life with staff and that it was not out of character for Commissioner Smith to state that this is a "24/7" job. Various witnesses noted that she would often call staff late at night, and they were expected to take her call.

Commissioner Smith's position is that official work happens more than "8 to 5," and these are "at-will positions" from which individuals can choose to walk away if they are not pleased with the working hours. She does periodically talk to staff late at night, and they may discuss work and personal issues. In short, elected officials work late and so do their staff.

While Commissioner Smith appears to treat some of her staff as if they must be on call at all hours to meet her needs, these positions are currently classified as salaried, and there are no County rules that prohibit such employees from being asked to work outside the hours of 9 to 5.

2. Taking Care of Personal Errands or Needs

Mss. Kwon and Saleem contend that Commissioner Smith routinely used her staff to groom her, get her nylons and other personal items, and "fetch food." While Witness Two indicates that he is unaware of staff being asked to make such purchases, Witness Three claims that she was once told by Commissioner Smith to go get her soup and take it to Commissioner Smith's home because she was sick. Witness Three says that she did not ask for reimbursement and none was offered. Witness Four noted that Commissioner Smith would occasionally send others to her car

to fetch items. Since Witness Four functioned as a receptionist and needed to be in the office, she was likely not asked to run errands.

Commissioner Smith acknowledges that she may send staff to get her food while at work and that she reimburses them for that. She recalls that, once when she was sick at home, several of her staffers brought food to her unrequested, and she has done that for them on occasion.

The facts are unclear as to the extent to which Commissioner Smith may use her staff to run errands to get food and personal items. It is also not clear if the staff understand that such requests may be personal requests as opposed to "official" requests.

What seems clear are the allegations that Commissioner Smith often requested that her female staffers groom her and do her hair. It does not appear that this was requested of the male staffers. Commissioner Smith indicated that she is an elected official and that her staff should help her to make sure that her hair and clothes look appropriate for her to interact with the public.

Again, there do not appear to be any clear rules prohibiting the Commissioner from having staff to groom her for public appearances.

C. Unprofessional Conduct Toward Staff

The sections above already address concerns such as Commissioner Smith allowing Mr. Brown to cover her disallowed reimbursements with personal checks and having female staffers groom her for public appearances. The allegations that amount potentially to unprofessional conduct that are covered above will not be restated in this section.

Mss. Kwon and Saleem also complained that Commissioner Smith was generally abusive, used profanity at and with staff, and threatened/bullied her subordinates. Jimmy Brown and Witness Two noted that they never saw any abusive conduct, heard any profanity⁵, or saw anything that could be construed as bullying or threatening.

In contrast, even Commissioner Smith notes that she may have "had a curse word" in her office, but she does not make a habit of being profane. Witness Three, Witness Four, and Witness Five gave statements consistent with those offered by Mss. Kwon and Saleem, that profanity was regularly used in the office. It is alleged that Commissioner Smith would take her frustrations with the performance of staff, other commissioners, or work in general out on her staff using profanity and questioning their competence. For example:

- "This is fucking unacceptable."
- "You are not fucking doing this right."
- "Where are the fucking numbers?"
- Using the term "bitch" to refer to another commissioner.

⁵ Witness One also indicated that he did not hear any profanity.

While not profane, staffers attribute other potentially inappropriate statements to Commissioner Smith including, but not limited to, the following:

| Statement | Witness |
|--|---------------|
| "I don't understand that. Some broads around here getting married, and I can't find a man." "Suck your stomach in, you look pregnant. You better not be pregnant." "You can do something about your weight." | Witness Three |
| "You dress like a college student." Various comments about weight and clothes. | Witness Four |
| General yelling at Saba Saleem. Staff "serves at the pleasure of the Commissioner." | Witness Five |
| Asked Ms. Saleem if she was pregnant when Ms. Saleem complained of a stomach ache. | Ms. Saleem |

Ms. Kwon also alleges that, at the request of Commissioner Smith, she went shopping with Witness Four to help Witness Four find clothes that "fit" her and looked professional. Witness Four acknowledges that Ms. Kwon did ask her to go shopping. Based on prior comments from Commissioner Smith, Witness Four "knew that Commissioner Smith put [Ms. Kwon] up to this." Commissioner Smith admits that Ms. Kwon took Witness Four shopping but denies that this was done at her request.

There are numerous additional allegations of unprofessional conduct raised (such as the assertion that Commissioner Smith followed one staff member into the bathroom to yell at her because Commissioner Smith suspected that staff member of leaking information to the press about potential financial irregularities). In many of the situations, Commissioner Smith was one-on-one with the staffer, and it is not possible to corroborate the truth of the allegation. That said, the allegations appear consistent and indicate that Commissioner Smith may have been harsher in her treatment of female staffers, using derogatory statements and profanity in these interactions.

Interestingly, Karin Lamberton noted that Commissioner Smith had the highest staff turnover of any commissioner and a reputation for yelling at her staff. Ms. Lamberton did not investigate the reasons for the turnover and personally did not see Commissioner Smith yell at or abuse her staff.

Under its rules, the County is committed "to providing a work environment that is respectful, professional, safe, accepting of cultural differences, and free from inappropriate and abusive workplace behavior." Rule 3-47-010.

Examples of inappropriate workplace behavior include, but are not limited to, comments or behaviors to or from an individual or group that disparage, demean, threaten, intimidate, humiliate, abuse authority, sabotage work, or show disrespect for another employee, supervisor/manager, subordinate, customer, contractor or visitor in the workplace, unless otherwise protected by law.

Rule 3-47-020(1).

While many allegations cannot be substantiated, it appears that Commissioner Smith created and fostered an environment in which she felt comfortable making demeaning or negative statements to and/or about female staffers in relation to their person and work. Her conduct violates the County's requirement that all employees must maintain a professional and respectful environment.

D. Discriminatory/Harassing Conduct

Several of the allegations raised against Commissioner Smith concern conduct that is potentially discriminatory or harassing in that it is tied to race, gender, religion, sexual orientation, or some other legally protected status. There are also assertions that she interfered with the rights of employees to take medical leave. Commissioner Smith clearly stated that she never engaged in such conduct, and this was supported by the statements of Jimmy Brown, Witness One and Witness Two.

1. References to Race, Culture of Ethnicity

In contrast, various questionable statements were attributed to Commissioner Smith including, but not limited to, the following:

| Statement | Witness |
|--|----------------|
| "I would not have been able to accomplish this but for the strong women in my life, but you would not know anything about that." This statement was allegedly made to a Muslim woman. | Saba Saleem |
| "I don't know why anyone would want to learn [Arabic]. ... I put my son through years of Spanish and he has not retained any of it." | |
| "She was Mexican, probably Christian. You know how those people are." This was purportedly made in relation to a point of contact for the Ambridge Center when a LGBTQ organization was initially not allowed to hold an event at the Ambridge Center. | |

| | |
|---|---------------|
| Numerous comments about the weight of staff. "Your kids will always be there, but now is the time to make a name for yourself. If anyone wants to leave, they should do so now." Comments allegedly made at a staff meeting after Ms. Saleem quit. The pregnancy comments noted in the sections above. The weight comments noted in the sections above. "You should not count on actually getting married." Purportedly made after a staff person announced her engagement. "What are you? You have those high cheek bones." A statement purportedly made to a mixed race employee. "You Latinos don't have any power anyway." A statement made to an employee Commissioner Smith assumed could be a Latina. "I am surprised about your education because it is not easy for women where you come from." This statement was purportedly made to Ms. Saleem and contemporaneously reported by Ms. Saleem to Witness Three. Using the term "bitch" to refer to another commissioner as noted in the sections above. | Witness Three |
| Miscellaneous derogatory statements based on race, religion or ethnicity. No specifics were offered. | Witness Four |
| General references to Muslims being terrorists and referencing Hispanics as "illegals." | Witness Five |

As with the general unprofessional statements, these allegations are difficult to substantiate because the various witnesses claim that Commissioner Smith made the statements in one-on-one meetings. That said, there does appear to be a pattern that indicates that Commissioner Smith likely shared her personal cultural or ethnic views with her staff in what she likely believed were personal conversations. To the extent that this happened, such conduct was inappropriate given that these conversations occurred in the workplace.

Under County Rule 3-40-020,

[t]he county's policy is to prohibit workplace harassment and discrimination on the basis of race, color, sex, age, religion, national origin, . . . marital status, sexual orientation, . . . familial status . . . or other protected status

Harassment based on these protected statuses is also improper where there is a hostile work environment – i.e. the conduct had the purpose or effect of creating an intimidating, hostile or offensive work environment, interferes with the employee's work performance, and/or substantially and adversely affects an employee's employment opportunities. See Rule 3-40-030. Such comments, if made to staff, would be inconsistent with these policies.

Interestingly, no employees raised contemporary complaints with Human Resources about inappropriate behavior. Most of the individuals who raised issues in their interviews noted that they had concerns about raising their concerns to the County's Human Resources staff because Commissioner Smith is fairly influential, and they did not challenge her. Instead, several of the staff left the Commissioner's office to take other jobs rather than report their concerns.

2. Retaliation for Use of Leave

Prior to taking a job with Commissioner Smith, Ms. Kwon [REDACTED]. When she was hired, Ms. Kwon made it known that she would have to occasionally go to doctor's appointments for treatment related to her injuries.

In or around July 2016, Ms. Kwon had to be hospitalized for several days. She subsequently returned to work, but had to be absent again for another doctor's appointment. Upon her return to work again, Ms. Kwon asserts that Commissioner Smith accused her of lying about how serious her injuries were and told Ms. Kwon that she needed her to provide her with a full list of all appointments.

Ms. Kwon then contacted Ms. Lamberton by email and set up a meeting to discuss leave issues. When Commissioner Smith found out about the meeting, she purportedly responded,

I don't know why you would ask about FMLA unless you were planning on filing a claim against me. Are you planning on filing a claim against me? Why did you go to HR? I handle this stuff. As an exempt employee, if you work one or two hours, you get paid for the whole day. Go to the HR appointment if you want, but they have nothing to do with your HR.

Ms. Kwon claims that she cancelled the meeting with HR based on this statement. (Ms. Lamberton confirms that Ms. Kwon did inquire with HR about leave and then cancelled the meeting.)

Commissioner Smith acknowledges that she may have had a conversation with Ms. Kwon about her health because Ms. Kwon "had several personal health issues." But she states that she and Mr. Brown would allow staff to go to doctor's appointments as needed. Mr. Brown notes that he is unaware of Commissioner Smith talking to staff about leave issues.

This is not the only allegation concerning leave/medical issues. Witness four had [REDACTED] were exacerbated by stress. When she could no longer drive the Commissioner to events, Commissioner Smith purportedly insisted that Mr. Brown be provided with copies of the doctor notes. Witness Three inquired with HR, and they informed her that she did not need to provide the notes to Commissioner Smith or Mr. Brown. (Ms. Lamberton remembers having a discussion

with Witness Three about turning over doctor's notes, but she cannot recall the specifics.) Ms. Kwon also claims that Commissioner Smith threatened to make her an hourly employee when Ms. Kwon raised the possibility of using some of the "extra time" she worked to "flex" other days.

Yet again, most of these conversations occurred, if at all, in one-on-one meetings and it is difficult to substantiate them. The alleged threat to move Ms. Kwon to hourly is not credible because it would only net her more pay given the amount of hours she worked. Also, these incidents did involve HR to some extent, and the staff members could have contemporaneously followed up with HR on any concerns that they had. It is unlikely that they were concerned about retaliation for making a complaint.⁶

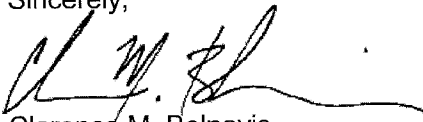
E. Use of Non-Disclosure Agreements

As alleged by Ms. Kwon, Commissioner Smith did provide some of her staff with non-disclosure agreements as a condition of future employment. Several of the staffers believe this was done as part of an effort by the Commissioner to prevent perceived leaks to the press. Irrespective of the motive, Commissioner Smith worked with the Office of the County Attorney to prepare the non-disclosure agreements.

III. CONCLUSION

Commissioner Smith denies any wrongdoing with respect to the allegations raised against her, and this is supported by the statements of several witnesses. However, there are several staff members who have raised serious concerns about their interactions with her. While many of the individual allegations could not be substantiated, it does appear that Commissioner Smith (and perhaps her Chiefs of Staff) assumed that staff would use vacation/personal time to support the Commissioner at personal/campaign events. It also appears that Commissioner Smith routinely used staff to run minor errands for her, has a propensity to misplace her P-Card receipts, allowed Mr. Brown to pay her disallowed expenses, used profanity at/with some of her staff and likely made personal statements that bordered on bullying to some staffers on cultural issues.

Sincerely,



Clarence M. Belnavis
Partner
For FISHER & PHILLIPS LLP

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⁶ To the extent that Commissioner Smith interfered with or retaliated against others for exercising their leave rights, this violates the Family Medical Leave Act and the Oregon Family Leave Act.