

#Sordyl Law, LLC

Kim Sordyl
Sordyl Law, LLC
422 NW 13th Ave. #751
Portland, OR 97209
503-502-1974
kim@kimsordyl.com

TORT CLAIM NOTICE

December 6, 2021

Via Regular Mail and Email

Katy Coba

State Chief Operating Officer and DAS Director
Department of Administrative Services
155 Cottage Street NE
Salem, Oregon 97301-3972
katy.coba@das.oregon.gov
risk.management@oregon.gov

Ellen Rosenblum

Attorney General
Oregon Department of Justice
100 SW Market Street
Portland, Oregon 97201
ellen.f.rosenblum@doj.state.or.us

Peter Courtney

Senate President
900 Court St. NE, S-201
Salem, Oregon 97301
sen.petercourtney@oregonlegislature.gov

Tina Kotek

House Speaker
900 Court St. NE, Rm. 269
Salem, Oregon 97301
Rep.TinaKotek@oregonlegislature.gov

Joint Conduct Committee

JCOND.Exhibits@oregonlegislature.gov

Sen.FloydProzanski@OregonLegislature.gov

Sen.ChuckThomsen@oregonlegislature.gov

Rep.JulieFahey@oregonlegislature.gov

Rep.RonNoble@oregonlegislature.gov

Sen.BillHansell@oregonlegislature.gov

Sen.KathleenTaylor@oregonlegislature.gov

Rep.RaquelMooreGreen@oregonlegislature.gov

Rep.TawnaSanchez@oregonlegislature.gov

Re: *Monson vs State of Oregon, Legislative Assembly, Kotek, and Courtney*

- 1. *Notice of Tort Claims for Damages and Injunctive relief***
- 2. *Notice to Preserve Records***
- 3. *Personnel Records Request Under ORS 652.750***
- 4. *Pre-Litigation Mediation Proposal***

Legislative Leadership:

Attorney Michael Fuller and I represent Nathan Monson, a former Oregon Legislature employee who opposed a pattern of non-compliance and suffered retaliation. Monson has claims against the State of Oregon, the Legislative Assembly, the Legislative Conduct Committee, Tina Kotek, individually¹ and Peter Courtney, individually.

Summary

For years, both the Oregon Department of Justice and the Legislature have engaged in, and endorsed, sexual misconduct and discrimination. After numerous incidents hit the media spotlight, Ellen Rosenblum, Courtney and Kotek promised to fix the problem. Based on the facts as we see them, it appears Rosenblum has taken little to no actual corrective actions. In signing a settlement with BOLI, Courtney and Kotek promised an independent Legislative Equity Office to investigate and handle complaints.

The legislative history shows that the Equity Office was inspired, at least in part, by past mishandling of sexual harassment complaints by Dexter Johnson (Legislative Counsel), Lore Christopher (HR Director) and employees in the Employee Services department,

¹ The Oregon Court of Appeals continues to make clear that “anyone” whose acts or omissions aid or abet an employment violation are civilly liable, even if the individuals were not directly involved as an employer, coworker, or supervisor. *Charlton v. Ed Staub & Sons Petro., Inc.*, 312 Or App 522, 526 (2021); *Hernandez v. Catholic Health Initiatives*, 311 Or App 70, 80-81 (2021).

and Courtney and Kotek.²

Oversight of the office is with the Joint Conduct Committee, co-chaired by Sens. Floyd Prozanski, Chuck Thomsen, Reps. Julie Fahey, and Ron Noble. In November 2019, interim Legislative Equity Officer (LEO) Jackie Sandmeyer started temporarily running the office. Sandmeyer was running her own outside consulting firm at the same time.

It took over two years for the Legislature to hire a permanent LEO. Monson was recruited from Iowa after a five-month, open and competitive hiring process. Monson started training with Sandmeyer. Monson was shocked to learn:

- *There was no Equity Office.* There were no employees, no files (electronic or paper), no complaints, no process, no evidence, no records. There weren't even office supplies. Sandmeyer's laptop had nothing on it.
- There were over 30 voicemails on the LEO office phone. Sandmeyer told him to "just delete them."
- In seeming violation of Rule 27, the Joint Conduct Committee ("the Committee") had not provided oversight of the LEO, or established a "uniform recordkeeping process." Sandmeyer handed Monson a post-it note list of the ongoing complaints, including one against Employee Services Manager Jessica Knieling³ for being allegedly transphobic.
- There was no data collection.
- In seeming violation of Legislative rules, exit interviews were not being conducted.
- Employees had been intentionally blocked from filing complaints.
- Outside investigators were hired seemingly illegally without a bidding process.
- Outside investigators were not being paid and had stopped work.⁴
- Outside investigators had caps on their contracts and had stopped work.
- Sandmeyer had not followed Rule 27 processes.⁵
- Sandmeyer told a female complainant they had been working on her complaint when in reality nothing had been done in the months since it had been filed.
- Sandmeyer had racked up hundreds of thousands of dollars in bills but there were no records.
- Legislators and staff had been seemingly violating the 2019 BOLI Conciliation

² The Oregon Legislature recently paid a \$500,000 settlement in a lawsuit where Johnson was named for retaliating against an attorney who reported misconduct. Despite Johnson's history, and Monson's request for different counsel, Monson was regularly directed to consult with Johnson. Even non-lawyers understand how this arrangement is unprofessional and ethically problematic.

³ Knieling has since been promoted to interim HR Director for the Legislature.

⁴ Although the Committee denied this in the media, there is an e-mail trail.

⁵ This failure has led to at least one lawsuit. *Diego Hernandez vs Oregon Legislature, Kotek, Sandmeyer*
<https://www.opb.org/article/2021/02/12/oregon-legislature-diego-hernandez-harassment-claims/>
<https://www.oregonlive.com/politics/2021/02/rep-diego-hernandez-files-1m-lawsuit-against-oregon-legislature-leaders-challenging-sexual-harassment-findings.html>

Agreement by 1) allowing Johnson and Knieling, who were banned from involvement, to continue to work and advise on Rule 27 process; 2) Johnson and Knieling were part of the work group that revised Rule 27⁶; 3) failing to adopt definitive timelines for investigations; and 4) failure to conduct harassment trainings.

- Despite Johnson and HR's past failures and express exclusion from the investigation process and complaints, Johnson⁷ and Knieling regularly injected themselves, both officially and unofficially.
- While contributing to the chaos, and meddling in matters from which he was legally barred, Johnson told Monson, in the presence of others, "You have the worst job in Oregon."
- Sandmeyer had not followed up on complaints that had been around for months.
- Sandmeyer falsely claimed 30 Democrat lawmakers decided not to proceed with the complaint against Rep. Nearman. This delayed the investigation.
- Knieling regularly called complainants "crazy," and once used a complainant's mental health condition to criticize her behind the scenes, calling her "crazy" to Mr. Monson.⁸
- According to Knieling and Rep. Fahey, Sandmeyer had a relationship with a Kotek staffer and it was a problem.
- Sandmeyer said "Kotek thinks she is a tough lesbian but really she will try to bribe you to keep you quiet...She'll offer you whatever you want - money, resources for the office."
- Two female employees repeatedly complained of a sexually hostile work environment in the Revenue Office. Knieling, who was banned from taking complaints, took the complaints but did not act on them.
- The Committee pre-decided complaints before they held hearings.
- Employee Services and Legislative Administration leaders regularly mock the Diversity Equity Committee.
- Sandmeyer said multiple sexual harassment complaints had been lodged against a current white male legislator, but Sandmeyer had not acted on them.
- Sandmeyer said a Legislator filed a complaint against Rep. Kotek for telling him to "get the fuck out of my office." Sandmeyer did not take action on the complaint.

The dysfunction was palpable, lacking leadership, integrity and direction at every turn. On Monson's first day of work, Sandmeyer told him that Knieling is "crazy, evil, controlling and transphobic." Despite her role and position, Sandmeyer did not investigate complaints against Knieling. On Monson's third day, Knieling told him that

⁶ See BOLI Conciliation Agreement at 7 (http://opb-imgserve-production.s3-website-us-west-2.amazonaws.com/original/boli_-_legislature_settlement_3-5-2019_1551828369254.pdf) (Dexter Johnson is the Legislative Counsel, and HR is overseen by the Legislative Administration Committee. The two were to play "no role" in investigations, with "all complaints" handled by the Equity Office).

⁷ Sandmeyer even directed Monson to get Johnson's written approval before acting on a complaint.

⁸ Additional evidence suggests that Capitol figureheads, including the Department of Justice in defending actions, referred to complainants as mentally unstable, to deflect from wrongdoing by public officials.

she cries most nights because Sandmeyer bullies her. Monson soon learned that both had incriminating information on each other, and wanted *him* to expose it.

His first week on the job, Monson reported a lack of documentation to DOJ attorney Marc Abrams and Knieling, even though a BOLI Substantial Evidence Determination (BOLI SED) faulted Respondents for this practice:

*Respondents consciously relied on processes that kept reports of harassment undocumented ... which resulted in ineffective or non-responses and discouraged people from bringing forward complaints.*⁹

Monson also reported unpaid bills, caps on legal contracts, and lack of follow-up on complaints, in violation of legislative branch procedural rules, which have the force and effect of law. Abrams, who had just wrapped up defending similar claims against the state and Johnson, said “We’re fucked.” Knieling said that she was not surprised, stating “I told you this place was crazy,” and “Just fix it.” Knieling also instructed Monson not to look into the BOLI information surrounding dysfunction in the recent past, once informing him that the related BOLI complaints were merely “political,” not to be taken seriously. When Sandmeyer resigned, they signed a form indicating all documents had been turned over. To this, Abrams replied via e-mail, “Well Mrs. Lincoln, how was the rest of the play?”

Monson then reported to the Committee co-chairs that complaints were languishing, and processes were not being followed. His complaints included that invoices were being ignored and investigators were illegally hired, without following the appropriate process. His complaints of illegal practices were met with disinterest, and passed off as simple administrative oversights. The Committee refused to provide Monson with independent counsel for legal questions. Instead, they told him that he should “ask Dexter” for legal advice relating to Rule 27 and “ask Jessica Knieling” regarding Rule 27 complaint procedures. Again, both had been banned from involvement under the BOLI Conciliation Agreement.¹⁰ The co-chairs also dismissed the BOLI settlement as “politically motivated,” and kept Johnson heavily involved in Rule 27 complaints even though Johnson is not an employment attorney. After Monson’s reports to the co-chairs, he experienced retaliation. Monson was now being intentionally ignored, his concerns were now being intentionally dismissed, and communications to him were now being chilled.

Monson also complained, mostly through Knieling, to President Courtney’s and Speaker Kotek’s offices about mismanagement, the lack of an Equity Office, and inaction on complaints. According to Knieling, Courtney’s Chief of Staff’s response was, “Sandmeyer was a great political choice and now that we have Nate we can just clean

⁹ BOLI SED p. 50. See http://opb-imgserve-production.s3-website-us-west-2.amazonaws.com/original/sed_-_issued_for_stemsh180801-11138_1546549497381.pdf.

¹⁰ Johnson would preface his legal advice regarding Rule 27 complaints with “I’m not supposed to give you legal advice regarding Rule 27 complaints, but” He would then do exactly that, with the authority that comes with serving as the legislative branch’s top lawyer.

up all of this quietly.” For her part, Kotek called Monson and told him that she knew there were many problems in the Equity Office, and kept saying “whatever you do, just fix it.” Everyone was aware of past press and lawsuits exposing Capitol mismanagement, but more effort was placed on protecting reputations than combating a hostile and retaliatory work environment. At one point, Monson was admonished by Knieling for reporting the problems to Kotek’s and Courtney’s office. “Mind your own business,” she warned, including “You’re going to get in trouble for breaking the chain of command,” and “All communication of LEO problems to Kotek and Courtney’s offices goes through me.” It was clear that the BOLI settlement was not being enforced, and nothing had changed.

For example, Monson told Knieling details about the multiple sexual harassment complaints that had been made against a current white male legislator that had not been addressed. She brushed it off, admitting her knowledge of the complaints while stating that she had already talked extensively to one of the complainants, without following the prescribed process. The complainant eventually resigned.

Monson repeated his objections and questioning about misconduct, despite Knieling’s warnings. Tension escalated when Monson asked Knieling, in response to a complaint that had been made, to get training on transgender issues. She refused and the complainant eventually resigned. Monson also found a printed email from a DAS employee to Sen. Boquist complaining about Knieling, including that Knieling was engaging in retaliation. Monson confronted Knieling regarding the allegations, after which Knieling began efforts to drive him from his position.

Witch Hunt

Although Monson had been hired months earlier, and no complaint had been filed, Knieling started her own, personal investigation into Monson’s background. While later claiming that someone inspired her inquiry by randomly contacting her from another state about his background, Knieling carefully checked Monson’s past references and work history, looking for discrepancies.

It is easy to infer a retaliatory intent in Knieling’s actions when looking at the contrast between her extreme and instant response to alleged resume discrepancies compared to her dismissive attitude in the face of serious concerns regarding the handling of sexual harassment complaints—and her silence regarding concerns about Sandmeyer’s performance before Monson was hired.¹¹

¹¹ Furthermore, Sandmeyer, who did not complain of illegal conduct, and did not investigate complaints against Knieling, was not held accountable for serious misconduct. Knieling told Monson that Sandmeyer would go months without signing into their computer or email, because they were running an outside business while working for the State. Knieling also said she investigated, and found that Sandmeyer was often absent because they were working on their outside business. Further, Knieling said Sandmeyer never recorded those absences and got paid for them. This appeared to anger Knieling, but she took no action. Instead, she insisted that Monson talk to the Committee to let them know Sandmeyer “was nuts.” Knieling did not distribute her investigation or personnel information on Sandmeyer to the Capitol or the media.

Knieling never consulted Monson for his reasonable response to what amounted to sordid gossip, and never allowed him to explain events and dispel her assumptions. Rather, Knieling drafted a memo dated June 8, 2021, to the Committee co-chairs attacking Monson.

Get Out

On June 9, 2021, without giving any reason, the Committee co-chairs and Knieling called Monson to a meeting. He was unaware that Knieling had written the co-chairs a memo the day prior, attacking his integrity. The Committee co-chairs ambushed Monson with a barrage of questions about his background. He answered all of the questions and offered evidence and factual support. Rep. Julie Fahey did not want to hear it, and pressed Monson to resign. Fahey explained that just as Sandmeyer's career could not recover from a relationship with a staffer in Rep. Kotek's office, Monson would not be able to recover from Knieling's allegations of resume discrepancies. Rep. Fahey reminded him that she told him early on that the LEO position was a bad job and the place is "crazy."

Monson returned to his office and gathered the requested information for the Committee, but Knieling entered and informed him that he was not going to survive, and the decision to terminate him would happen within days. Knieling instructed him that he was not to provide any facts or evidence to the Committee – that it must only go through her, denying him basic process. She then dismissed Monson's factual support with a conclusory and nonsensical determination that it served as "context not proof." She also told him this is a "life lesson." Monson never heard from the Committee again.

Knieling added, "If you resign, you are only to put me down as a reference, and I will say you resigned in lieu of termination because you lied on your resume."

Knieling then instructed Monson to draft a memo detailing the state of the Legislative Equity Office, along with his resignation letter. On June 15, 2021 Monson drafted a memo and resignation letter to the Committee co-chairs detailing unlawful conduct, taxpayer waste and mismanagement.¹² The documents were public records.

Weeks later, Monson contacted a journalist, in part because a Capitol employee had impressed upon him the LEO's duty to protect new employees, interns and those fresh out of college. Monson confirmed his complaint and cooperated, in the interest of the public and Capitol employees. Monson detailed his concerns regarding mismanagement and misconduct. He also described how that behavior negatively impacted Rule 27 complainants, respondents, and the Capitol generally. On July 8, 2021, OPB published a story on Monson's concerns.¹³ Monson's cooperation with the

¹² See Exhibits A and B.

¹³ <https://www.opb.org/article/2021/07/08/oregon-capitol-lawmakers-harassment-investigations-nate-monson-resignation/>

press and his underlying complaint both constitute protected free speech, vital to political accountability and transparency.

Retaliation for Monson's Exercise of Protected Speech

In response to Monson's exercise of protected speech, one week later, on July 15, 2021, the Committee distributed to all Capitol employees and to the press, an e-mail attacking Monson's character.¹⁴ The e-mail contained personnel documents, typically exempt from disclosure under public records laws. The Committee also provided extraneous gossip obtained during Knieling's so-called "investigation" – even when the media had not requested it.

Rather than following Oregon law, Capitol protocol and process, Knieling offered Monson a post-decision "name clearing" hearing regarding his personnel records that the Committee released to the Capitol and media.

A public employer is not entitled to attack an employee who reports wrongdoing with poorly researched and unsubstantiated allegations and then absolve itself by offering a "name clearing" hearing. But that is exactly what the Committee did. Personnel matters are presumed confidential, and the threat of public exposure looms over every reporting party in the Oregon Capitol. Knieling's post hoc impression of one of Monson's references, for example, is not important to the public's interest. The documents contained unsubstantiated and false information that was harmful to Monson's career.

Knieling and the Committee's actions were not simply vengeful and mean-spirited to punish Monson for making them look bad: they were misleading and retaliatory.

After just two months on the job, Monson had been forced out. He was qualified to take over and repair the Legislative Equity Office's processes and systems. But obstacles like cover-ups, dishonesty, intentional foot-dragging and obfuscation from people as powerful as sitting senators, the President of the Senate, the Speaker of the House, the Employee Services Manager, the HR Director and the Legislative Counsel cannot be overcome by one new employee alone, without support or resources, regardless of experience.

Despite Knieling and the Committee's hatchet job on Monson's reputation, he was highly qualified. He has 14 years of experience in equity, management, team building, HR, civil rights investigations, training, organizational climate & culture improvement and analysis, and was unanimously the top choice for the position.

BOLI's Substantial Evidence Determination found that threatening public exposure and

¹⁴ See Exhibit C.

ruining careers¹⁵ is exactly what these respondents had done in the past,¹⁶ and that's exactly what they did to Monson.

“Respondents are aware of the inherent chilling effect created by the power imbalances between legislators and those whose careers can be significantly hindered by Respondents. Respondents have compounded that chilling effect in multiple ways...”

A culture where a victim is unable to prove what happened to them can reasonably be in fear of being called a liar, or be sanctioned, is an optimal environment for harassment...”

As an additional act of pettiness and retaliation, Knieling refused to provide Monson with his final paycheck, in seeming violation of Oregon law. Monson had to file a BOLI complaint simply to be paid, receiving his final check only after formally complaining to the BOLI wage and hour division.

Retaliatory Intent Exposed and Questioned

On July 21, 2021, Sen. Boquist sent an e-mail to the Committee calling out the illegal retaliation and its chilling effect.¹⁷ Sen. Boquist's correspondence expressly reported that:

“The release to legislative employees and worldwide news media violates LBPR 27, Oregon Revises Statutes, the Government Employee Rights Act, and BOLI Settlement Agreement.”

Despite the personnel rules, and state and federal legal standards, no investigation ensued, and Sen. Boquist was largely ignored.

More Empty Promises from the Committee

“Without an LEO in place, the office is not functioning as intended,” the Committee co-chair Sen. Floyd Prozanski said. “We are currently in the process of hiring a new LEO.” Despite having knowledge of the problems for months, the Committee wrote in its July 15, 2021 email sent Capitol-wide. “We are taking the time now to gather all the relevant

¹⁵ After complaining of sexual assault, Sen. Gelser was told by top Democrats that her complaint isn't going anywhere because she's unlikable, disliked, unfriendly, grandstanding, and media hungry. Sen. Alan Olsen told Gelser the Conduct Committee was prepared to “tear her to shreds.” Sen. Courtney yelled at Gelser in a coffee shop over it, and told his own office manager to resign or be fired when he learned she was dating a lawmaker.

¹⁶ See BOLI SED, paragraphs 26, 27, 36, 37, 86, 92 and pages 48-50 (detailing facts indicating that Dexter Johnson discouraged complainants and reporting parties, including threats that a report could cause someone's career to be ruined. Johnson's actions were sometimes taken in conjunction with HR. See also BOLI SED, paragraphs 50, 99, 100, 101, 103 and elsewhere (detailing efforts by capitol offices, sitting elected officials and staff to chill reporting and compliance).

¹⁷ See Exhibit D.

facts to ascertain the veracity of the allegations ...”

There is no evidence that the Committee followed through with any inquiry. Indeed, it has been almost 3 years since the BOLI settlement was signed. Yet, the Legislative Equity Office remains vacant, complaints ignored, and Johnson continues to act as counsel.

Claims

The claims for damages and injunctive relief include claims for sexual discrimination and retaliation under ORS 659A.030; ORS 659A.203(1)(b)(A), (d) (Individual Defendants ORS 659A.030(1)(g)); ORS 659A.199; Title VII of the Civil Rights Act of 1964, Equal Protection and First Amendment violations of the United States Constitution and retaliation under 42 USC § 1983; negligence, negligent supervision, negligent retention, defamation, whistleblower retaliation, intentional interference in economic relations, wrongful discharge, and aiding and abetting.

Notice to Preserve Records

This letter is also intended to serve as notice of the obligation that the State, Legislature and individual staff members, representatives, and attorneys including Tina Kotek and staff, Rob Nosse, Julie Fahey, Ron Noble, Floyd Prozanski, Chuck Thomsen, , Peter Courtney and staff, Jessica Knieling, Marc Abrams, Dexter Johnson, Brett Hanes, have to preserve electronic files and data related to Monson’s employment and the facts in this notice and the potential claims and defenses. These individuals must take affirmative action to ensure preservation of evidence, and must not destroy, conceal or alter any papers or electronic files or any other electronic data generated by and/or stored on computers, cell phones or storage media that may contain information related to this dispute.

If these individuals ever used outside or personal text message or e-mail to conduct state business or to communicate personally in any way related to this matter, these communications must be preserved as well.

Request for Personnel Records

Under ORS 652.750, please provide me with a **certified** copy of Monson’s personnel, time and pay records, as defined by statute. **ORS 652.750(2)** requires these very specific records to be produced within **45 days** of this request.

Prelitigation Mediation Proposal

Monson has retained attorney Michael Fuller to present this case before a local jury, sometime late next year. I have personally drafted a 28-page memo of the detailed factual allegations that support the forthcoming legal complaint. If Monson prevails at trial, he is entitled to reimbursement for his reasonable attorney fees. The amount of the

attorney fees will be decided by the Court, in part based on the “objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.” ORS 20.075(1)(f).

Accordingly, Monson invites any entity or individual who may want to explore early settlement to attend a confidential mediation under ORS 36.220 within the next three weeks. Monson is willing to attend mediation in good faith, in hopes of resolving this matter with as little expense as possible to the taxpayers.

Please let us know if you are interested in attending mediation, and please direct all communications moving forward to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kim Sordyl', with a stylized flourish at the end.

Kim Sordyl
503-502-1974
kim@kimsordyl.com

Michael Fuller
503-222-2000
michael@underdoglawyer.com