

January 28, 2025

PRIVATE & CONFIDENTIAL

Mr. Brandy Wreath
Agency Director of Administration
Executive Director
Oklahoma Corporation Commission
Oklahoma City, OK 73105

RE: Report of Finding from Investigation of Commissioner Conduct

Mr. Wreath,

The purpose of this letter is to report the results of this law firm's investigation into any and all information voluntarily provided resulting from the engagement letter entered into between the Oklahoma Corporation Commission (OCC) and this law firm on August 13, 2024.

The nature and scope of the engagement was stated as follows:

“Nature and Scope of the Project: The Firm is to conduct an independent investigation of Commissioner misconduct impacting Commission employees or others who do business with the Commission. The primary investigative tool will be interviews at locations to be agreed upon by the firm and the interviewee. All interviews will be strictly voluntary and will be arranged by anyone wishing to come forward and speak with the investigator(s) and the Firm. The Firm will maintain the confidentiality of those giving statements and will provide to the OCC an anonymized Report of Findings and Recommendations. If required, the Firm will prepare to defend the OCC in related civil litigation. Any information obtained during the course of the investigation that involves behavior of a criminal nature will be referred to the investigator assigned to this matter at the Office of the Attorney General.”

On August 21, 2024, a letter was sent to all Oklahoma Corporation Commission employees:

“Dear Employee:

This is a matter of utmost importance. Please be advised that the OCC has retained the law firm of Riggs, Abney, Neal, Turpen, Orbison, & Lewis- in particular Melvin C. Hall and Don Bingham- to conduct an independent and confidential fact-finding process of

potential Commissioner misconduct impacting the Commission employees and others doing business with the Commission.

Please do not delete any communications, documents, or data of any sort whether on work or personal devices that relate to the above-referenced independent and confidential fact-finding. The independent and confidential fact-finding is not seeking preservation or access to personal communications unrelated to state business or this fact-finding process with your family members or friends. The independent and confidential fact-finding strives to not delve into OCC employees' personal lives. However, if any of your personal devices have information, documents, or data related to this Hold and Preservation Notice, please notify attorney Melvin C. Hall immediately so he can assist in reviewing those items, conversations, documents, text messages, emails etc. ("identified items") in as private a manner as possible.

In connection with the independent and confidential fact-finding referred to above, I write to advise your legal obligation to preserve relevant documents and data in this matter and enlist your assistance in this regard. The independent and confidential fact-finding requires preservation of all documents and data that may be related to the fact-finding referenced above. This legal obligation to preserve and hold extends to and includes any personal devices or accounts in your possession or control that have documents and data located on them related to the independent and confidential fact-finding. Your duty is ongoing until specifically notified otherwise by Melvin C. Hall. "Documents and data" as used here means not only hard copy documents, but audio recordings, video recordings, pictures, screen-shots, e-mail, text messages, messages from any and all message applications, Teams Channel messages and/or chats, instant messages, word processing documents, spreadsheets, excel document, databases, calendars, telephone logs, contact manager information, Internet usage files, telephone records, cell phone records, cell phone history to include but not limited to incoming and outgoing telephone call history, voicemails, and all other electronic information maintained created, received, and/or maintained by OCC on computer systems. "Sources" include all hard copy files i.e., printed or written documents, computer hard drives, Drop Box, Box or similar file storage concepts, removable media (e.g., CDs, DVDs, flash drives, USBs, and external hard drives, laptop computers, PDAs, Blackberry devices, and any other locations where hard copy and electronic data is stored. Keep in mind that any of the above-mentioned sources of relevant information may include but are not limited to personal computers, phones, I-Pads, or other items you use or have access to at home, or other locations. It also includes inaccessible storage media which may contain relevant electronic information that does not exist in any other form. Regarding State of Oklahoma technology systems, your obligations related to State issued devices are not to delete, change, revise, edit, and/or otherwise destroy any documents and data as defined herein.

If you have any questions on how to comply with this directive, please contact attorney Melvin C. Hall at (405) 810-4215.

Electronically stored data is an important and irreplaceable source of discovery and/or evidence in this matter. You must take every reasonable step to preserve this information until further notice.”

On August 22, 2024 at 9:29 a.m., an email was sent to all Oklahoma Corporation Commission employees:

“The Oklahoma Corporation Commission has retained the law firm of Riggs, Abney, Neal, Turpen, Orbison, & Lewis- in particular, Melvin C. Hall and Don Bingham- to conduct an independent and confidential fact finding of Commissioner misconduct that affected the Commission employees and others doing business with the Commission. The parameters of the independent and confidential fact finding will include:

1. Confidentiality will be strictly maintained. The identity of any Commission employee will be redacted from any and all findings, reports, or recommendations produced as a result of the fact finding;
2. All interviews will be strictly voluntary and will be conducted at a remote location;
3. Any Commission employee who submits information will be protected from retaliation and will not be subjected to any disciplinary action;
4. Any information obtained during the course of the fact finding that involves behavior of a criminal nature will be referred to the office of the Attorney General; and
5. Any employee who wishes to come forward and submit information should contact attorney Melvin C. Hall at (405) 810-4215.”

On August 22, 2024 at 1:12 p.m., a clarifying email was sent to all Oklahoma Corporation Commission employees:

“All OCC Personnel: “The Office of General Counsel would like to make clear that any employee may reach out to Melvin Hall and/or Don Bingham directly. There is no requirement or need to notify any member of OCC supervision, management, leadership, or Commissioner Offices for any reason if an employee chooses to reach out to Mr. Hall or Mr. Bingham. This is meant to be a completely private, confidential, and voluntary matter. Mr. Hall or Mr. Bingham are available during the day, afterhours, and on weekends. Please reach out to them directly.”

EVENTS WHICH PROMPTED THE CONFIDENTIAL INVESTIGATION

On June 21, 2023, there was an incident that occurred at Broadway 10 Bar & Chophouse. According to a published newspaper article, two OCC employees who spoke to the newspaper on the condition that they not be identified said that OCC Commissioner Todd Hiatt became intoxicated at a launch party for a new law firm in the upstairs area of the bar. The first employee said she had to help him walk down the stairs when the party wound down and that she didn't want him to drive his vehicle. The second employee also assisted Hiatt "after he had too much to drink". She said she had to hold him up at one point. She also reported to the newspaper that Hiatt stated to her, "How are me and you going to do this?" The following week, Hiatt spoke to her about the incident and apologized for his behavior the other night: "It was not acceptable. I'm embarrassed and I'm sorry that I put you and anybody else through that," she recalled¹.

INFORMATION RECEIVED AND REVIEWED

Subsequent to announcing of the confidential investigation, this law firm began receiving information that was voluntarily and confidentially submitted from a variety of sources, both internal and external to OCC². The information received was both in the form of individual witness statements and documents³. In addition to the witness statements and documents reviewed, this law firm also reviewed:

1. Newspaper articles;

¹ See August 7, 2024 *The Oklahoman*: "Todd Hiatt Steps Down as Chair of the Corporation Commission as New Accusation Emerges" by Nolan Clay.

² Information that was received from a non-employee of OCC was referred to the office of the Attorney General.

³ The law firm received statements from ten (10) individuals and over approximately 4,000 pages of documents.

2. AG Opinions;
3. OCC's Personnel and Administrative Policy Manual;
4. OCC's Supervisory Policy Manual;
5. Oklahoma Supreme Court Cases; and
 - a. Case No. PR-122513 ([Writ of] Prohibition)
 - b. Case No. PR-122441 ([Writ of] Prohibition)
 - c. Case No. PR-12244
6. OCC Filings.
 - a. Case No. GD2023-000005
 - b. Case No. GD2023-000087
 - c. Case No. PUD2022-000057
 - d. Case No. PUD2024-000047

After carefully reviewing the above-referenced information, and restricting my analysis to the scope of the investigation, it is my determination that the overwhelming majority of the information voluntarily submitted was not relevant to the nature and scope of the investigation. Consequently, my analysis will relate to the assertion reportedly made by Commissioner Hiatt, "How are me and you going to do this?" Such a statement most properly should be analyzed under the context of hostile work environment sexual harassment.

WHAT CONSTITUTES HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT?

Sexual harassment in the workplace is unlawful because it is a form of discrimination with respect to conditions of employment on the basis of sex. *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1413 (10th Cir. 1987). For sexual harassment to be actionable it must be sufficiently severe

and pervasive "to alter the conditions of employment and create an abusive working environment." *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67, 106 S. Ct. 2399, 2405, 91 L.Ed.2d 49 (1986). *Shaeffer v. Anderson Management Company, Inc.*, 2014 U.S. Dist. LEXIS 93300, Dist. Court, D. Kansas (July 9, 2014).

"In determining whether an actionable hostile work environment existed," courts look to all the circumstances, "to see if the workplace was 'permeated with discriminatory intimidation, ridicule, and insult . . . sufficiently severe or pervasive to alter the conditions of the [plaintiff's] employment,' and if the plaintiff was subjected to this abusive environment because of "her gender". *Montes v. Vail Clinic, Inc.*, 497 F.3d 1160, 1169-70 (10th Cir. 2007) (quoting *Herrera v. Lufkin Indus., Inc.*, 474 F.3d 675, 680 (10th Cir. 2007), alterations original).

To establish this claim, a plaintiff must prove: "(1) [the plaintiff] is a member of a protected group; (2) [the plaintiff] was subject to unwelcome harassment; (3) the harassment was based on [the plaintiff's membership in a protected class]; and (4) due to the harassment's severity or pervasiveness, the harassment altered a term, condition, or privilege of the plaintiff's employment and created an abusive working environment." *Harsco Corp. v. Renner*, 475 F.3d 1179, 1186 (10th Cir. 2007) (quotation marks, brackets, and citation omitted).

The applicable test for a hostile work environment has both an objective and a subjective component. See *Fox v. Pittsburg State Univ.*, 257 F. Supp. 3d 1112, 1130 (D. Kan. 2017). "In determining whether an objectively 'severe or pervasive' hostile environment exists," "it is necessary to look at all the circumstances involved, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.* at

1130 (internal quotation marks omitted). While the offending conduct is not required to have "seriously affected the plaintiff's psychological well-being," the "conduct must be extreme"; "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." *Id.*; *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (citation and internal quotation marks omitted).

Applying the above-referenced test to the statement reportedly made by Commissioner Hiatt to an OCC employee on June 21, 2023, the comment can only be construed as "isolated" and consequently did not amount to discriminatory changes in the terms and conditions of employment. In addition, such a statement and/or comment on its face cannot be interpreted as sexual in nature because it did not contain any sexually explicit language, sexually explicit propositions, or sexual innuendo.

Commissioner Hiatt, as an elected official, is not an employee of OCC. He also is not the appointing authority for the agency, and he has no supervisory responsibility over any employees of OCC, with the exception of his immediate staff. Consequently, the law requires that Commissioner Hiatt's conduct be evaluated as that of an outsider to the agency, such as a customer or non-employee. Therefore, even assuming that the statement reportedly made to an OCC employee on June 21, 2023 constituted sexual harassment, the OCC would be liable only if it was placed on notice and failed to protect the employee.

CAN OCC BE HELD LIABLE FOR SEXUAL HARASSMENT FROM NON-EMPLOYEES?

The Tenth Circuit has held that employers, such as OCC, are obligated to protect employees from sexual harassment initiated by outsiders, customers, non-employees, or visitors

to the workplace premises. See *Holmes v. Utah Dept. of Workforce Services*, 483 F.3d 1057, 1065 (10th Cir., 2007). Pursuant to *Lockhard v. Pizza Hut, Inc.*, 162 F.3d 1062, 1073 (10th Cir., 1998) (“EEOC regulations specifically provide that an employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action.”) (29 C.F.R. § 1604.11(e)(1997)).

The courts apply a negligence theory of liability to the harassing acts of customers. In cases involving harassment by co-workers, as opposed to harassment perpetrated by supervisory employees, the only basis for employer liability available is a negligence theory under Restatement (Second) of Agency § 219(2)(b). See *Hirschfeld v. New Mexico Corrections Dep't*, 916 F.2d 572, 577 (10th Cir.1990). Because harassment by customers is more analogous to harassment by co-workers than by supervisors, we hold the same standard of liability applies to both co-worker and customer harassment. Thus, employers may be held liable in these circumstances if they "fail[] to remedy or prevent a hostile or offensive work environment of which management-level employees knew, or in the exercise of reasonable care should have known." *Hirschfeld*, 916 F.2d at 577 (internal quotation omitted). But even assuming such liability exists, the question remains whether the work place is “permeated with discriminatory intimidation, ridicule, and insult.” *Holmes v. Utah Dept. of Workforce Services*, 483 F.3d 1057, 1065 (10th Cir., 2007); citing *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993).

An employer is not strictly liable for all harassment of which it actually or constructively knew; it may only discharge its obligation by taking appropriate remedial or preventative action. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 676 (10th Cir., 1998); citing *Meritor Sav. Bank*,

F.S.B. v. Vinson, 477 U.S. 57 at 72 (1986). By way of example, responses that have been reasonable have often included prompt investigation of the allegations, proactive solicitation of complaints, scheduling changes and transfers, oral or written warnings to refrain from harassing conduct, reprimands, and warnings that future misconduct could result in progressive discipline including suspension and termination. *Adler v. Wal-Mart, Id.* at 676 (citations omitted). In this case, OCC opted to proactively solicit complaints by way of requesting that anyone with information may submit it confidentially to the Riggs Abney law firm. By taking this action, OCC discharged its obligation and responsibility to protect its employees, because pursuant to the above-referenced authorities, once the OCC became aware of the reported conduct, it initiated this confidential investigation.

FACIALLY GENDER-NEUTRAL, NON-SEXUAL CONDUCT

Conduct from the Broadway 10 incident that was non-sexual and facially gender neutral - such as accusations that Commissioner Hiett was drinking to the point of intoxication and operated his vehicle in such a condition – can contribute to a sexual harassment claim. The Tenth Circuit allows for consideration of facially gender-neutral abusive conduct. See *O’Shea v. Yellow Tech. Servs., Inc.*, 185 F.3d 1093, 1097 (10th Cir., 1999). In the Tenth Circuit, gender-neutral abusive conduct can support a gender-based claim when viewed in the context of other, more overtly gender-discriminatory conduct. *Id* at 1097. However, if the gender-discriminatory conduct is isolated and not asserted as evidence in this investigation, the gender-neutral abusive conduct described above does not support a hostile work environment. Stated another way, the gender-neutral conduct attributed to Commissioner Hiett does not contribute to the reported statement,

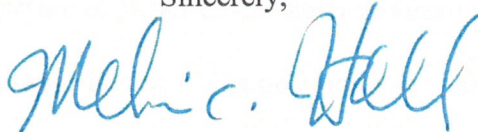
because the reported statement by itself does not rise to the level of creating a hostile work environment.

FINDING AND CONCLUSION

In sum, it is the finding of this law firm that the comment reportedly made by Commissioner Todd Hiatt to an OCC employee on June 21, 2023 was “isolated” and not sufficiently egregious to amount to discriminatory changes in the terms and conditions of employment. In addition, OCC discharged its obligation to protect its employees by retaining this law firm to independently and confidentially investigate all information that was voluntarily submitted for review and consideration.

Should you have any questions regarding this report, kindly let me know.

Sincerely,



Melvin Hall
FOR THE FIRM