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By Electronic Mail
March 22, 2021

Attorney General Letitia James
Office of the Attorney General
The Capitol
Albany, NY 12224
Email: Letitia.james@ag.ny.gov

Re: Charlotte Bennett/Governor Andrew Cuomo

Dear Attorney General James:

I am writing on behalf of my client, Charlotte Bennett, to share our concerns regarding recent reporting that the Executive Chamber is providing staffers with in-house attorneys to meet with them in advance of their investigatory interviews with Joon Kim and Anne Clark and to attend those interviews with them. See Albany Times Union, “Official: Cuomo’s office conducting its own ‘inquiry’ of groping allegation” (March 17, 2021). It is my understanding that these attorneys are also “debriefing” staffers after their interviews with investigators. This is highly improper and we object in the strongest possible terms to this obvious interference with what you have stated would be a “thorough and independent” investigation.

The Executive Chamber’s decision to provide staffers with in-house attorneys to advise them and accompany them to interviews will have a chilling effect on potential witnesses or other accusers who wish to come forward but fear job-related retaliation if they tell the investigators about the Governor’s sexual harassing behavior and the misconduct of those around him. Witnesses with whom I have spoken fear retaliation if they refuse to cooperate with the Executive Chamber’s lawyers and feel constrained from sharing information about the Governor’s misconduct and the sexually hostile work environment in which they have been forced to work with the Governor’s lawyers present. We believe that this offer of counsel constitutes a deliberate attempt by the Governor to interfere with your office’s investigation.

Best practices dictate that an employer’s in-house counsel not attend an investigation conducted by outside counsel because their presence may be detrimental to the perceived independence of the investigation. *See, e.g., O’Melveny & Meyers LLP, “In-House Counsel’s Guide to Conducting Internal Investigations,”* at 37 (January 2020) (“If [an] investigation is being conducted by outside counsel, in-house counsel ordinarily should not attend interviews. Depending on the circumstances, the presence of in-house counsel may jeopardize the perceived independence of the investigation. . . .”). Indeed the involvement of Executive Chamber attorneys before, during, and after staffers’ interviews will most certainly deter those with relevant information about Ms. Bennett’s and others’ allegations of sexual harassment –

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individuals inside the Executive Chamber – from coming forward, at all, because of perceived bias in the investigation or fear of retaliation.

Their fear of retaliation is well-founded. The EEOC's Select Task Force on the Study of Harassment in the Workplace, available at https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf, documented that 75% of employees who spoke out against workplace mistreatment faced some form of retaliation. Other studies have found that sexual harassment reporting is often followed by organizational indifference or trivialization of the harassment complaint as well as hostility and reprisals against the victim. The EEOC Select Task Force also confirmed that the vast majority of employees who experience harassment "fail to report the behavior or to file a complaint because they anticipate and fear a number of reactions - disbelief of their claim; inaction on their claim; receipt of blame for causing the offending actions; social retaliation (including humiliation and ostracism); and professional retaliation, such as damage to their career and reputation." Select Task Force at 16. According to one 2003 study, two-thirds of employees who spoke out against workplace harassment faced some form of professional or social retaliation for doing so. Lilia M. Cortina & Vicki J. Magley, *Raising Voice, Risking Retaliation: Events Following Interpersonal Mistreatment in the Workplace*, 8:4 J. OCCUPATIONAL HEALTH PSYCHOL. 247-265 (2003).

We urge you to issue a directive to the Governor to cease this highly improper practice. This is necessary to restore credibility to this investigation and to assure victims of harassment and witnesses to the Executive Chamber's misconduct that the investigation will be fair and untainted by this type of improper influence.


Additionally, as was also reported by the Albany Times Union, the Governor has claimed that your office "directed [the Executive Chamber] to continue [its] own inquiry" into allegations that the Governor groped a female aide at the Executive Mansion late last year, setting off what is effectively a parallel investigation. As you know, the legal responsibility for investigating complaints of workplace harassment within the Executive Chamber belongs to the Governor's Office of Employee Relations (GOER). Governor Cuomo, himself, authorized GOER to investigate complaints within the Executive Chamber "to promote more effective, complete and timely investigation of complaints" in his Executive Order No. 187. The Executive Department's employee handbook expressly requires "any complaint" of sexual harassment to be investigated by GOER, and mandates that "any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature must report such conduct to [GOER] so that it can be investigated."

Though your office did not officially respond to questions about the Executive Chamber's parallel investigation into these allegations, a source within your office denied that it had "directed" the Chamber to undertake it. Coupled with the Executive Chamber's failure to adequately address Ms. Bennett's allegations, this maneuver clearly demonstrates its unwillingness to use the proper channels for reporting and investigating complaints of sexual harassment. It therefore is critical that you issue a public statement clarifying that the Attorney

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General's office was not made aware of and did not approve the Executive Chamber's internal "inquiry" into allegations of sexual harassment and assault, which is being conducted in violation of the Governor's own Executive Order. Otherwise, this unauthorized parallel investigation will continue to undermine the legitimacy of the thorough, independent investigation being conducted by your office.

Sincerely,



Debra S. Katz
Attorney for Charlotte Bennett

cc: Ms. Charlotte Bennett

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