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SENATE RULES COMMITTEE

KEVIN DE LEÓN
CHAIR

March 6, 2018

The Honorable Robert Hertzberg
State Capitol, Room 4038
Sacramento, California 95814

Dear Senator Hertzberg,

The Rules Committee of the California State Senate retained Gibson, Dunn & Crutcher, LLP and Van Dermeyden Maddux Law Corporation to conduct an independent investigation into complaints against you that were reported in the press. The Rules Committee initiated this investigation following reports in the press that you engaged in uninvited hugging that made female legislators uncomfortable, as reported by a former Assemblywoman ("Former Assemblywoman") as well as a sitting Assemblywoman ("Assemblywoman") and a sitting female Senator ("Senator").

The Former Assemblywoman alleged that during her freshman year in the Assembly in 2010, you hugged her multiple times in a manner that was unwanted, and continued to do so even after she asked you to stop. The investigators made multiple attempts to interview the Former Assemblywoman to learn more about her perspective and encourage her participation in the investigation. Ultimately, she did not make herself available for an interview. Therefore, the investigators relied on her multiple statements to the media and written responses by her in assessing her claims.

In subsequent press reports, the Senator reported that you hugged her in a very "intimate" manner on one occasion that made her uncomfortable, and the Assemblywoman reported that she "yelled" at you at a public event in early 2015 for inappropriately hugging her after she had previously told you that your hugs made her feel uncomfortable.

During the pendency of this review, the investigators investigated one additional complaint. Specifically, a Senate Sergeant-at-Arms complained that you backed into him in a manner that was unwelcome and offensive to the Sergeant.

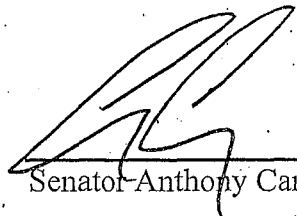
After a full review of the information presented and collected, and applying the preponderance of the evidence standard, the investigators made the following findings:

- 1) The record does not support a finding that you hugged the Former Assemblywoman multiple times in a manner that was unwanted or that you continued to do so even after she asked you to stop. However, in 2010, you likely hugged her on one occasion and likely hugged others on that day, as was your practice.
- 2) In 2015, you hugged the Senator on one occasion in a manner that made her uncomfortable, but did not repeat the conduct after she told you to stop.
- 3) In 2015, you hugged the Assemblywoman more than once in a manner that made her uncomfortable, but you were not aware that the hugs were unwelcome.
- 4) In 2016, you danced briefly with your backside against a Sergeant-at-Arms in a manner that was unwanted and made the Sergeant uncomfortable.

A copy of the summary of the findings of the investigation is attached. Based on the above findings and mitigating factors, such as the fact that the majority of the hugs are not unwelcome, the motivation is not sexual in nature, you were not given sufficient details regarding past complaints (which may have made you change your behavior) and you expressed remorse, the Senate Rules Committee is giving you this letter of reprimand. The behavior with the Sergeant was inappropriate. In addition, consistent with the fact that you have been counseled in the past, the Senate Rules Committee instructs you that you are now on notice that your behavior has been unwelcome. The Rules Committee also instructs you not to initiate hugs. You cannot solve the problem by asking someone if a hug is unwelcome or welcome because a person may not feel comfortable telling you it is unwelcome. Any further similar behavior will result in the Rules Committee recommending more severe discipline.



Senator Kevin de León, Chair



Senator Anthony Cannella, Vice Chair



Senator Tony Atkins



Senator Tom Berryhill