THE
HOMER
LAW FIRM PC

Fifth Avenue Station
200 E. 5th Avenue, Suite 123
Naperville, IL 60563
ph: 630-428-3311
fx: 630-428-3344
www.homerlawoffices.com

WRITTEN TESTIMONY OF THOMAS J. HOMER

TO: House Sexual Discrimination and Harassment Task Force

FROM: Thomas J. Homer, Former Legislative Inspector General

DATE: July 30, 2018

Thank you for the opportunity to appear before the task force. By way of background, I served as the Legislative Inspector General from July 24, 2004 – June 30, 2014. My professional career includes 36 years of public service as State's Attorney (8 years), Legislator (12 years), Appellate Court Justice (6 years) and Legislative Inspector General (10 years). Since 2004, I have operated my own law firm in Naperville. Last year, I was appointed by Governor Rauner to serve as a public member on the Illinois Board of Examiners, the agency that determines eligibility and administers testing for CPA candidates.

I applaud the efforts of the General Assembly and your task force to foster and promote legislation designed to address the important subject of sexual discrimination and harassment. Today's hearing is central to that goal and I am pleased to have been invited to testify.

In 1967, the General Assembly enacted the Illinois Governmental Ethics Act (5 ILCS 420/1-101 et seq.), which prohibits certain restricted activities and sets forth a code of conduct for legislators. Although enforcement provisions were lacking – most of the provisions were "intended only as guides to conduct, and not as rules meant to be enforced by penalties", Section 3-107 providing that "no legislator may engage in conduct which is unbecoming to a legislator or which constitutes a breach of public trust" has been relied upon by me and my successor in resolving complaints that otherwise would have been unfounded. The requirement for legislators and certain other officials to file Statements of Economic Interest has its origin in the 1967 Act.

In 2003 the General Assembly took an additional significant step in ethics reform with the passage of the State Officials and Employees Ethics Act. This comprehensive legislation was well thought out and established a process for the orderly investigation and adjudication of certain enumerated ethics violations. Prohibited political activity was defined and prohibited. Campaign contributions were banned on State Property. Fundraising in Sangamon

County was prohibited on days when the General Assembly is in session. Legislators and legislative employees and members of their families were banned for one year from accepting employment with a company if the State employee participated substantially in a state contract awarding $25,000 or more to a prospective employer. This is referred to as the Revolving Door Prohibition. The Gift Ban Act prohibitions were added to the Act making it unlawful for legislators and State employees to accept gifts from lobbyists. Ex parte communications made by interested parties to regulatory agencies must be reported. Whistleblower protections are accorded state employees who bring forth evidence of wrongdoing by state officials or other state employees. Persons having a financial interest in contracts with an entity are prohibited from serving on boards and commissions which oversee the entity. The Act also mandates an ethics training program for all covered employees.

Then in 2009, the General Assembly enacted additional reforms, including the authorization for the inspector general to self-initiate investigations and enabled the inspector general to consider anonymous complaints (both of which were previously prohibited). Another important reform added by the 2009 Act was the mandatory publication of summary reports (and responses) that resulted in a suspension of at least 3 days. 5 ILCS 430/25-52) Of course, it must be noted that legislators are not subject to this provision since there is no authority to suspend legislators.

The recent action taken by the General Assembly was a further step in the right direction, particularly the inclusion of sexual harassment as an ethics violation and extending authorization for investigating such complaints without the necessity of seeking permission from the Legislative Ethics Commission.

Taken together the previous legislation is far reaching and has provided an important framework for the implementation ethics reforms. However, more can and should be done.

One of the main criticisms of the Act has been the lack of transparency due to the strict confidentiality provisions. In an attempt to protect the privacy rights of the subject of the complaint, the legislation limits the parties who are entitled to receive information relative to the complaint and investigation.

Section 25-50 of the Act (5 ILCS 530/25-50) provides that if the Inspector General, upon the conclusion of an investigation, determines that reasonable cause exists to believe that a violation has occurred, then the Inspector General shall deliver a summary report of the investigation "to the appropriate ultimate jurisdictional authority and to the head of each state agency affected by or involved in the investigation, if appropriate." Section 25-50 (c) of the Act provides that the legislative inspector general "shall keep confidential and shall not disclose information exempted from disclosure under the Freedom of Information Act or by this Act."

While it is understandable that the General Assembly desires to protect the innocent from the public revelation of alleged wrongdoing, the same provisions

have served to thwart the public's right-to-know and have served to undermine public confidence in the process.

It has been proposed by others, including former executive inspectors general for the office of the governor that all final founded reports issued by the IG's be subject to publication. So far the General Assembly, other than mandating publication of summary reports that result in suspensions of three or more days, has rejected more liberal publication proposals.

In the spirit of legislative compromise, I propose that the legislature amend the current statute to require that all founded reports (with responses and dispositions) be made available to the public unless specifically rejected by the Commission. The legislature could set forth the criteria by which the Commission is to make the decision to publicize a report. The criteria may include such factors as the seriousness of the infraction and the public's right to know. A redaction requirement could be included to minimize the potential deleterious impact on the accused and innocent individuals. In this way, oversight by the Commission will be provided, the independence of the office of the Inspectors Generals preserved, and the privacy rights of the accused be balanced against the public's right to know. While this compromise falls short of giving the Commission the right to approve or reject disciplinary dispositions, as Mr. Turow has proposed, it would provide oversight and transparency that is not available under the current statutory scheme. I believe that such legislative amendments to the Act will go a long way toward addressing the various concerns that have been expressed without unduly interfering with the independent role of the Inspectors General or violating the privacy rights of the parties.

I would further recommend that the Legislative Ethics Commission be expanded to include one public member, selected by the Commission. Currently there are four Democrats and four Republicans, two each selected by the four Legislative leaders. This bi-partisan, bi-cameral split lends itself to party-line votes which deny a majority. Adding a ninth member to the Commission would avoid such deadlocks.

In further promotion of transparency, I believe that there is at least one additional matter that should be considered. Under the current statutory scheme, all investigatory files and reports of the Inspectors General, other than quarterly reports, are to be kept confidential, and shall not be divulged except as necessary (i) to the appropriate law enforcement authority, (ii) to the ultimate jurisdiction authority, or (iii) to the appropriate ethics commission. See 5 ILCS 430/20-95 and 5 ILCS 430/25-95. The statue does not specifically authorize an IG to inform a complainant of the status or ultimate disposition of the complaint. It is my understanding that at least one of the EIGs has taken the position that complainants are not entitled to any notification. Although I do not read the current statute as precluding general notification of disposition to the complainant, I believe that the IGs should be specifically authorized to notify complainants of the disposition of their complaints. Unless an IG has the authority to inform a complainant, at least in general terms, of the disposition

of the complaint, the matter lacks closure. The failure to communicate with the complainant can lead to unwarranted speculation as to what if any action was taken with respect to the complaint.

I further recommend that the Legislative Ethics Commission repeal Rule 17-25 which requires the Legislative Inspector General to obtain approval from the Commission to initiate investigations. While the recent legislation deleted the requirement for sexual harassment complaints, the independence of the Legislative Inspector General is of paramount importance and should extend to investigations of all complaints.

Separately, I propose that section 25-5(d) of the State Officials and Employees Ethics Act (the Act) ((5 ILCS 430/25-5(d)) be amended. This section limits jurisdiction of the Legislative Ethics Commission to matters arising under the Act. The Commission was not given jurisdiction over matters arising under the Illinois Governmental Ethics Act (5 ILCS 420/1-101 et seq.). The Governmental Ethics Act, which was enacted in 1967, prohibits certain restricted activities and sets forth a code of conduct for legislators. Although my office has jurisdiction to investigate alleged violations of the Governmental Ethics Act ((see 5 ILCS 430/25-10(c)), the Legislative Ethics Commission is without jurisdiction to hear such matters ((see 5 ILCS 430/25-5(d)). The potential harm that could result from this dichotomy is apparent and foreseeable. When my office receives a complaint alleging that a member of the General Assembly has violated the Illinois Governmental Ethics Act, for example by accepting an honorarium prohibited by that Act, I am compelled to investigate the complaint. However, where I conclude that the complaint was founded, the Commission is without jurisdiction to consider the matter. This scenario can lead to a lack of enforcement and serves to undermine public confidence in the integrity of the investigatory process. Consequently, I recommend that section 25-5(d) of the Act be amended to extend the jurisdiction of the Legislative Ethics Commission to violations of Article 2 (Restricted Activities) and Article 3, Part 1 (Rules of Conduct for Legislators) of the Illinois Governmental Ethics Act as well as for violations of other rules and laws. I further recommend that section 25-95(b) of the Act be amended to authorize the Legislative Ethics Commission to impose administrative fines for violations of those provisions.

Thank you for your consideration and for providing a forum for the airing of these important issues.