



**SEBRIS
BUSTO
JAMES**

Jillian Barron
(425) 450-0111
jbarron@sbj.law

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Port of Seattle Commission Board of Ethics
William Barret, Co-Chair
Josh Friedmann, Co-Chair
Lindsay Pulsifer, Member

Re: Commissioner Code of Ethics Investigation

Dear Board,

At your request, and on behalf of the Port of Seattle (“Port”) Commission’s Board of Ethics (or “Board”), I have conducted an investigation of a complaint about conduct by Port Commissioner Fred Felleman that may violate the Code of Ethics for Port Commissioners (“Commissioner Code”) and other Port policies and standards (referred to collectively as “policies”). This report summarizes my investigation, findings, and conclusions.

I. Summary of Allegations and Conclusions

The complaint alleges that Commissioner Felleman may have violated applicable policies in the following ways:

1. In violation of the Commissioner Code, using his position as a Port commissioner to secure special privileges or exemptions for himself and/or seeking special consideration, treatment, or advantage from others.
2. In violation of Port policies, retaliating against a Port employee for taking a position contrary to the Commissioner’s personal interests.
3. In violation of Port policies, as incorporated in the Commissioner Code, discriminating against one of the complainants based on gender.

In brief, my investigation has substantiated that, though the benefits he sought were not of a monetary nature, Commissioner Felleman, using his position as a Port commissioner, sought special privileges, consideration, and treatment for himself personally. The evidence also shows that although the necessary elements of a formal retaliation claim do not appear to have been met, he used his commissioner position to retaliate against a Port employee he believed had opposed a request Commissioner Felleman made to an outside organization in his personal capacity. The investigation has not revealed by a preponderance of the evidence that gender

played a role in Commissioner Felleman’s differential treatment of a [20-Emp. Inv.] employee and [20-Emp. Inv.] [20-Emp. Inv.] coworker.

II. Investigative Procedure

I interviewed the following individuals via Zoom or, in a couple of cases, in person. In some cases, I conducted follow-up interviews via Zoom or phone.

- Commissioner Felleman (or “the Commissioner”)¹
[20-Emp. Inv.]

In addition, I have reviewed a number of documents, including: the Commissioner Code and related resolutions and amendments; the Port Code of Ethics and Workplace Responsibility; the Port Statement of Values; and numerous email and text communications between and among Commissioner Felleman, other witnesses, and non-witness third parties. If you request, I can provide a more detailed list or copies of the documents I have reviewed.

¹ Commissioner Felleman is represented in this investigation by an attorney, Steffanie Fain, who was present during his interview sessions and with whom I exchanged follow-up communications. Although there are a few references to him in his capacity as a private party, for consistency and convenience, this report uniformly refers to him as Commissioner Felleman.

² As noted below, [20-Emp. Inv.] was included in emails among the QS Leadership Committee relevant to this investigation. Although [20-Emp. Inv.] did not identify [20-Emp. Inv.] during [20-Emp. Inv.] interview as a member of the Leadership Committee, [20-Emp. Inv.] inclusion in those emails indicates [20-Emp. Inv.] is likely an LC member.

III. Factual Evidence³

A. General Background of Commissioner Felleman and Quiet Sound

Commissioner Felleman has served on the Port Commission since 2016. He has Bachelor's and Master's degrees in Science and describes himself as a leader in the advancement of marine conservation and maritime safety in the Pacific Northwest. He has a particular interest in Southern Resident Killer Whales ("orcas"). Since 1989, he has been the sole proprietor of Wildlife and Visual Enterprises ("WAVE"), a private consulting firm that has had contracts with local, state, federal, and tribal governments, as well as nongovernmental organizations ("NGOs"), to advance the conservation of Pacific Northwest marine waters. He has continued his private consulting business while serving as a commissioner—dual roles he says are not only permitted but also necessary because the commissioner position is considered to be and is compensated as a half-time job.

In March of 2018, Governor Inslee established the Southern Resident Orca Task Force through Executive Order 18-02 "to identify, prioritize, and support the implementation of a longer-term action plan needed for the recovery of Southern Residents and necessary to secure a healthy and sustained population for the future." In his capacity as a representative of the Port, Commissioner Felleman was a working group member on the Task Force. Eventually, Quiet Sound was created as a program under the auspices of Maritime Blue (or "MB"), an NGO, with the goal of reducing the disruptive impact of large commercial vessels, particularly their underwater noise, on orcas. In his role as Port Commissioner, Commissioner Felleman supported Port and state funding for Quiet Sound.

Commissioner Felleman wanted to be part of the decision-making body for Quiet Sound—a group now referred to as the Leadership Committee (or "LC")—and he made his desire known. He worked with people at the NWSA and the Port to create an NWSA representative position on the Leadership Committee, a position he assumed he would fill due to his background and expertise in the field.⁴ However, the group planning Quiet Sound's formation and structure ultimately concluded that to foster open discussion and avoid power discrepancies, the Leadership Committee should include only staff members from the participating organizations but no elected officials.⁵ Quiet Sound periodically provided updates on its activities to interested officials and others, including a committee of NWSA managing

³ The facts described here are supported by the evidence I have obtained and appear to generally be undisputed in material respects unless otherwise noted.

⁴ The NWSA is governed by the Ports of Seattle and Tacoma as equal members, with each port acting through its five elected commissioners, who serve as managing members of the NWSA. Thus, had Commissioner Felleman served as a representative of NWSA on the Quiet Sound Leadership Committee, he would have done so in his capacity as a Port commissioner, not as a private consultant.

⁵ Certain Tribal elected officials are excepted from the general rule and may serve on the Leadership Committee.

members on which Commissioner Felleman served. Currently, two Port staff members serve on the Leadership Committee— [REDACTED] and, as [REDACTED] alternate, [REDACTED].⁶

B. Commissioner Felleman Requests to Observe Quiet Sound Leadership Committee Meetings in his Private Capacity

Commissioner Felleman was not happy with his inability to play a significant role in Quiet Sound’s leadership. He decided that since he had been told he could not participate as a commissioner, he would ask to do so in his private capacity.

On August 24, 2022,⁷ Commissioner Felleman sent an email to [REDACTED] and the members of the Leadership Committee (also referred to as the “August 24 request”), saying:

Dear Quiet Sound Leadership Committee –

I would like to formerly (sic) request the ability to observe the quarterly meetings of the Leadership Committee. I understand you make decisions by consensus which is why I have copied all of you who I believe are members.

Thank you for your consideration.

Fred

Fred Felleman,
Principal, WAVE Consulting
206.595.3825

Commissioner Felleman’s email did not identify the reason(s) he wanted to observe LC meetings. When asked during this investigation why he wished to observe, he said he wanted Quiet Sound to succeed, and he could help its members avoid “stumbling” by providing advice *before* they took action.⁸ He says his intent was not to provide advice during meetings; rather, he would quietly listen to the discussion, but then, if he heard something he thought he could be helpful with, he could talk to the person “offline” and offer his assistance.⁹

⁶ Currently, 12 organizations are represented on the Leadership Committee, with each having a primary and alternate representative, both of whom may attend meetings at the same time.

⁷ The remainder of the dates referred to in this report are from 2022, unless specifically noted.

⁸ As an example of why he believed his input would be beneficial, Commissioner Felleman described a situation in which Port staff asked for his assistance in dealing with another maritime organization. He says he provided input to staff in his personal capacity on that occasion but he could have been more helpful if he had been brought into the situation earlier. Port staff describing what appears to be the same situation say that after they took Commissioner Felleman up on his offer of assistance, he said staff were doing things wrong and didn’t want to help them unless they did things his way.

⁹ One witness says Commissioner Felleman indicated the reason he wanted to observe LC meetings was that he knows best, the Leadership Committee was “screwing it up,” and he wanted to give his input.

At the time [20-Emp. Inv.] received his August 24 request, [20-Emp. Inv.] understood Commissioner Felleman to be asking to observe LC meetings in his capacity as a Commissioner.¹⁰ The Leadership Committee had already decided its meetings would be closed to outside parties as a general rule, though outsiders could be invited to speak on specific agenda topics. [20-Emp. Inv.] says [20-Emp. Inv.] was a meeting facilitator before [20-Emp. Inv.] took the Quiet Sound position and [20-Emp. Inv.] believed observers in their meetings would change the group's dynamics. [20-Emp. Inv.] was therefore inclined to turn down Commissioner Felleman's request, but [20-Emp. Inv.] wanted to get the Leadership Committee's input before proceeding.

Upon receiving Commissioner Felleman's August 24 request, [20-Emp. Inv.] forwarded it to [20-Emp. Inv.], [20-Emp. Inv.], and [20-Emp. Inv.], Sarah Ogier. [20-Emp. Inv.] says [20-Emp. Inv.] did so because the request came from a commissioner, and [20-Emp. Inv.] anticipated that if the request was denied there would be blowback. [20-Emp. Inv.] forwarding email noted that the Port already had representation on the Leadership Committee, so the utility of the request was unclear.¹¹ In a subsequent email to [20-Emp. Inv.] and Ms. Ogier, [20-Emp. Inv.] expressed concern that Commissioner Felleman would not be a silent observer and rather was seeking to insert himself into Quiet Sound's decision-making process.¹² [20-Emp. Inv.] sought legal advice about the request from Port counsel.

[20-Emp. Inv.] also reached out to [20-Emp. Inv.] to get [20-Emp. Inv.] perspective on Commissioner Felleman's August 24 request. [20-Emp. Inv.] responded that [20-Emp. Inv.] wasn't sure of the Commissioner's motive for observing meetings, and the Leadership Committee had already come to the consensus that they wanted closed meetings. Still, noting the Commissioner's decision-making role over essential future Quiet Sound funding, [20-Emp. Inv.] pondered how Quiet Sound might meet his needs while respecting the leadership group's prior consensus; [20-Emp. Inv.] suggested the possibility of briefing Commissioner Felleman or giving him a special guest spot at a future meeting.¹³

On the morning of August 26, [20-Emp. Inv.] emailed the Leadership Committee, forwarding Commissioner Felleman's August 24 request. [20-Emp. Inv.] said:

¹⁰ Commissioner Felleman acknowledges he has sometimes sent emails related to his activities as a commissioner from the personal email address he uses for his consulting business; he has access to both his Port and his personal email accounts on his personal phone and computer and occasionally is "sloppy" in his use of his personal email account for activities related to his Port position. I found examples of such emails in a term search of his Port account, for example, emails from his personal address to Commission staff regarding setting up meetings he says were part of his Port work.

¹¹ Like [20-Emp. Inv.], [20-Emp. Inv.] appears to have initially assumed the request was made in Commissioner Felleman's official capacity.

¹² I found no evidence that [20-Emp. Inv.] shared this concern other than with [20-Emp. Inv.] Port superiors. The evidence shows [20-Emp. Inv.] accurately assessed Commissioner Felleman's intention to participate in Quiet Sound's decision-making, albeit purportedly by providing his views to LC members behind the scenes.

¹³ Although their emails reference a possible phone call to discuss the matter, and [20-Emp. Inv.] and [20-Emp. Inv.] believe they probably did speak with each other, neither recalls the specific details of their discussion. [20-Emp. Inv.] imagines [20-Emp. Inv.] said [20-Emp. Inv.] didn't think it was appropriate for Commissioner Felleman to observe and asked if [20-Emp. Inv.] had any feelings to the contrary. [20-Emp. Inv.] says [20-Emp. Inv.] would have said no.

I've heard from a couple folks in the LC already that this doesn't seem conducive to our collaborative brainstorming space, and they would prefer that the Commissioner does not regularly attend meetings. My recommendation is that we reiterate our offer to brief the Commissioner, with participation from LC members and QS staff. We could also explore the Commissioner being on the agenda for part of a future QS meeting where he could share his thoughts and hear from the group.

20-Emp. Inv. asked people to try to get back to 20-Emp. Inv. by the end of the following week if they had urgent thoughts on the request. Otherwise, 20-Emp. Inv. planned to re-offer Commissioner Felleman a personal briefing.

Also on the morning of August 26, 20-Emp. Inv. responded to Commissioner Felleman's request:

Hello Commissioner Felleman,

Thank you for your email and interest in Quiet Sound. The Leadership Committee will consider your request and let you know. In the meantime, Maritime Blue and Quiet Sound would be very happy to meet with you and brief you on the progress of our major projects and our upcoming fall initiatives, including a trial of a voluntary vessel slowdown. If that's of interest, 20-Emp. Inv. and I can organize a briefing and invite Leadership Committee members to participate.

Commissioner Felleman responded to 20-Emp. Inv. August 26 email that afternoon:

20-Emp. Inv. - Thank you for your consideration of my request and offer for a briefing.

As you will note by the email address, I am making this request in my capacity as an environmental consultant.

In case you or other LC members are unaware, I have been involved in the study of SRKWs since 1980 and earned an MSc in Fisheries Biology from the UW in 1986 studying their feeding ecology.

I continue my whale-related work in that capacity as you know from our participation in Harbor Safety and Sanctuary meetings.

Given that commissioners are only compensated part time, I must retain both my capacities and expect that the LC, like the other fora in which I participate, understand that necessity.

And just to reiterate, I am not asking for membership on the LC, but simply to observe meetings thereof.

On the morning of August 29, Commissioner Felleman sent another copy of his August 26 message—clarifying that his request to observe was made in his capacity as a private consultant—to [20-Emp. Inv.] to be shared with the Leadership Committee.

In the meantime, LC members had responded to [20-Emp. Inv.] about Commissioner Felleman’s original August 24 request to observe LC meetings. [20-Emp. Inv.] says [20-Emp. Inv.] received four responses from LC members almost immediately after [20-Emp. Inv.] August 26 email to the LC, all of them saying LC meetings should remain closed to outsiders. [20-Emp. Inv.] also received a few other emails and spoke with some members by phone. [20-Emp. Inv.] says there was a consensus that members wanted to continue with closed meetings and that briefings would be an appropriate alternative to allowing outsiders to observe meetings.

[20-Emp. Inv.] was one of the people who quickly responded to [20-Emp. Inv.] August 26 email to the LC. In an email to [20-Emp. Inv.] and other LC members, [20-Emp. Inv.] expressed a couple of concerns: (1) that if LC meetings became “open meetings,” many others would request entry, making the meetings more difficult to manage and potentially chilling candid, free-flowing conversation; and (2) having an elected official in LC meetings, especially one involved in funding, would exacerbate that effect, regardless of whether the official attended in their public or private capacity. [20-Emp. Inv.] also said, however, that it was important that Quiet Sound information be freely shared outside the committee and that there be mechanisms for taking input from interested parties. [20-Emp. Inv.] noted several paths through which Commissioner Felleman could ask questions and provide input.

On August 29, [20-Emp. Inv.] followed up on [20-Emp. Inv.] email message, like [20-Emp. Inv.], copying other LC members:

[20-Emp. Inv.], thank you for sharing this with the Leadership Committee. Within the Operating Procedures, I believe there are methods to share information with interested external parties. I recommend we implement those procedures in this case and re-iterate to Com. Felleman the additional opportunities (at MB board retreat, annual QS briefings) for updates on QS.

Witnesses say that other than [20-Emp. Inv.] emails to the Leadership Committee, [20-Emp. Inv.] and [20-Emp. Inv.] emails were the only ones sharing members’ views on Commissioner Felleman’s request with the whole group. Other LC members emailed or spoke with [20-Emp. Inv.]

20-Emp. Inv. privately, or in some cases communicated with one another individually about the request.¹⁴

On the afternoon of August 29, 20-Emp. Inv. conveyed to Commissioner Felleman what 20-Emp. Inv. describes as the Leadership Committee's consensus decision:

Hello Fred,

Thank you again for your interest in and support of Quiet Sound.

I've consulted with the Quiet Sound Leadership Committee, who will also receive this email. The group reaffirmed their agreement that the collaboration and problem-solving process at their meetings benefits from a closed-door policy. We're particularly not able to invite outside consultants as observers into the meetings, as we'd like to avoid partiality among professionals in the field.

We will continue to post meeting summaries on the Quiet Sound website. And, whether you are wearing your consultant or Commissioner hat, here are several other opportunities for you to engage with Quiet Sound:

- In your capacity as a Commissioner, we're happy to meet with you and brief you on our work, along with LC members
- We hope to have a fall briefing for elected officials related to the trial slowdown this fall and will invite the Port of Seattle Commissioners to attend
- We are planning a briefing and meet and greet for NGO partners as we head into the upcoming state legislative session and conduct budget outreach with elected officials

Please be in touch if I can help organize a briefing for you. We'll be in touch as we head towards other organized open-door meetings.

Witnesses say the decision regarding Commissioner Felleman's request was not personal to him. Rather, it reflected the desire to maintain the kind of candid discussion enabled by closed meetings. In addition, there was concern that if Commissioner Felleman were allowed to observe meetings, Quiet Sound would have to grant similar requests from others.

¹⁴ For example, one LC member sent individual emails to 20-Emp. Inv. and 20-Emp. Inv., agreeing with the thoughts expressed in their emails about Commissioner Felleman's request. In order to preserve the confidentiality of non-Port LC members who did not directly communicate with Port staff about the Commissioner's request, and because I was retained by Port counsel and do not have any authority to require production of information outside the Port, I have not requested that 20-Emp. Inv. provide additional details of 20-Emp. Inv. discussions or copies of emails 20-Emp. Inv. received from non-Port LC members. Such communications do not appear determinative of the issues in this investigation in any event.

At the same time, witnesses indicate Commissioner Felleman’s role as a commissioner had an impact on their consideration of his request. It would have been difficult from their perspective to separate his role as an elected official—particularly an official with some say in Quiet Sound’s funding—from that of his announced role as a private consultant. In fact, [20-Emp. Inv.] says, [20-Emp. Inv.] took Commissioner Felleman’s request under consideration only *because* of his role as a commissioner; had a purely private consultant with no such public role requested to observe Committee meetings, [20-Emp. Inv.] would have simply said, “No.”

C. Commissioner Felleman Advocates for His Request While it is Pending

Commissioner Felleman says he thought his request to observe Quiet Sound Leadership Committee meetings was a “no-brainer,” so he didn’t actively lobby for it or ask others for support before the decision was made. He acknowledges he spoke to [20-Emp. Inv.] and [20-Emp. Inv.], respectively [20-Emp. Inv.], about his request while it was pending, but he says he just did so in passing, during their [20-Emp. Inv.] interactions, and he denies he asked for their support. He says he criticizes himself for not lining up his ducks beforehand, but he didn’t think it was a big deal.

[20-Emp. Inv.] says Commissioner Felleman spoke to [20-Emp. Inv.] on multiple occasions about the Commissioner’s desire and request to participate in the Leadership Committee, including at least once while the request was pending. [20-Emp. Inv.] has difficulty recalling the details of each individual conversation, but [20-Emp. Inv.] says the common theme was Commissioner Felleman expressing his frustration about not being allowed to participate in the Leadership Committee and his belief that it was a missed opportunity for the Leadership Committee and Quiet Sound given his expertise in the area.

After one such occasion while Commissioner Felleman’s request to observe LC meetings was pending, [20-Emp. Inv.] shared with [20-Emp. Inv.] that the Commissioner had spoken with [20-Emp. Inv.] about the request; [20-Emp. Inv.] told [20-Emp. Inv.] the Commissioner was agitated, gave [20-Emp. Inv.] “an earful,” and wasn’t going to let the issue go. [20-Emp. Inv.] does not recall Commissioner Felleman saying anything like, “You should do whatever you can to get me to be able to observe.” Rather, the Commissioner spoke about his expertise and his belief that Quiet Sound would not be as successful without the Commissioner’s involvement. When asked whether the Commissioner pressured [20-Emp. Inv.] to support his request, [20-Emp. Inv.] says that is a tricky issue, because staff members have difficulty expressing disagreement with a commissioner, never want to disappoint them, and always want to support their needs. [20-Emp. Inv.] notes that staff has difficulty separating a commissioner’s private role from their public one, particularly when the issues involved are the same.

[20-Emp. Inv.] says that a few months after the Leadership Committee denied Commissioner Felleman’s request, an LC member told [20-Emp. Inv.] that the Commissioner had called the member some months earlier and said something like, “Hey, I want to come to these meetings. Pull some strings, get me into these meetings.” According to [20-Emp. Inv.], the LC member said

they told the Commissioner it would be an uphill battle and not to push it; the LC member wasn't going to go against the consensus.¹⁵ [20-Emp. Inv.] says the LC member is a [20-Emp. Inv.] [20-Emp. Inv.] for which the Commissioner has worked as a private consultant and the two have a good relationship. During [20-Emp. Inv.] interview, [20-Emp. Inv.] refused to provide the individual's name. In response to my follow-up email, [20-Emp. Inv.] said [20-Emp. Inv.] had checked with the individual and they preferred not to be identified.¹⁶

D. Commissioner Felleman Receives Informal Guidance About the Problematic Nature of His Request to Observe Quiet Sound LC Meetings

[20-Emp. Inv.] informed [20-Emp. Inv.] about [20-Emp. Inv.] description of Commissioner Felleman's conversation while the Commissioner's August 24 request was still pending. [20-Emp. Inv.] was concerned that despite the Commissioner saying his request was to observe LC meetings in his capacity as a private consultant, the Commissioner had raised his request with [20-Emp. Inv.] while acting in his commissioner role, and he might try to further leverage his public role to seek an outcome favorable to him as a private party—actions [20-Emp. Inv.] considered unethical. [20-Emp. Inv.] passed on [20-Emp. Inv.] concern to [20-Emp. Inv.] in the hope that [20-Emp. Inv.] would ask [20-Emp. Inv.] [20-Emp. Inv.] to head off any potential unethical conduct by Commissioner Felleman.

On August 31 or September 1, [20-Emp. Inv.] spoke with [20-Emp. Inv.], who in turn spoke with Commissioner Felleman about the situation in early September. Given that the Commissioner had been one of the main people supporting the formation and funding of Quiet Sound, [20-Emp. Inv.] did not believe it was realistic or beneficial for the Commissioner to ask to participate or actually participate in LC meetings as a private citizen. [20-Emp. Inv.] explains that such a situation would cause consternation and problems for LC members since everyone knows the Commissioner's role as a public official; as a practical matter, they can't just treat him as a private person and they would feel pressured by his requests. [20-Emp. Inv.] says [20-Emp. Inv.] conveyed to Commissioner Felleman that the request to observe as a private party was unreasonable, but the Commissioner seemed angry and continued to be mad about the denial of his request, thinking he should be allowed to be involved in Quiet Sound.

Although Commissioner Felleman says he isn't certain whether [20-Emp. Inv.] spoke to him in the early September timeframe, he believes that at some point [20-Emp. Inv.] may have said that, obviously, Quiet Sound knew the Commissioner in both his public and private roles.

¹⁵ My notes do not specifically show [20-Emp. Inv.] said the reported exchange occurred while Commissioner Felleman's request was still pending. However, my questions to [20-Emp. Inv.] focused on the period during which the request was pending and LC members were considering it; accordingly, I understand the reported exchange occurred during that period.

¹⁶ Other than asking Commissioner Felleman with whom he spoke while his request was pending, I did not take further steps to try to identify the individual in question, as attempting to do so could have required me to interview most or all of the remaining LC members. Given that [20-Emp. Inv.], [20-Emp. Inv.], and [20-Emp. Inv.] each acknowledged and described their communications with Commissioner Felleman regarding his request, as further described below, it appears likely that the individual to whom [20-Emp. Inv.] referred was a different member of the Leadership Committee.

The Commissioner says he thinks [20-Emp. Inv.] was just trying to explain the Leadership Committee’s decision denying the Commissioner’s request to observe its meetings.

E. Commissioner Felleman Shares His Discontent About the Denial of His Personal Request with Port Leadership and Others

Commissioner Felleman says he disagrees with the rejection of his request to observe LC meetings, because he believes he could be helpful to Quiet Sound. When asked whether he didn’t believe the explanation [20-Emp. Inv.] provided for Quiet Sound’s decision, he says only: “That was their stated reason. If that’s how they felt, that’s how they felt.” He says he has no idea if other private consultants have been allowed to observe LC meetings. He sidesteps the question whether he was angry or upset about the decision; he says he was “disappointed.”

On September 1, [20-Emp. Inv.], in follow-up to [20-Emp. Inv.] offer of briefings for Commissioner Felleman to keep him apprised of Quiet Sound developments, sought to set up such a briefing. [20-Emp. Inv.] says the Commissioner was so frustrated by the denial of his request at that point that he turned down the offer of a briefing and said he would just be interested in a memo. Commissioner Felleman says he didn’t ask for a briefing at that time or take up [20-Emp. Inv.] on [20-Emp. Inv.] offer of one because briefings take time and require scheduling, and he was already receiving a lot of information about Quiet Sound’s activities through sporadic briefings and presentations to other forums that he attended as a commissioner. He says he could scan a memo to see if there was something he didn’t know already, but that would be unlikely.

Commissioner Felleman did not let the issue of participating in Quiet Sound LC meetings go, however; he continued to bring up his frustration about the denial of his request with individuals in and outside the Port.

In an email to Commission administrative staff on September 15 regarding his expense reports for the previous month, Commissioner Felleman wrote:

It all looks good except I don’t attend the Harbor Safety committee in my port capacity (8/3). The port has its own rep - I’m just an attendee (as I’m deprived of doing for Quiet Sound meetings). You can ignore the () I just couldn’t miss the opportunity given the Ccs.

(Italics added.) When asked in his interview what he meant by the italicized language, Commissioner Felleman considered it and then said it was a “snarky” and “bizarre” thing to say, and he wondered why he didn’t delete it. But he suggested the message was just a personal gripe shared with the two people cc’ed on the email— [20-Emp. Inv.] and [20-Emp. Inv.] .

As his email account reveals, however, Commissioner Felleman forwarded the same email to [20-Emp. Inv.] one minute later, saying, “Just thought you should see the email chain.” When asked why he did so, he said he thinks this was the first time he let [20-Emp. Inv.] know

about the rejection of his request to observe Quiet Sound LC meetings. The Commissioner said it was not the most professional way to go about doing that, but it was not like he was petitioning [20-Emp. Inv.] to do anything.¹⁷

Commissioner Felleman also continued to express his frustration about the Leadership Committee decision with [20-Emp. Inv.] and [20-Emp. Inv.].¹⁸ [20-Emp. Inv.] understood that [20-Emp. Inv.] felt pressured by the Commissioner's communications and wanted support in responding to them. Eventually, the three [20-Emp. Inv.] held a call, which [20-Emp. Inv.] believes occurred on or about September 22. [20-Emp. Inv.] says the Commissioner was "pissed" during the conversation, very upset that the Leadership Committee wasn't giving him an opportunity to participate. [20-Emp. Inv.] recalls the Commissioner saying something like, "I'm an expert, that's a mistake, I can't believe you're not taking me up on this." [20-Emp. Inv.] perceived that the Commissioner was seeking "a pound of flesh"—coming after [20-Emp. Inv.] personally, though not expressly saying he wanted [20-Emp. Inv.] fired. Eventually, while acknowledging Commissioner Felleman's expertise, [20-Emp. Inv.] told him that if he wanted to pursue the issue of observing LC meetings, he needed to go back to Port leadership—the other Port commissioners or the [20-Emp. Inv.].¹⁹ [20-Emp. Inv.] says Commissioner Felleman acknowledged that advice; [20-Emp. Inv.] says the Commissioner was not happy with it.²⁰

[20-Emp. Inv.] and [20-Emp. Inv.] say Commissioner Felleman's conversations about his desire to observe LC meetings occurred in the context of his and their work for [20-Emp. Inv.], when the Commissioner was acting in his capacity as a Port commissioner. [20-Emp. Inv.] and [20-Emp. Inv.] say they would not have spoken with a purely private consultant seeking to observe LC meetings in the same way. [20-Emp. Inv.] says [20-Emp. Inv.] would simply have told a private consultant that the Leadership Committee would not allow the person to observe. [20-Emp. Inv.] says [20-Emp. Inv.] would have pointed the person to the Leadership Committee. Then each would have ended the conversation. They say they spoke with Commissioner Felleman about his request as they did only because of his role as a Port commissioner.

¹⁷ At the time he received this email stream, [20-Emp. Inv.] wasn't aware of Commissioner Felleman's request to observe Quiet Sound LC meetings in a private capacity and didn't understand the reference. [20-Emp. Inv.] doesn't recall following up on the email.

¹⁸ Commissioner Felleman says he spoke with [20-Emp. Inv.] because [20-Emp. Inv.] is the [20-Emp. Inv.], and the Commissioner is a managing member of the NWSA as a commissioner. The Commissioner says he spoke with [20-Emp. Inv.] and [20-Emp. Inv.] about his frustration about the Quiet Sound decision because they are the "head dogs" of their respective organizations and knew of his desire and his interests. The evidence shows the Commissioner did not speak with [20-Emp. Inv.] about the Quiet Sound issue until September 28.

¹⁹ [20-Emp. Inv.] recalls hearing from [20-Emp. Inv.] that the Port had made the decision not to allow Commissioner Felleman to observe LC meetings based on concerns about a potential conflict of interest. [20-Emp. Inv.] says [20-Emp. Inv.] shared that understanding with the Commissioner. [20-Emp. Inv.] denies telling [20-Emp. Inv.] or the Commissioner that was the reason the Commissioner's request was denied. [20-Emp. Inv.] says [20-Emp. Inv.] told [20-Emp. Inv.], as well as Commissioner Felleman, that the LC was united on the decision not to allow the Commissioner to observe.

²⁰ Commissioner Felleman describes his conversations with [20-Emp. Inv.] and [20-Emp. Inv.] somewhat differently, but he acknowledges he spoke to them about his disappointment with the denial of his request to observe LC meetings, and he says he thinks [20-Emp. Inv.] would have said it was a Port issue.

Commissioner Felleman reports that he also contacted [REDACTED] 20-Emp. Inv. [REDACTED] 20-Emp. Inv., regarding his frustration about the denial of his request to observe LC meetings. The two [REDACTED] 20-Emp. Inv. say they have known each other for many years, primarily through the Commissioner's work as a private consultant performing work for the Makah Tribe. According to the Commissioner, when he told [REDACTED] 20-Emp. Inv. he was really disappointed that he wasn't going to be allowed to observe the meetings, [REDACTED] 20-Emp. Inv. said, "Wow, I wish I knew you were applying for it, I could have supported it." Commissioner Felleman says he didn't ask [REDACTED] 20-Emp. Inv. to do anything to change the decision, however.

In contrast, [REDACTED] 20-Emp. Inv. says their interaction on the subject began with Commissioner Felleman calling and asking whether [REDACTED] 20-Emp. Inv. would be comfortable advocating for the Commissioner sitting in on LC meetings. [REDACTED] 20-Emp. Inv. says that because of their history working together, [REDACTED] 20-Emp. Inv. was comfortable advocating for Commissioner Felleman to observe the meetings and said [REDACTED] 20-Emp. Inv. would do so, even though the Leadership Committee had already turned the Commissioner down.²¹ But, [REDACTED] 20-Emp. Inv. says, [REDACTED] 20-Emp. Inv. then learned from the Tribe's staff representative on the Leadership Committee that Quiet Sound's charter and bylaws provide for staff, but not commissioners or private parties, to attend meetings, so [REDACTED] 20-Emp. Inv. did not proceed with any action on behalf of Commissioner Felleman.²²

On September 28 at 10:08 a.m., Commissioner Felleman sent a text to [REDACTED] 20-Emp. Inv. Port cellphone:

Just learned – [REDACTED] 20-Emp. Inv. led the opposition to even my observation of Quiet Sound leadership committee. And I only initiated the effort as well as secured initial state funding and designing an exhibit highlighting the work. Nice staff you have.

At 11:23 a.m. the same day, Commissioner Felleman sent [REDACTED] 20-Emp. Inv. another text:

Is the \$150k to MB intended for QS or just whatever they choose?

[REDACTED] 20-Emp. Inv. says [REDACTED] 20-Emp. Inv. didn't know what Commissioner Felleman's September 28 text referring to [REDACTED] 20-Emp. Inv. was about, so [REDACTED] 20-Emp. Inv. forwarded it to [REDACTED] 20-Emp. Inv., [REDACTED] 20-Emp. Inv., and a couple of other senior staff to get their input.

²¹ In a brief follow-up interview, [REDACTED] 20-Emp. Inv. confirmed that Commissioner Felleman asked [REDACTED] 20-Emp. Inv. to advocate for the Commissioner's request to observe the LC meetings, and [REDACTED] 20-Emp. Inv. agreed to do so, but [REDACTED] 20-Emp. Inv. now said [REDACTED] 20-Emp. Inv. thought that occurred before the Commissioner's request was denied.

²² I realized after our interview that [REDACTED] 20-Emp. Inv. email address was listed along with other LC members on Commissioner Felleman's requests and [REDACTED] 20-Emp. Inv. responses, so presumably [REDACTED] 20-Emp. Inv. is an LC member (possibly an alternate) and received the emails about the request. [REDACTED] 20-Emp. Inv. did not mention that correspondence to me, however; rather, [REDACTED] 20-Emp. Inv. referred to the Tribe's staff member LC representative as the source of [REDACTED] 20-Emp. Inv. information about Commissioner Felleman's request.

At 10:23 a.m. the same morning, [20-Emp. Inv.] sent an email to [20-Emp. Inv.], copying [20-Emp. Inv.] and the Commission's Deputy Chief of Staff, regarding a meeting about kelp that [20-Emp. Inv.] had been scheduled to attend with Commissioner Felleman, [20-Emp. Inv.]—another [20-Emp. Inv.] [20-Emp. Inv.] email said:

Good morning [20-Emp. Inv.],

Fred asked me to let you know that he'd prefer that you not attend tomorrow's meeting with Pew regarding the Kelp Digest. He would like [20-Emp. Inv.] [20-Emp. Inv.] to attend if [20-Emp. Inv.] wants.

Sorry if this is awkward and thanks for your understanding.²³

Later that day, [20-Emp. Inv.], [20-Emp. Inv.], and [20-Emp. Inv.] discussed Commissioner Felleman's text about [20-Emp. Inv.] from that morning, as well as his request that [20-Emp. Inv.] not attend the Pew meeting. Based on the information [20-Emp. Inv.] had at the time, [20-Emp. Inv.] didn't believe the Commissioner's allegation about [20-Emp. Inv.] was accurate. [20-Emp. Inv.] was also concerned that Commissioner Felleman had taken it upon himself to disinvite [20-Emp. Inv.] from the Pew meeting, when [20-Emp. Inv.], as [20-Emp. Inv.], should be the person to determine which staff person was an expert on the relevant subject matter and should attend particular meetings.

[20-Emp. Inv.] alerted Commissioner Felleman to the fact [20-Emp. Inv.] had shared the Commissioner's text about [20-Emp. Inv.]. At 5:15 p.m. on September 28, the Commissioner texted [20-Emp. Inv.] :

Would have like (sic) to have spoken with you re my email so you could understand the context before speaking ti (sic) others but would be happy to discuss matters further with you at your convenience[.]

[20-Emp. Inv.] spoke with Commissioner Felleman that evening. [20-Emp. Inv.] says the Commissioner was very emotional. Commissioner Felleman acknowledges he was not happy that [20-Emp. Inv.] had shared his text about [20-Emp. Inv.] with others, and he was really upset about the denial of his request to observe LC meetings. The Commissioner says he couldn't believe that after all his work, "It was not only 'No,' but, 'Hell no!'" [20-Emp. Inv.] says the Commissioner spoke about how much work he had done for Quiet Sound and how important it was to him; the Commissioner said protecting the environment and the orcas is his life's work. He said he wanted to observe the meetings so he could shape the direction in which Quiet Sound was going.

²³ [20-Emp. Inv.] forwarded [20-Emp. Inv.] email to [20-Emp. Inv.], who copied Ms. Ogier. [20-Emp. Inv.] and Ms. Ogier agreed that, under the circumstances, [20-Emp. Inv.] also should not attend the meeting.

According to [20-Emp. Inv.], the Commissioner said he'd heard from someone on the QS Leadership Committee that [20-Emp. Inv.] was the leader of the opposition to his being allowed to observe LC meetings, but the Commissioner didn't identify the person who provided that information. [20-Emp. Inv.] says [20-Emp. Inv.] shared with the Commissioner [20-Emp. Inv.] understanding that [20-Emp. Inv.] hadn't led the opposition, and [20-Emp. Inv.] recommended that the Commissioner apologize sincerely to [20-Emp. Inv.] for what he'd done. [20-Emp. Inv.] says the Commissioner agreed to that.

[20-Emp. Inv.] does not believe Commissioner Felleman said during their conversation that he had sought to observe LC meetings in the capacity of a private consultant. [20-Emp. Inv.] notes that [20-Emp. Inv.] received the Commissioner's texts during work time on [20-Emp. Inv.] work phone, and [20-Emp. Inv.] assumed the Commissioner was contacting [20-Emp. Inv.] in his capacity as a commissioner. If Commissioner Felleman had just been a member of the public, [20-Emp. Inv.] says, [20-Emp. Inv.] probably wouldn't have addressed the communication in the same way; although [20-Emp. Inv.] wouldn't have ignored a private party's concern, a concern from a commissioner would go to the top of the queue.

F. Commissioner Felleman Continues to Complain About Being Left out of Quiet Sound Information and Activities

On September 30, Commissioner Felleman sent an email to [20-Emp. Inv.], [20-Emp. Inv.], [20-Emp. Inv.], and another senior staff member about a letter of support for Coast Guard Reauthorization. In the email, the Commissioner wrote:

The Quiet Sound Program is specifically cited in the Bill which I worked on, but I continue to have little exposure to their operations other than what I hear from constituents who are not even directly affiliated.

He noted that a constituent had invited him to a Quiet Sound event, but unless he had missed an email, he didn't know about it and he would be out of town at the time, "which perhaps is best." He also wrote to [20-Emp. Inv.] and [20-Emp. Inv.] separately about the same event—an open house—indicating he didn't need to attend the event virtually; rather, his concern was:

They say I'm unqualified as an elected official to participate in internal events and don't even invite me to public ones.

Commissioner Felleman says these emails reflected his learning, through constituents, about a Quiet Sound open house he hadn't known about. He believes he should have been informed about the event by either Port staff or Quiet Sound itself.²⁴

²⁴ [20-Emp. Inv.] explains that the event was an open house for NGOs, and neither elected officials nor LC members—except where the latter worked for an NGO—were sent invitations.

Later on September 30, after receiving an email update on Quiet Sound from [20-Emp. Inv.], Commissioner Felleman wrote back to [20-Emp. Inv.], copying [20-Emp. Inv.], [20-Emp. Inv.] and [20-Emp. Inv.], as well as Ms. Ogier, saying:

Thanks for the update – apparently I wouldn’t have received one otherwise.

Commissioner Felleman acknowledges that [20-Emp. Inv.] update was, in effect, the memo he had asked for earlier in September, and that there were other presentations on Quiet Sound activities he could have attended. As of the time of my interview with [20-Emp. Inv.] on March 16, 2023, [20-Emp. Inv.] said the Commissioner still had not taken [20-Emp. Inv.] up on [20-Emp. Inv.] offer to provide him briefings.

When asked in his first interview what his goal was in including such comments about being left out of Quiet Sound’s activities in emails he sent to Port senior staff, Commissioner Felleman said there seemed to be a pattern of Quiet Sound telling him he would get information when it’s available, and also of not giving him an opportunity to share his insights and not acknowledging his value. He said he was documenting that this is a pattern, not an accident. Not being allowed to observe LC meetings was disappointing, he said, but being disparaged in front of his colleagues—which he was under the impression had occurred verbally and possibly in writing—went beyond that.

G. Commissioner Felleman’s Explanations of His Accusations Against [20-Emp. Inv.] and His Goal in Involving [20-Emp. Inv.]

In his first interview session, Commissioner Felleman said his September 28 text naming [20-Emp. Inv.] as leading the opposition to his request to observe LC meetings was based on conversations he had shortly before then with two LC members. He recounted having called each of the two individuals separately to discuss his disappointment about the denial of his request and being told that the opposition to his request was surprisingly adamant, with disparaging things being said as reasons for him not to be allowed to observe. Commissioner Felleman said he couldn’t give any quotes, and he didn’t actually know if [20-Emp. Inv.] led the opposition, but the two individuals said [20-Emp. Inv.] was “adamant and disparaging.” Commissioner Felleman said the individuals told him something like, “Boy your staff really don’t like you,” and one of them named [20-Emp. Inv.]. When asked what he meant by his comment in his text to [20-Emp. Inv.], “Nice staff you have,” the Commissioner said, “Unfortunately, that was snarky,” but he reiterated that one of his sources had referred to [20-Emp. Inv.], in particular, as disparaging, and the other referred to Port staff in general. Commissioner Felleman indicated he believed Port staff were ultimately the deciding factor in the denial of his request to observe. He said that if Port staff on the Leadership Committee had objections to his participation, no one else would go against them. In that sense, he said, Port staff leads the Leadership Committee.

Commissioner Felleman provided a similar explanation of his request for [20-Emp. Inv.] not to attend the meeting with Pew, to which [20-Emp. Inv.] had previously been invited. He said he just didn’t want [20-Emp. Inv.] there because he had learned that [20-Emp. Inv.] had used his name in a less-than-professional way

in front of his colleagues, and he couldn't afford to have that happen in front of Pew, which is a major player in Washington State among people involved in kelp.²⁵ The Commissioner noted that as a commissioner he can invite whomever he wants to attend his meetings. He said he had never previously intentionally excluded [20-Emp. Inv.], in particular, from meetings or correspondence related to kelp or other matters in which [20-Emp. Inv.] has expertise.

In his first interview session, Commissioner Felleman refused to identify the individuals he said had told him about [20-Emp. Inv.] role in Quiet Sound turning down his request to observe LC meetings. After I followed up with his attorney, the attorney provided two names: [20-Emp. Inv.] and [20-Emp. Inv.] .

In the second session of the Commissioner's interview, I followed up on his conversations with those individuals and the bases for his September 28 text to [20-Emp. Inv.] about [20-Emp. Inv.] . The Commissioner explained that his reference to [20-Emp. Inv.] leading the opposition stemmed from his understanding, from what he had heard, that [20-Emp. Inv.] was the strong voice on the Leadership Committee against his participation, regardless of whether [20-Emp. Inv.] was the first member to express opposition. When asked from whom he had heard [20-Emp. Inv.] made disparaging comments, he said he just assumed from the statement, "Your staff really don't like you," that the comments involved were disparaging. In his mind, he explained, just the fact that [20-Emp. Inv.] led the opposition to his request was disparaging. He said he was upset, not mad, that [20-Emp. Inv.] led the opposition.

Commissioner Felleman now identified [20-Emp. Inv.] as the person who had told him "Man, your staff really don't like you," or something close to that. According to the Commissioner, when he asked [20-Emp. Inv.] who, specifically, did not like him, [20-Emp. Inv.] said it was [20-Emp. Inv.] or [20-Emp. Inv.] . Commissioner Felleman wanted the details of what was said about him, but [20-Emp. Inv.] wouldn't say anything more. The Commissioner understood that [20-Emp. Inv.] was getting the information about [20-Emp. Inv.] from the Tribal staff member on the Leadership Committee, but [20-Emp. Inv.] wouldn't allow the Commissioner to speak with that individual. Commissioner Felleman said this conversation occurred shortly before his September 28 text to [20-Emp. Inv.] —maybe a few days earlier. The Commissioner said he had tried several times since the conversation with [20-Emp. Inv.] to speak with the Tribal staff member—"like, three times"—but [20-Emp. Inv.] continued to say, "No."

[20-Emp. Inv.] says [20-Emp. Inv.] will not divulge what [20-Emp. Inv.] told Commissioner Felleman about the Leadership Committee's consideration of his request to observe LC meetings. [20-Emp. Inv.] says: [20-Emp. Inv.] personally did not hear any negative comments by Port staff on the Leadership Committee; anything [20-Emp. Inv.] might have heard was thirdhand; the Tribe will not allow its staff member on the Leadership Committee to be interviewed; and the Tribe will not allow [20-Emp. Inv.] [20-Emp. Inv.] to answer my questions about what [20-Emp. Inv.] told the Commissioner in this regard. [20-Emp. Inv.]

²⁵ [20-Emp. Inv.] says Commissioner Felleman indicated he disinvited [20-Emp. Inv.] because the Commissioner wasn't happy with [20-Emp. Inv.] based on his belief that [20-Emp. Inv.] led the opposition to his request to observe LC meetings.

20-Emp. Inv. says the Tribe does not get involved in Port business, and 20-Emp. Inv. doesn't want to make a statement that is based on hearsay that would benefit one party or another. Had 20-Emp. Inv. known Commissioner Felleman would overreact to what 20-Emp. Inv. said, that the Commissioner would take 20-Emp. Inv. 20-Emp. Inv. comments to a higher level, and that the Commissioner might use the comments to protect the Commissioner's personal interests, 20-Emp. Inv. says, 20-Emp. Inv. would have been much more careful in what he said to the Commissioner. 20-Emp. Inv. denies that Commissioner Felleman asked more than once to speak with the Tribal staff member on the Leadership Committee; 20-Emp. Inv. says the Commissioner understood 20-Emp. Inv. original statement that the Commissioner would not be allowed to speak with the staff member.

In his second interview session, Commissioner Felleman confirmed that 20-Emp. Inv. was the second person to whom he had referred as the source of his information related to his request to observe Quiet Sound LC meetings—the person he described in his first interview as having referred to Port staff in general not liking him. He said he called 20-Emp. Inv. sometime after he spoke with 20-Emp. Inv. in an attempt to corroborate what 20-Emp. Inv. told him, which had been secondhand information. He explained that 20-Emp. Inv. was an LC member and presumably had firsthand knowledge of the discussion of his request.²⁶ Commissioner Felleman said he relayed to 20-Emp. Inv. what he had heard from 20-Emp. Inv., specifically the comment about staff not liking the Commissioner and 20-Emp. Inv. having been named in that regard. According to the Commissioner, 20-Emp. Inv. responded, “You can only imagine,” but would not provide additional information. Commissioner Felleman indicated he believed this statement implicitly corroborated the information provided by 20-Emp. Inv.

I had already interviewed 20-Emp. Inv. before my second interview session with Commissioner Felleman. 20-Emp. Inv. denied that 20-Emp. Inv. made disparaging comments about Commissioner Felleman or appeared to lead the opposition to his request to observe LC meetings, and 20-Emp. Inv. denied that 20-Emp. Inv. s, 20-Emp. Inv., informed the Commissioner that was the case. 20-Emp. Inv. also denied that the Commissioner expressed the belief or understanding that 20-Emp. Inv. disparaged him or led the opposition to his observing Quiet Sound LC meetings. 20-Emp. Inv. said 20-Emp. Inv. and the Commissioner had only one exchange about Port involvement in the decision on his request to observe LC meetings, which occurred via texts.

When asked in his second interview session about the texts 20-Emp. Inv. described, Commissioner Felleman indicated he did not recall having texted with 20-Emp. Inv. However, in follow-up to my request that he review his texts and provide copies of any with 20-Emp. Inv. about his request to observe LC meetings, his attorney later provided copies of a set of texts between them. The messages are as follows, with Commissioner Felleman's messages on the right and 20-Emp. Inv. 20-Emp. Inv. on the left.

²⁶ Commissioner Felleman and 20-Emp. Inv. say they know each other through their mutual involvement in the environmental community—in his case, primarily as a private consultant.

I can do the 7th but would like to know asap if [REDACTED] was part of the discussion re me sitting in on the Quiet Sound LC meetings as an observer.

As far as I'm aware, there wasn't a "discussion" per se. [REDACTED] asked for input via email and various people weighed in with their thoughts. Some were opposed to opening the meetings to anyone given the group is new and building trust while others (myself included) weighed in in favor of transparency.

My question is what did port staff say?

Fred, I'm not going to divulge individual comments from the Leadership Committee – that's a sure way for me to lose all credibility with the group.

....

Understood. I already heard from others – just seeking confirmation. No need to say more

This initial exchange, which was part of a group text with others related to an environmental organization in which Commissioner Felleman and [REDACTED] are involved, occurred at 5:58 p.m. on September 28—that is, after the Commissioner sent his text to [REDACTED] that morning asserting that [REDACTED] led the opposition to his request.

In a set of texts with just Commissioner Felleman beginning at 7:16 p.m. the same evening, [REDACTED] started a follow-up exchange:

I'm sure you can read between the lines.

Hard to see between the tears

My sense is it's not personal but rather a desire to keep the LC conversations internal and not open to public scrutiny/pressure.

I just have 40 yrs of background to share

Yes, you do. Not to mention tons of creative energy and good ideas

Commissioner Felleman has not disputed that these texts, rather than the phone conversation he described in his second interview session, constitute the full extent of his communications with 20-Emp. Inv. related to his request to observe the Quiet Sound LC meetings.²⁷

20-Emp. Inv. says 20-Emp. Inv. did not communicate with anyone outside the Port about Commissioner Felleman's request to observe Quiet Sound LC meetings while it was pending, other than through 20-Emp. Inv. emails and one conversation with 20-Emp. Inv., 20-Emp. Inv. phone conversation with 20-Emp. Inv., and 20-Emp. Inv. email to all the LC members, described above. 20-Emp. Inv. specifically denies: having any conversations about the request with the 20-Emp. Inv. on the LC; saying anything to other LC members in writing or orally that they might have interpreted as adamantly opposing Commissioner Felleman's request to observe; or saying anything that might have been interpreted as dislike for or disparagement of the Commissioner.

Other witnesses also deny that 20-Emp. Inv. disparaged Commissioner Felleman or led the opposition to his observing LC meetings. A review of 20-Emp. Inv. emails to individuals outside the Port during the period the Commissioner's request was pending and shortly after it was denied—which I conducted at the request of the Commissioner's attorney—revealed no messages other than to 20-Emp. Inv. and the whole Leadership Committee, described above.

In his first interview session, Commissioner Felleman said his September 28 text to 20-Emp. Inv. about 20-Emp. Inv. was a form of venting, an expression of frustration and surprise. He said the idea that such a simple request (to observe the LC meetings) was met with such a vociferous response was disappointing. If his own Port people thought poorly of him in front of the others on the Leadership Committee, he said, that would be damaging to his reputation. He expected 20-Emp. Inv. would come back in response to his text and ask what was going on. Commissioner Felleman explained that the statement in his September 28 text—"I only initiated the effort as well as secured initial state funding and designing an exhibit highlighting the work"—referred to the "whole litany" of things he did in connection with the governor's task force, that is, his support as a commissioner for underwater noise reduction and the formation of Quiet Sound.

In his second interview session, Commissioner Felleman punted on whether he expected that Port staff, as part of the same organization, would support his request to observe Quiet Sound LC meetings. He said that independent of his status as a commissioner, he would expect Port staff to understand his unique expertise, his knowledge of whales and the people who study whales, and his ability to help Quiet Sound. A couple of other witnesses say that in speaking with them, the Commissioner indicated that because he and 20-Emp. Inv. were both part of the Port, and, according to one witness, because he was a commissioner, he would have expected 20-Emp. Inv. to support his request.

²⁷ In two successive emails after receiving copies of these texts, I told the Commissioner's attorney that if he still believes he also spoke with 20-Emp. Inv. on the phone about the subject, I would need to speak briefly with him again. I have not heard back from his attorney.

Commissioner Felleman now said that in texting [20-Emp. Inv.], he was hoping that [20-Emp. Inv.] would be able to look further into [20-Emp. Inv.] opposition and what had occurred in relation to the Commissioner's request to observe; the Commissioner explained that the people who told him about that—[20-Emp. Inv.] and [20-Emp. Inv.]—had not been specific about what was said. The Commissioner said he wanted to make sure that communication with staff was good going forward and to make sure there wasn't some "standing misunderstanding." He denied he was trying to overturn the Leadership Committee's decision.

Commissioner Felleman said he realized that his question to [20-Emp. Inv.] texted soon after his complaint about [20-Emp. Inv.] role in denying his request to observe LC meetings—"Is the \$150k to MB intended for QS or just whatever they choose?"—doesn't look good. But the Commissioner said that question does not reflect that he wanted to deny funding to Quiet Sound. He says he has supported Quiet Sound and has continued to vote to provide it funding since the denial of his request to observe LC meetings. He says his question about the "150k" simply reflected his desire to know if there was something he could still do with Maritime Blue, Quiet Sound's parent entity, since he couldn't participate in Quiet Sound.

At the end of his second interview session, Commissioner Felleman offered some thoughts about the situation that led to this investigation. He said he may have misheard or misinterpreted what he was told or put more emphasis on it than was intended by those who provided the information. The Commissioner described his inquiries about the position taken by Port staff on his request to observe LC meetings as him "trying to put more meat on the bones," "doing his due diligence."

Commissioner Felleman went on to say that he wasn't asking for special privileges in his capacity as a commissioner. He asserted that his motivation is to share his knowledge of whales, and to do so in his private capacity. Posing the question himself whether he would receive a benefit from observing LC meetings, he answered that he has served on boards and nonprofits and has devoted so much of his life to whales. He said his doing so is not for remuneration.²⁸ Rather, everything he does has some benefit for the whales in the northwest; he considers them his client and does things on their behalf. He said he also looks on Quiet Sound as his client and is just trying to provide his knowledge and expertise to Quiet Sound.²⁹

Commissioner Felleman noted that he can be abrasive. He said people don't like him for his style, even if they like what he says. He said he's trying to work on that and is seeking some professional leadership training. He said he forgets his role in interacting with people.

²⁸ During his first interview session, Commissioner Felleman said that in his private consulting business he has clients that pay him and his consulting work is pretty much all paid. Later, however, he said he is not working with any client who is being impacted by his participating (or not) in Quiet Sound LC meetings.

²⁹ None of the other witnesses identified a financial motive for Commissioner Felleman's attempt to observe Quiet Sound LC meetings.

H. The Role of Gender, if Any, in Commissioner Felleman's Treatment of 20-Emp. Inv.

The complaints that led to this investigation raise a concern that Commissioner Felleman's treatment of 20-Emp. Inv., particularly his exclusion of 20-Emp. Inv. from the meeting with Pew, may have reflected not only retaliation for 20-Emp. Inv. opposition to the Commissioner's request to observe LC meetings, but also gender discrimination.

Witnesses say that 20-Emp. Inv. department considers 20-Emp. Inv. the subject matter expert ("SME") on kelp. In August 2022, shortly before Commissioner Felleman's August 24 request to Quiet Sound, 20-Emp. Inv. learned that the Commissioner had asked 20-Emp. Inv. to accompany him during a filmed interview regarding kelp and orca research. 20-Emp. Inv. wrote back to 20-Emp. Inv. expressing concern about the Commissioner going directly to staff for information and participation in events, rather than following the generally accepted protocol for commissioners to take such requests to senior managers, who then decide which SME(s) to involve.

On August 30, after a representative from Pew contacted Commissioner Felleman and others about kelp projects in Washington, the Commissioner wrote back to her saying he would copy staff who would be able to better flesh out the Port's work. He copied only 20-Emp. Inv. 20-Emp. Inv. and 20-Emp. Inv. on that message, but 20-Emp. Inv. forwarded it to 20-Emp. Inv. 20-Emp. Inv. then forwarded it on to 20-Emp. Inv., 20-Emp. Inv., 20-Emp. Inv., and Ms. Ogier, noting that Commissioner Felleman had been reaching out to 20-Emp. Inv. directly. 20-Emp. Inv. requested that 20-Emp. Inv. let commissioners know that 20-Emp. Inv. is the department's staff SME and point of contact for kelp work, and 20-Emp. Inv. could bring in other staff as needed.

20-Emp. Inv. says 20-Emp. Inv. may have informed Commissioner Felleman of 20-Emp. Inv. request, but 20-Emp. Inv. is not certain. 20-Emp. Inv. says 20-Emp. Inv. did not do so, but 20-Emp. Inv. notes that the Commissioner already knew 20-Emp. Inv. is the kelp SME. Commissioner Felleman denies he was told 20-Emp. Inv. is the department SME on kelp; he says he understands that 20-Emp. Inv., 20-Emp. Inv., and 20-Emp. Inv. are all SMEs and points of contact for kelp issues.

20-Emp. Inv. also was contacted by the Pew representative and in early September 20-Emp. Inv. held 20-Emp. Inv. own meeting with the representative. Meanwhile, 20-Emp. Inv. and the Commission's executive assistant sent emails arranging for Commissioner Felleman to meet the Pew representative. The emails copied 20-Emp. Inv. and 20-Emp. Inv., but not 20-Emp. Inv. 20-Emp. Inv. forwarded the email chain to 20-Emp. Inv. and 20-Emp. Inv., and 20-Emp. Inv. offered to attend the meeting with Commissioner Felleman, 20-Emp. Inv., and the Pew representative. In response, 20-Emp. Inv. invited 20-Emp. Inv. to join that meeting. However, as described above, on September 28, Commissioner Felleman had 20-Emp. Inv. disinvite 20-Emp. Inv., while stating that the Commissioner still wanted 20-Emp. Inv. to attend.

During September, Commissioner Felleman also communicated with someone named Betsy Peabody regarding kelp issues and a possible meeting. He initially wrote from his

personal email address, but he copied [20-Emp. Inv.] and [20-Emp. Inv.] and eventually suggested a meeting with Ms. Peabody that would include Port staff. When the Commission’s executive assistant scheduled the meeting, he copied [20-Emp. Inv.] and [20-Emp. Inv.], as well as [20-Emp. Inv.], on the invitation, but the subject line of the invitation was “Betsy Peabody/[20-Emp. Inv.] re Kelp.” The invitation went out on September 30, after [20-Emp. Inv.] had been alerted to Commissioner Felleman’s complaint to [20-Emp. Inv.] about [20-Emp. Inv.] and exclusion of [20-Emp. Inv.] from the meeting with Pew. Given the recent events and [20-Emp. Inv.]’s earlier designation of [20-Emp. Inv.] as the kelp SME, [20-Emp. Inv.] was disturbed by the reference to [20-Emp. Inv.] in the invitation’s subject line. Witnesses say the choice of words for the subject line was made by the executive assistant, apparently based on the previous correspondence on which only [20-Emp. Inv.] was included, with no input from Commissioner Felleman.

A search of Commissioner Felleman’s Port email account for the term “kelp” revealed several messages sent by the Commissioner from his personal email address to or copying [20-Emp. Inv.] but not [20-Emp. Inv.].³⁰ On one occasion, just a few days before the events of September 28, the Commissioner sent an email from his personal address with a link to an article to [20-Emp. Inv.], [20-Emp. Inv.], Ms. Peabody, and another non-Port individual; [20-Emp. Inv.] wrote back to the Commissioner’s Port email address, thanking him for sending the link.

The Commissioner denies that gender has been a factor in his differential treatment of [20-Emp. Inv.] and [20-Emp. Inv.]. He describes [20-Emp. Inv.] as unique in a number of respects: being [20-Emp. Inv.], a kind of “professor of the Port,” with an interest in habitat restoration, someone who surreptitiously plants kelp on weekends.³¹ Knowing that [20-Emp. Inv.] would be interested in certain topics or events, the Commissioner explains, he has copied [20-Emp. Inv.] on articles or invited [20-Emp. Inv.] to participate in meetings. In doing so, Commissioner Felleman says, he didn’t consider [20-Emp. Inv.] as the Port staff point person. The Commissioner acknowledges that requests to staff were always supposed to go through [20-Emp. Inv.]; he says going through [20-Emp. Inv.] was “a personal interest thing, not an exclusion thing.” The Commissioner says he also copied [20-Emp. Inv.] or [20-Emp. Inv.] on things that called for a department staff member, and he expected them to get others involved as appropriate.

Other than noting Commissioner Felleman’s proclivity to involve [20-Emp. Inv.] rather than [20-Emp. Inv.] in certain correspondence or activities, witnesses do not identify any reason to believe [20-Emp. Inv.] gender may have played a role in the Commissioner’s treatment of [20-Emp. Inv.]

³⁰ The term search was applied to emails from August 11 to October 31. Some of those messages were sent from Commissioner Felleman’s personal email address but ended up being included in his Port account when he copied his Port email address or included Port staff who then responded to his Port address.

³¹ [20-Emp. Inv.] confirms that Commissioner Felleman has had a special admiration and fondness for [20-Emp. Inv.] based on the latter being a kind of “salty” character who mucks about in the mud and has a long history at the Port.

I. Events Since September 28

Commissioner Felleman says he expected from his discussion with [20-Emp. Inv.] that there would be some sort of facilitated intervention where he would sit down with [20-Emp. Inv.] and they would work things out. But the next thing he knew, he was the subject of an ethics claim. He indicates he has had little in the way of interaction with [20-Emp. Inv.] since then.

On or about October 17, [20-Emp. Inv.], [20-Emp. Inv.], and [20-Emp. Inv.] met with Commissioner Felleman and discussed how he should interact with staff. [20-Emp. Inv.] said he should direct things to [20-Emp. Inv.], which he understood was a way to avoid conflict. The Commissioner says he sensed this was the resolution to the issues that had been raised, but it didn't deal with undoing the original problem, and it's unfortunate that he didn't have an opportunity to do some kind of apology.

[20-Emp. Inv.] similarly indicates [20-Emp. Inv.] has had little interaction with Commissioner Felleman since he disinvited [20-Emp. Inv.] from the Pew meeting. [20-Emp. Inv.] says they were both present at one event where he spoke, but he did not acknowledge [20-Emp. Inv.].

[20-Emp. Inv.] would like an acknowledgment from the Commissioner that he mischaracterized [20-Emp. Inv.] and [20-Emp. Inv.] LC colleagues' consideration of his request. [20-Emp. Inv.] believes that Commissioner Felleman's history and network of contacts in orca and marine environment protection lead to conflicts of interest, for example when he participates in funding decisions or recommends his colleagues from other organizations to perform work; [20-Emp. Inv.] thinks the rules governing conflicts of interest should be clarified to cover such situations.

IV. Conclusions

The Commissioner Code provides that in a case where the Board of Ethics delegates the investigation of a complaint to a third party,

The delegated investigator shall report to the Board its factual findings and conclusions about whether a violation of the Code occurred. In addition, the delegated investigator may make recommendations about necessary corrective action.

Commissioner Code, Section 8(C).

In order to provide conclusions, I have reviewed the Commissioner Code and other applicable Port policies. I have not engaged in independent legal research or attempted to survey past Port or Board application of the Commissioner Code and policies. Thus, this section provides my assessment of the evidence and its relation to the ordinary meaning of the language of the applicable provisions and policies. My factual findings are based on a preponderance of the evidence, or more likely than not, standard.

A. Reliability and Credibility of Witnesses

While many of the material facts in this case appear to be undisputed, there are some significant areas where witness accounts and documents differ. Thus, to reach factual conclusions, I have had to assess the relative credibility of the witnesses and the reliability of their respective information.

The public nature of the Port and Commissioner Felleman's elected position have impacted the investigation. Several witnesses inquired or expressed concern about whether what they said might become public. Some witnesses seemed hesitant to provide information unfavorable to Commissioner Felleman. [20-Emp. Inv.] refused to answer certain questions, and one member of the Quiet Sound Leadership Committee reportedly asked not to be identified, thus preventing me from obtaining relevant information.

Nevertheless, although witnesses sometimes indicated they had difficulty recalling details with specificity or certainty—not surprising since the events in question took place several months earlier—I found witnesses other than Commissioner Felleman to generally be credible overall. Witnesses other than the Commissioner did not appear to have a motive to lie or exaggerate, and their accounts are consistent with documentary evidence.

In contrast, Commissioner Felleman clearly has reason to present his actions in a favorable light. In addition, significant aspects of his assertions about events and his understanding and motives are internally inconsistent, changed over the course of his two interviews, or are in conflict with other more reliable evidence such as texts or emails. For example, his contention that his accusatory September 28 text about [20-Emp. Inv.] was based in part on [20-Emp. Inv.] information is indisputably untrue. Not only does [20-Emp. Inv.] deny his assertions, but their text exchange—their only communication on the subject—occurred *after* the Commissioner sent the September 28 text and does not support his accusations. Without further investigation, I am unable to conclude with certainty whether the Commissioner's misrepresentations were deliberate or the result of faulty memory and understanding. Regardless, where his account appears less credible and reliable than that of others, I have given it less weight.

B. Use of Office and Appearance of Propriety

The complaint against Commissioner Felleman alleged potential violations of two Commissioner Code provisions:

A port commissioner shall not use his or her position to secure special privileges or exemptions for himself, herself, members of his/her family or others.

Commissioner Code, Section 2, Use of Office, Subsection A.

A port commissioner shall not request or otherwise seek special consideration, treatment or advantage from others, or knowingly engage in activities which are in conflict, or which have the potential to create a conflict, with the performance of official duties.

Commissioner Code, Section 3, Conflicts of Interest, Subsection B, Appearance of Impropriety. For convenience, I refer to special privileges, exemptions, consideration, treatment, and advantage, collectively, as special “benefits,” and I address the prohibitions in the two sections together.

Commissioner Felleman denies that in seeking to observe Quiet Sound LC meetings he sought any financial benefit. He says that none of his clients would benefit from his observing those meetings. Although it seems possible that the Commissioner could use his participation in Quiet Sound LC meetings to enhance his resume, attract new clients, or recommend personal friends and colleagues for consulting work Quiet Sound might need, I found no evidence that the Commissioner was in fact seeking a financial benefit in violation of these provisions.

However, Sections 2(A) and 3(B) do not require that the special benefit sought through use of a commissioner’s position be financial in nature. In this case, the evidence shows that Commissioner Felleman sought several personal benefits using his position as a Commissioner.

First, having been denied his request to serve as a member of Quiet Sound’s Leadership Committee in his capacity as a commissioner, Commissioner Felleman came up with a way around that restriction—to request to “observe” LC meetings in his capacity as a private consultant. Commissioner Felleman admittedly had something more in mind. He didn’t just want to know what Quiet Sound was up to—although he complained about not receiving briefings and notices about Quiet Sound events, he says he was already able to, and did, obtain such information through other means, such as attending presentations to other organizations. He ignored [REDACTED] 20-Emp. Inv. and [REDACTED] 20-Emp. Inv. offers to provide individual briefings for the same reason. Rather than simply observing, Commissioner Felleman wanted to insert himself into Quiet Sound’s decision-making process by hearing the Leadership Committee’s deliberations live and then providing advice to its members behind the scenes.³² He describes his interest as a kind of selfless, philanthropic one—he wants to help the orcas and use his many years of experience in the field to head off bad decisions by the Leadership Committee before they are put into effect. Regardless of his intention, however, his goal in being involved was indisputably a personal one, neither sought by the Port, nor desired by the Leadership Committee.

When [REDACTED] 20-Emp. Inv. informed Commissioner Felleman of the reasons his request was denied—to maintain the Committee’s collaborative process and avoid having to open meetings to multiple similar requests from other consultants, reasons that would apply to any private

³² Evidence indicates that if he were allowed to observe, Commissioner Felleman likely would not be silent during LC meetings.

consultant—the Commissioner simply ignored [20-Emp. Inv.] information. He continued to take the position that he, individually, should be allowed to observe meetings (and in doing so, provide his expertise), a privilege no other private consultant (or commissioner) enjoyed.

Commissioner Felleman contends he didn't advocate for his request to observe while it was pending, or, after it was denied, ask to have that decision overturned. But the evidence contradicts his assertion. Though he may not have expressly asked [20-Emp. Inv.] and [20-Emp. Inv.] at the [20-Emp. Inv.] to vote for his request or assist him in reversing its denial, the evidence shows that he pursued those outcomes through repeated mentions of his request, the value and expertise he would bring to the Leadership Committee, the lost benefit the Committee would suffer if it did not let him participate, and his frustration and disappointment that the Committee turned him down.³³ And although [20-Emp. Inv.] diplomatically avoids saying the Commissioner pressured [20-Emp. Inv.], [20-Emp. Inv.] description of the Commissioner's repeated conversations, and [20-Emp. Inv.] understanding of the situation, confirm that Commissioner Felleman was doing so and was seeking action from [20-Emp. Inv.] and [20-Emp. Inv.] in support of the Commissioner's private request to Quiet Sound. The Commissioner initiated these conversations while interacting with the two [20-Emp. Inv.] in his capacity as a Port commissioner. He wouldn't have had an audience with them had he not held his commissioner position. And action by them almost certainly would not have helped him obtain the personal benefit he sought had [20-Emp. Inv.], in particular, not held a [20-Emp. Inv.], in which position [20-Emp. Inv.] potentially had the ability to persuade Port leadership to rethink the position its staff had taken with regard to the Commissioner's request.

Commissioner Felleman's conversation with [20-Emp. Inv.] further supports the conclusion that, contrary to his assertions, the Commissioner actively advocated and sought support for his request to observe LC meetings. Although [20-Emp. Inv.] vacillated on the timing of the Commissioner's request for [20-Emp. Inv.] assistance—whether that occurred before or after the Commissioner's request to observe LC meetings was denied—the Commissioner himself says their conversation occurred *after* the request was denied, and just a few days before the Commissioner sent his September 28 text to [20-Emp. Inv.]. I therefore find it more likely that, as [20-Emp. Inv.] initially described, the Commissioner sought [20-Emp. Inv.] support in reversing the Leadership Committee's decision after it was made.³⁴ While the Commissioner apparently sought [20-Emp. Inv.] assistance based on his history working with [20-Emp. Inv.] and the Makah Tribe in his capacity as a private consultant, and thus was not clearly using his commissioner position to obtain a personal benefit in that instance, the fact the Commissioner was still seeking to reverse the denial of his request to observe LC meetings in late September

³³ That Commissioner Felleman indicated the Leadership Committee was crazy not to grant his request given the expertise he would bring to it confirms that he didn't plan to participate as just a silent observer.

³⁴ For the general reasons described earlier, in this instance, I find Commissioner Felleman's denial that he asked [20-Emp. Inv.] to advocate for the reversal of the LC decision less credible than [20-Emp. Inv.] assertion that the Commissioner did so.

provides objective evidence about his likely goal in reaching out to [20-Emp. Inv.] on September 28.³⁵

Not surprisingly, Commissioner Felleman denies that he contacted [20-Emp. Inv.] on September 28 with the goal of overturning the LC decision. However, the evidence shows that in addition to seeking [20-Emp. Inv.] assistance in doing so, the Commissioner was still railing against the decision in his conversations with [20-Emp. Inv.] and [20-Emp. Inv.] in mid to late September. Further, [20-Emp. Inv.] had just recently advised the Commissioner that if he wished to pursue the issue, he needed to take it to Port leadership.

Commissioner Felleman acknowledges he was hoping that [20-Emp. Inv.] would get back to him about his September 28 text. The text related to the denial of his request to observe LC meetings and mentioned the work the Commissioner had done—as a commissioner—on Quiet Sound’s behalf. Under the circumstances, it seems likely the Commissioner was seeking some action on [20-Emp. Inv.] part related to the personal benefit the Commissioner had been pursuing; it seems likely the Commissioner’s goal was to obtain [20-Emp. Inv.] support for changing Port staff’s opposition to the Commissioner’s request—in the Commissioner’s view, the Port was the leader in creating and funding Quiet Sound, and other LC members were likely to go along with Port staff’s position on the request. But by the time [20-Emp. Inv.] spoke with the Commissioner that evening, the focus had switched to the Commissioner’s comments and actions toward [20-Emp. Inv.], and although the Commissioner voiced his distress that he had done so much work for Quiet Sound and wasn’t being allowed to use his expertise to assist it, he apparently did not press the possibility of overturning the LC decision.

Commissioner Felleman’s September 28 text to [20-Emp. Inv.] reveals additional personal benefits the Commissioner sought by using his position as a commissioner. By that time, the Commissioner believed—mistakenly—that [20-Emp. Inv.] had led the opposition to his request to observe LC meetings. By his own account, he took Port staff’s opposition to his request to observe LC meetings—which he made in his capacity as a private consultant—as an affront, a form of disparagement.³⁶ He acknowledges that at least part of his reason for contacting [20-Emp. Inv.] was to obtain more information about what had transpired in relation to his request. In other words, he wanted to obtain information *through his Port position* about the Leadership Committee’s confidential consideration of his *personal* request to observe meetings in his *private* capacity.

³⁵ [20-Emp. Inv.] report that an LC member said Commissioner Felleman asked the member to pull some strings to get the Commissioner into LC meetings provides further support for the conclusion that the Commissioner sought assistance with reaching his personal goal from multiple sources, some in his capacity as a commissioner, others in his private capacity. Because I had no name with which to follow up on this information, I give this information only limited weight in my analysis.

³⁶ Commissioner Felleman’s initial assertions that he was told [20-Emp. Inv.] was adamant and disparaging did not hold up to examination. In his second interview session, he acknowledged he knew of no disparaging statements by [20-Emp. Inv.] only that [20-Emp. Inv.] opposed his request to observe LC meetings.

The evidence shows the Commissioner used his position to obtain another, related personal benefit. His assertions that he wasn't mad, just disappointed, about [20-Emp. Inv.] opposition, and that in contacting [20-Emp. Inv.] he just wanted to make sure that communication with staff was good going forward, are belied by the language of his text and his almost simultaneous disinviting of [20-Emp. Inv.] from the Pew meeting. Instead, the evidence shows the Commissioner used his communication with [20-Emp. Inv.] in his capacity as a commissioner to criticize [20-Emp. Inv.] and place [20-Emp. Inv.] in a bad light for not supporting a request he made outside the Port in his private capacity.³⁷ Similarly, and for the same reasons, he used his position as a commissioner to disinvite [20-Emp. Inv.] from a meeting to which [20-Emp. Inv.] had previously been invited, which was about a subject in which [20-Emp. Inv.] is an SME. Commissioner Felleman's suggestion that disinviting [20-Emp. Inv.] wasn't punitive or didn't involve a conflict because as a commissioner he can invite whomever he wants to his meetings appears disingenuous; this suggestion only highlights his use of a commissioner's prerogatives to obtain a personal benefit—the exclusion from Port business of a Port staff member for whom he now felt animus because that individual did not support his request for a personal benefit from another agency.

In sum, the evidence shows, on a more likely than not basis, that Commissioner Felleman used his Port position in an effort to obtain personal benefits for himself: first, to be able to observe Quiet Sound LC meetings and provide advice in his private capacity when he could not do so in his role as a commissioner; second, when the Leadership Committee denied his request—a denial that was not individual to him but was stated as one that would apply to any private consultant—to reverse that denial as to him personally; third, to obtain information about the Leadership Committee's process in considering and rejecting his request, information to which he had no entitlement as a private party; and fourth, to punish [20-Emp. Inv.] for what he considered [20-Emp. Inv.] disloyalty in opposing his request to participate in Quiet Sound as a private consultant.

C. Retaliation Against [20-Emp. Inv.]

In follow-up to the complaint, I considered in my investigation whether Commissioner Felleman's actions with respect to [20-Emp. Inv.] constituted a form of prohibited retaliation under the Commissioner Code or other Port policies that indirectly apply to commissioners. Port Commission Bylaws (the "Bylaws") state:

Commissioners shall uphold the standard of conduct reflected in the Port of Seattle Statement of Values and further described in the Port of Seattle Code of Ethics and Workplace Conduct and the Port of Seattle Code of Ethics for Port Commissioners.

³⁷ That Commissioner Felleman jumped to the mistaken conclusion that [20-Emp. Inv.] led the opposition to his request demonstrates the elevated nature of his sensitivity to what he considered a disloyal affront. However, even had [20-Emp. Inv.] in fact led the opposition, it would not change the conclusion that the Commissioner improperly used his Port position to seek revenge for and possibly the reversal of the denial of his private request to Quiet Sound.

Bylaws, Article II, Section 5(a). The Statement of Values referred to in the above provision includes five named values, including the following two provisions that could be considered relevant to retaliation:

Respect

We uphold the dignity and value of every person.

. . . .

Integrity

We are honest, accountable, and ethical.

The “Port of Seattle Code of Ethics and Workplace Conduct” (“Employee Code”) referenced in the Bylaws directly applies to employees, but, according to the Bylaws, also sets forth standards to be upheld by commissioners. Under the Employee Code,

Retaliation is a negative action taken against an employee because the employee reported or participated in an investigation of a potential Code violation. A negative action is one that would dissuade a reasonable person from making a report or participating in an investigation. Retaliation can take the form of threats of or actual suspension, termination, harassment, demotion or intimidation.

The Employee Code goes on to say that “employees will not be retaliated against” for reporting in good faith concerns or potential violations of the policies set forth in the Code. Similarly,

No retaliatory action will be taken against any employee who in good faith reports a concern or potential violation of a Workplace Responsibility policy, or Reporting Concerns or Violations who assists in the investigation of one. The commitment to non-retaliation includes protection of those employees who report complaints of alleged improper governmental activity, commonly referred to as “whistleblowers.”

The Commission Code itself states that commissioners are “prohibited from engaging in . . . retaliation against whistleblowers.” The Commission Code does not define what constitutes whistleblowing. Wikipedia defines the term “whistleblower” generally—that is, not tied to specific statutes or regulations—as someone “who reveals information about activity within a private or public organization that is deemed illegal, immoral, illicit, unsafe or fraudulent.”

As described above, Commissioner Felleman used his position to take what in lay terms would be considered retaliatory action against [20-Emp. Inv.] in two ways. First, he complained to [20-Emp. Inv.] about [20-Emp. Inv.] alleged leadership of the opposition to the Commissioner’s request to observe LC meetings in his private capacity, making what he admits was the snarky remark, “Nice staff you have.” Second, he directed [20-Emp. Inv.] to disinvite [20-Emp. Inv.] from

the Pew meeting. These actions could be considered a form of intimidation to the extent [20-Emp. Inv.] was or became aware of them. We don't know how far Commissioner Felleman would have taken them had [20-Emp. Inv.] and other leadership not intervened and halted his actions involving [20-Emp. Inv.], but even the actions the Commissioner took could have dissuaded a reasonable person from making a report or participating in an investigation.

Seemingly lacking in [20-Emp. Inv.] case, however, is a connection between Commissioner Felleman's punitive actions and [20-Emp. Inv.] engagement in the kind of conduct protected by the Port's retaliation policies. The conduct about which the Commissioner was upset was [20-Emp. Inv.] alleged leadership of the opposition to his request to observe LC meetings. As the evidence shows, [20-Emp. Inv.] did not do anything to encourage opposition by other LC members. Rather, [20-Emp. Inv.] simply indicated agreement with [20-Emp. Inv.] and [20-Emp. Inv.] stated concerns about allowing the Commissioner to regularly observe the meetings. Moreover, even had [20-Emp. Inv.] "led the opposition," the concerns raised about the Commissioner's request did not include that the Commissioner's attendance at LC meetings, itself, would constitute an ethical violation or that he had engaged in any illegal or improper actions under applicable law or policies. Although [20-Emp. Inv.] eventually complained that his use of his commissioner position to seek support for his request to observe LC meetings in his private capacity was an ethical violation, that complaint apparently came only after the Commissioner's punitive conduct toward [20-Emp. Inv.] had occurred and thus cannot support a retaliation claim, as Commissioner Felleman could not have based his vindictive actions on a complaint that [20-Emp. Inv.] had not yet asserted.³⁸

In sum, while I find that Commissioner Felleman's retaliatory actions toward [20-Emp. Inv.] improperly used his position to obtain the personal benefit of revenge, as described above, I cannot conclude those actions constituted retaliation within the scope of the Port's anti-retaliation policies.

D. Gender Discrimination

Section 1(B) of the Commissioner Code states that commissioners "shall abide by the Port of Seattle's policies of equal opportunity and non-discrimination and [are] prohibited from engaging in unlawful sexual or non-sexual harassment." The Employee Code states in relevant part:

Every employee has the right to work in surroundings that are free from all forms of unlawful employment discrimination. The Port will not engage in, or tolerate, any discrimination in the workplace prohibited by local, state or federal law.

³⁸ As noted, [20-Emp. Inv.] expressed concern to [20-Emp. Inv.] that Commissioner Felleman's conversation with [20-Emp. Inv.] of [20-Emp. Inv.] about the Commissioner's request to observe LC meetings while the request was pending could be considered unethical. It is not clear that [20-Emp. Inv.] verbally joined in that concern at the time, however, and the evidence I have obtained does not establish that Commissioner Felleman was aware of such a concern by [20-Emp. Inv.] at the time he took his actions against [20-Emp. Inv.] .

The Code goes on to list multiple factors protected from discrimination, including “sex.” Sex, also referred to as “gender,” is protected from discrimination under laws at the federal, state, and local levels.

The allegation that Commissioner Felleman may have discriminated against [20-Emp. Inv.] based on [20-Emp. Inv.] gender arose in the context of his disinvitation of [20-Emp. Inv.] from the Pew meeting, while he simultaneously stated his desire that [20-Emp. Inv.] still attend the meeting. It was then noted that the Commissioner had invited [20-Emp. Inv.] to participate in a couple of other events during the previous few months, while not inviting [20-Emp. Inv.]. In addition, the Pew meeting disinvitation occurred just a month after [20-Emp. Inv.], reacting to Commissioner Felleman reaching out to [20-Emp. Inv.] directly, asked [20-Emp. Inv.] to let commissioners know that [20-Emp. Inv.] is the department’s staff SME and point of contact for kelp work.

The evidence obtained in this investigation does not establish on a more likely than not basis that Commissioner Felleman invited [20-Emp. Inv.] but did not invite [20-Emp. Inv.] to events, or sent [20-Emp. Inv.] but not [20-Emp. Inv.] articles, because of their respective genders. Rather, the evidence indicates that Commissioner Felleman has a special fondness for [20-Emp. Inv.] based on a number of factors that have led the Commissioner to include [20-Emp. Inv.] on emails and invitations in which the Commissioner believes [20-Emp. Inv.] will be interested. While this special treatment of [20-Emp. Inv.] could appear discriminatory if it resulted in ongoing exclusion of [20-Emp. Inv.] from events important to [20-Emp. Inv.] position and career, it appears that the Commissioner has, as he states, had [20-Emp. Inv.] or [20-Emp. Inv.] copied on at least some invitations relevant to their department, such that they can decide which staff member(s) should attend.

With respect to Commissioner Felleman’s disinvitation of [20-Emp. Inv.] from the Pew meeting, in particular, the Commissioner was aware of and did not object to [20-Emp. Inv.] participation in the meeting until he interpreted information he received to mean [20-Emp. Inv.] had led the opposition to his request to observe LC meetings. As described above, his decision to disinvite [20-Emp. Inv.] at that point was a vindictive response to conduct he considered disloyal. I have found no basis to believe his desire for [20-Emp. Inv.] to still attend the meeting was based on [20-Emp. Inv.] gender; rather, he had no reason to believe [20-Emp. Inv.] had opposed his interests as he believed [20-Emp. Inv.] had.

In conclusion, the evidence I have obtained does not establish on a more likely than not basis that Commissioner Felleman discriminated against [20-Emp. Inv.] based on [20-Emp. Inv.] gender.

E. Suggested Corrective Action


Commissioner Felleman’s conduct in this case seems sufficiently misguided and harmful to warrant corrective action that will obtain his attention and ideally prevent similar conduct in the future. As an outside investigator, I am hesitant to recommend what corrective action would be appropriate, as ultimately that is a decision for the Board. At a minimum with regard to

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remedial measures, however, I suggest that the Commissioner be required to participate in counseling or coaching regarding the nature of the commissioner role, the ethical obligations it entails, the missteps he made in this situation, and how he can avoid them in the future. It may also be beneficial to have him apologize to **20-Emp. Inv.** .

These suggestions are not intended to be exclusive of any other corrective action the Board or Commissioners may consider appropriate.

Sincerely,



Jillian Barron