

# APANO INVESTIGATION REPORT

February 9, 2018

## I. INTRODUCTION

This report consists of several parts. In Part I, we describe the events that led to an independent investigation of the Asian Pacific American Network of Oregon ("APANO") and the scope of the investigation. In Part II, we provide a brief summary of our findings and the limitations of the investigation. In Part III, we describe APANO's creation, mission, vision, values, and governance structure. In Part IV, we summarize the legal standards for discrimination, which we used in making our findings; the applicable legal duties for directors of nonprofit boards; and the relevant personnel policies. In Part V, we set out the major allegations in the Letter and explain the investigation process. In Part VI, we present our findings of fact, addressing each major allegation in the order presented in the Letter (defined in the next paragraph), and organizational changes that have recently occurred at APANO.

On November 5, 2017, a group consisting of 14 individuals—former APANO employees, former volunteers, and one former APANO Board member—sent a letter with the subject line "Systemic and Historical Gender & LGBTQ Violence and Oppression at APANO" to the members of APANO's governing bodies (the "Letter"). The group identified itself as the API Community Transformation Collective (the "Collective").<sup>1</sup> In the Letter, the Collective raised numerous concerns and demanded the resignation of the Executive Director, the Associate Director, and the full Boards of Directors by November 8, 2017. The Collective warned that if the foregoing individuals did not resign by that date, the Collective would "bring these issues to the attention of the wider community." On November 22, 2017, the Collective published an "Open Letter" (the "Second Letter"), restating and clarifying its concerns.

Because of the nature of the allegations, the Boards determined that they would hire independent counsel to conduct an investigation. In selecting independent counsel, which they called "the Community Liaison," the Boards considered the following qualifications: (1) practicing attorney who is currently bound by the professional code of conduct; (2) knowledge of gender justice principles; and (3) understanding of Asian and Pacific Islander communities. The Boards retained Miller Nash Graham & Dunn LLP to investigate and provide an impartial assessment regarding certain concerns about APANO's organizational and employment practices that were raised in recent "open letters."<sup>2</sup> This included reviewing, among other things, the Letters; state law; applicable personnel policies; and confidential Human Resources ("HR") materials; conducting direct outreach to individuals expressing concerns; making factual findings; and providing a confidential summary and impartial assessment report.

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<sup>1</sup> The acronym "API" stands for "Asian Pacific Islander."

<sup>2</sup> Copies of the biographies of authors of this investigation report are attached.

## II. SUMMARY OF FINDINGS AND LIMITATIONS

Based on the interviews conducted and materials reviewed, we do not find any evidence that overt discrimination against any protected class occurred. Put simply, we do not find any evidence (1) of a pattern of ongoing and persistent harassment severe enough to alter the conditions of employment and that the harassment was because of an individual's sex, gender identity or sexual orientation; (2) that APANO treated an individual disparately in the terms and conditions of employment because of the person's sex, gender identity or sexual orientation; or (3) that APANO denied a position or a promotion because of an individual's sex, gender identity or sexual orientation.

But based on the consistent concerns raised by current and former Board members, staff, volunteers, and external stakeholders, we find that APANO has inadequately addressed numerous organizational challenges. In brief, APANO leadership has failed to professionally manage its human capital, and to ensure that appropriate employment policies were implemented and followed. And because APANO is a progressive social-justice-minded organization, APANO staff, community members, and stakeholders expect APANO to address those concerns.

Our investigation had several limitations. First, the scope of the investigation was not finalized until the middle of December 2017, in large part because of concerns regarding confidentiality. We were not engaged to provide a comprehensive HR audit that reviewed whether current exempt/nonexempt classifications are appropriate.<sup>3</sup>

Second, the Boards provided a short time frame for us to conduct interviews and produce a final report. We were asked to finish interviews by January 15, 2018, and complete the report by February 1, 2018.<sup>4</sup> We received last-minute outreach from a former Board member, a current staff member, and community members as late as January 31, 2018, which we attempted to incorporate into our findings. But because of the short timeline, we were not able to review key documents, such as e-mails from APANO's leadership, that could have had a bearing on our findings.

Third, our time-limited investigation was obstructed by the refusal of the majority of the signatories to be interviewed and slow production of documents. The investigative team was forced to go to extraordinary lengths to obtain information, including making multiple attempts to contact individuals and providing numerous assurances to individuals that their responses would remain confidential. In the end, in order to gather as much information as possible, and to minimize the APANO staff's unexpected fears of retaliation, we created two 20-question electronic surveys as part of

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<sup>3</sup> We recommend that the Boards do such a review in the future.

<sup>4</sup> Notably, on January 17, 2018, the Boards met with community members, including some of the signatories to the Letter, to answer questions regarding the investigation and the selection of the Community Liaison.

the independent investigation—one for current APANO staff and one for APANO's "full e-mail list."<sup>5</sup>

After being assured of confidentiality, several individuals (other than the signatories) agreed to be interviewed or to respond to the surveys.<sup>6</sup>

### **III. FACTUAL BACKGROUND**

#### **A. APANO's history, mission, vision, and values.**

APANO grew out of the advocacy wing of the Immigrant & Refugee Community Organization, commonly referred to as "IRCO." That group of people, which later included APANO's current Executive Director, formed APANO to advocate for APIs.

APANO has had a broad mission; currently, APANO's mission statement provides that APANO is "*a statewide, grassroots organization, uniting Asians and Pacific Islanders to achieve social justice. We use our collective strengths to advance equity through empowering, organizing and advocating with our communities.*"<sup>7</sup> (Emphasis added.) APANO's vision statement provides that it "envision[s] a just and equitable world where Asians and Pacific Islanders are fully engaged in the social, economic and political issues that affect us."<sup>8</sup>

APANO's statement regarding its "values" provides, among other things, that APANO believes that a "just world" means that:

"[a]ll our families have the rights, recognition and resources they need to thrive, and their life outcomes are not tied to identity or social determinants of health";

"[e]veryone has the social, economic and political power and resources to make healthy decisions for themselves about their bodies, *genders, sexualities and families, in all areas of their lives, without fear of discrimination, exclusion or harm*";

"*[t]he health, well-being and survival of our communities and the natural world are understood as more important than individual profit, and supported through equitable distribution of wealth and resources*";

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<sup>5</sup> We were informed that this is "an email list of over 7,000 people, many of whom are electeds, funders, and non-API folks who have signed a petition[,] attended an event at some point in the past several years," or signed up to receive APANO e-mails or its newsletter.

<sup>6</sup> The APANO Boards agreed that the identity of witnesses who wished to remain confidential would not be provided to the Boards. Confidential witnesses are therefore referred to in this report by numbers, e.g., R1, R2.

<sup>7</sup> APANO, Mission, Vision, Values, <http://www.apano.org/about/mission-vision-values/> (last accessed Jan. 28, 2018).

<sup>8</sup> *Id.*

*"[i]nstitutions are built around the inherent worth and dignity of all people and are designed and function as systems of care and support, not systems of criminalization and control";*

"[c]ommunities have the skills, capacity and resources to organize themselves for change, collectively self-determine their needs and solutions, and control their own destinies."<sup>9</sup> (Emphases added.)

On its website, APANO claims to be committed to:

"1. *Highlighting intersectionality.* Each of us holds multiple identities and is impacted by multiple, interlocking issues. *We strive to lift up the many ways that systems of oppression are interconnected and shape our experience, and center the voices and leadership of those who live at the intersections. We honor and make space for the multiple identities and issues we hold as diverse communities under the 'API' banner.*

"2. *Prioritizing movement-building.* We work in values-based alliances to build long-term movements and invest in meaningful relationships with other organizations and groups fighting for social justice.

"3. *Centering organizing in the way we do our work.* We recognize the need for a diversity of tactics to support social change, from direct service to non-violent direct action, and intentionally elevate organizing as our central strategy to empower communities, win concrete changes and shift the balance of power.

"4. *Strengthening organizational political analyses.* Through political education opportunities, policy endorsements, and coalition decisions, APANO will continue to operationalize this framework and deepen the political analysis of Board, staff, and members in support of these values."<sup>10</sup> (Emphases added.)

Because of its mission, vision, and values, APANO staff and stakeholders have a strong "desire to hold APANO to a higher standard" than other nonprofit organizations.

## **B. Governance structure.**

APANO has two volunteer Boards: the APANO Communities United Fund 501(c)(3) Board ("APANO CUF") and the APANO 501(c)(4) Board ("APANO 501(c)(4)") (collectively, the "Boards"). APANO CUF was formed in 2008, and its primary purpose is "to *educate* for the welfare of the Asian and Pacific Islander

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

communities of Oregon."<sup>11</sup> (Emphasis added.) APANO CUF is composed of ten individuals and is led by a Chair and a Vice Chair.

APANO 501(c)(4) was formed in 2016, and its primary purpose is "to *advocate* for the welfare of the Asian and Pacific Islander communities of Oregon."<sup>12</sup> (Emphasis added.) APANO 501(c)(4) is composed of six individuals and is led by a Chair and a Vice Chair.

#### **IV. LEGAL STANDARDS AND PERSONNEL POLICIES**

Oregon's workplace discrimination statute, Oregon Revised Statute ("ORS") 659A.030, prohibits workplace discrimination based on sex, gender, and sexual orientation.<sup>13</sup> Under that statute, it is unlawful for an employer to treat a job applicant or employee unfavorably *because of* sex, gender, or sexual orientation with regard to any employment action. Employment actions may include termination, decisions to hire or promote, determinations of pay rate, and the assignment of work in relation to both quantity and quality. Additionally, the statute prohibits harassment and retaliation.

##### **A. Elements of gender and LGBTQ discrimination.**

ORS 659A.030 gives rise to four notable causes of action for gender and LGBTQ discrimination<sup>14</sup> and harassment:

1. Hostile Work Environment: To establish a claim for hostile work environment based on sex, gender or sexual orientation, a plaintiff must establish the following: (a) a pattern of *ongoing and persistent harassment severe enough to alter the conditions of employment; and (b) that harassment was because of the plaintiff's sex, gender or sexual orientation.*<sup>15</sup>

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<sup>11</sup> Bylaws of APANO CUF (amended 2016).

<sup>12</sup> Bylaws of APANO 501(c)(4) (amended 2016).

<sup>13</sup> In completing our investigation to determine whether APANO engaged in *any* form of sex, gender, or sexual orientation discrimination, we were guided by the following definitions:

1. The term "sex" refers to the biological, anatomical, and physiological characteristics that we know to commonly define men and women;

2. The term "sexual orientation" refers to an individual's actual or perceived heterosexuality, homosexuality, or bisexuality; and

3. Although not defined by statute, the term "gender" or "gender identity" refers to an individual's gender-related identity, whether or not that identity deviates from that traditionally associated with the individual's biological sex.

See Oregon State Bar, *The Rights of Gay, Lesbian, Bisexual and Transgender People*, Aug. 2013, available at [http://www.osbar.org/public/legalinfo/1191\\_LGBTRights.htm](http://www.osbar.org/public/legalinfo/1191_LGBTRights.htm) (last accessed Feb. 9, 2018).

<sup>14</sup> The word "discrimination" means "[t]he effect of a[n] \* \* \* established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or disability." Black's Law Dictionary 566 (10th ed 2014).

<sup>15</sup> *Fred Meyer, Inc. v. BOLI*, 152 Or App 302, 307, 954 P2d 804 (1998). A legal dictionary defines the term "harassment" as "words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose; purposeful vexation." Black's Law Dictionary at 831.

2. **Disparate Treatment:** To establish a prima facie case of discrimination based on disparate treatment, a plaintiff must show that (a) the defendant treated them disparately in the terms and conditions of work and (b) this treatment was *because of their sex, gender identity or sexual orientation*.<sup>16</sup>

3. **Retaliation:** To establish a prima facie case of sex-, gender-identity- or sexual-orientation-based retaliation in employment, a plaintiff must demonstrate that (a) they engaged in the protected activity of complaining of gender discrimination, (b) they were subject to discriminatory action, and (c) the discriminatory action was taken against them *because of their protected complaint*.<sup>17</sup>

4. **Failure to Promote:** To establish a prima facie case for sex, gender-identity or sexual orientation discrimination based on the failure to promote, a plaintiff must prove by preponderance of the evidence that they (a) applied for an available position, *but (b) were rejected under circumstances giving rise to an inference of unlawful discrimination*.<sup>18</sup>

## **B. General fiduciary duties of a nonprofit board.**

Oregon law provides that a director "shall discharge the duties of a director, including the director's duties as a member of a committee: (a) In good faith; (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (c) In a manner the director reasonably believes to be in the best interests of the corporation." ORS 65.357(1).

## **C. Personnel policies.**

Personnel policies and guidelines have been in place at APANO since 2010. The language included in these policies and guidelines has largely stayed consistent to the present.<sup>19</sup> Under its current personnel policies and guidelines (the "2017 Policies"),<sup>20</sup> APANO has aimed to create a work culture that personifies close communication, coordination, and strong accountability. The following sections in the 2017 Policies highlight APANO's goals of creating an equitable work environment:

- Section 3.1. "Equal Employment Opportunity"—"APANO will endeavor to provide equal opportunity to all qualified employees and applicants for

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<sup>16</sup> *Gibson v. Douglas County*, 197 Or App 204, 218, 106 P3d 151 (2005); *see also* Black's Law Dictionary, at 566 ("Differential treatment; esp., a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.").

<sup>17</sup> *See generally LaCasse v. Owen*, 278 Or App 24, 373 P3d 1178 (2016).

<sup>18</sup> *Medina v. State of Oregon*, 278 Or App 579, 587, 377 P3d 626 (2016).

<sup>19</sup> According to the records reviewed, the formal grievance procedure is specifically referenced in APANO's 2010 and 2017 personnel policies and guidelines. APANO personnel policies and guidelines in 2013, 2015, and 2016 did not contain provisions regarding the formal grievance policy—the policies reference a more general "problem resolution" procedure instead.

<sup>20</sup> The 2017 Policies were approved on October 28, 2017, and became effective on November 1, 2017.

employment. All aspects of employment will be governed on the basis of merit, competence, and qualifications and will not be influenced in any manner by race, color, religion, sex, age, national origin, physical or mental disability, marital status, veteran status, sexual orientation, genetic information or any other basis prohibited by law."

- Section 3.2. "Prohibition of Harassment and Discrimination"—Under APANO's antidiscrimination and harassment policy, all forms of discrimination and harassment are completely prohibited.
- Section 7.2. "Code of Conduct"—Employees are responsible for contributing toward ensuring safety and cultivating a positive, productive, and pleasant workplace culture and a productive environment.
- Section 8. "Grievance Policy."

Notably, "APANO has a policy of not only prohibiting, but also endeavoring to prevent, harassment and discrimination."<sup>21</sup> The policy defines each term as follows:

- "Sexual harassment" is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" that has "the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment."<sup>22</sup>
- "Unlawful harassment [sic]" is defined as any "conduct that has the purpose or effect of creating an intimidating, hostile, or offensive work environment; has the purpose or effect of substantially and unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities because of the individual's membership in a protected class."<sup>23</sup>

"Unlawful harassment includes, but is not limited to, epithets; slurs; jokes; pranks; innuendo; comments; written or graphic material; stereotyping; or other threatening, hostile, or intimidating acts based on race, color, ancestry, national origin, gender, sex, sexual orientation, marital status, religion, age, disability, veteran status, or other characteristic protected by state or federal law."<sup>24</sup>

If an employee believes a violation of the 2017 Policies has occurred, the employee should immediately report the matter to a supervisor-level employee.<sup>25</sup> If a

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<sup>21</sup> 2017 Policies at 8.

<sup>22</sup> 2017 Policies at 7.

<sup>23</sup> 2017 Policies at 7-8.

<sup>24</sup> 2017 Policies at 8.

<sup>25</sup> *Id.*

supervisor is not available or is not responsive to the complaint, the employee is instructed to "contact the Executive Director or other appropriate management personnel."<sup>26</sup> If the Executive Director is the subject of the complaint, the employee is instructed to contact the Chair of the Board of Directors.<sup>27</sup>

Additionally, employees are encouraged to utilize APANO's formal grievance procedure. Specifically, after exhausting every effort to discuss and resolve complaints with an immediate supervisor, an employee should file a formal grievance with the organization.

The following are the reporting procedures under the grievance policy:<sup>28</sup>

1. Employee reports offending conduct: Employee reports inappropriate conduct to the "Executive Director<sup>29</sup> or to any available organizational supervisor or manager."
2. A formal grievance is filed: The supervisor or manager files a formal grievance<sup>30</sup> with the HR Manager<sup>31</sup> containing a description of the specific problem or area of dissatisfaction and the "relief, resolution and ideal outcome sought by the employee."
3. Initial resolution meeting between the employee and manager is held: "A meeting between the employee, their immediate supervisor, and/or the HR Manager is arranged within seven (7) business days of receipt of the written grievance."<sup>32</sup> The issue alleged in the grievance is discussed and a written report of the meeting is prepared by the supervisor or HR Manager.
4. Additional resolution meeting between a manager and director may be held: If the grievance is not resolved during the formal meeting referenced above, the supervisor or HR Manager arranges a meeting between the supervisor, the supervisor's primary organizational director, and the Executive Director within five business days of the initial meeting.<sup>33</sup> The Executive Director may elect to utilize a third-party facilitator for the purposes of resolving the conflict if requested and agreed

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<sup>26</sup> *Id.* The policy does not define the term "appropriate management personnel."

<sup>27</sup> The policy, however, does not indicate which Chair to contact—the APANO CUF Chair or the APANO 501(c)(4) Chair.

<sup>28</sup> The policy notes that the reporting procedures outlined in Section 8.3 "may not apply" to grievances regarding the Executive Director. 2017 Policies at 25.

<sup>29</sup> The employee is required to submit the completed grievance form to the Board Chair when the grievance is against the Executive Director. 2017 Policies at 25.

<sup>30</sup> Grievance forms are "available in the Employee Handbooks and from the HR Manager." The APANO Grievance Form was last updated in October 2017 and provides that employees "[s]ubmit all forms to the HR Manager." 2017 Policies at 26.

<sup>31</sup> If the grievance is against the HR Manager, the formal grievance is filed with the Executive Director. 2017 Policies at 25.

<sup>32</sup> 2017 Policies at 26.

<sup>33</sup> *Id.*

on by all parties. Once a decision has been reached, the Executive Director has ten business days to provide the employee with a copy of the decision.

5. APANO's resolution appeals process: An employee who is unsatisfied with the grievance resolution may elect to file a written appeal, which states the employee's ideal outcome, to the Chair of the Board of Directors.<sup>34</sup> The appeal must be submitted within ten business days of the employee's receipt of complaint decision.<sup>35</sup>

6. The Board's appeal decision is final: The Chair must consult the Executive Committee, and has 20 business days in which to review the grievance and make a recommendation to the full Board for a decision.<sup>36</sup> In all cases, the decision of the Board of Directors is final and not subject to any further organizational appeal.<sup>37</sup>

Disciplinary actions taken by APANO under the 2017 Policies will depend on the seriousness of the situation and assessment of the circumstances. Termination is the highest form of disciplinary action. Discipline less than termination may take the form of an oral warning, a written warning, a performance review indicating substandard performance in one or more areas, probation, or suspension. "The evaluation of the seriousness of the offense will be made solely by the Executive Director."<sup>38</sup> The 2017 Policies strictly prohibit termination of employment that violates any applicable local, state, or federal law.

## **V. INVESTIGATION PROCESS**

### **A. Allegations in the Letter.**

In the Letter, the Collective describes its concern that APANO has been engaged in the systemic and historical oppression of women as well as individuals identifying with the LGBTQ community. The Letter cites the experiences of more than "a dozen staff members who have been pushed out and traumatized because of their experiences of rampant sexism, homophobia, and transphobia at APANO." The Letter notes specific allegations of oppression and trauma experienced by staff at APANO; the following are the key allegations:

- "Limited opportunities for mobility for female and LGBTQ staff, even though they do the bulk of the work within the organization";
- "Pay disparities based on gender and sexual orientation";

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 2017 Policies at 27. There is no provision in the 2017 Policies regarding the evaluation of the seriousness of an offense committed by the Executive Director. *See generally* 2017 Policies at 27-28.

- "Workplace harassment from supervisors and board members including anger, violence, intimidation, and bullying";
- "Threats of demotion as a coercive tactic to force work upon a female staff member";
- "[C]onstant minimizing, denying, and defensiveness regarding serious grievances involving gender and queer oppression and bad management";
- Differing "expectations and standards for male, female, queer, and gender non-conforming staff" with regard to the different employee responsibilities;
- "Retaliatory and coercive behaviors against former staff who have raised grievances, and/or supported others with grievances against the organization";
- "Preventing the success of former staffers [and] volunteers \* \* \* by blocking relationships, job opportunities, and refusing to write letters of recommendation";
- "Intimidation, coercion, and threats to former (mostly female) staff[]," including limiting staff members' livelihoods in different partner organizations; and
- "[T]he APANO Board has received reports of these toxic behaviors and patterns, but has failed to take adequate steps to remedy the situation."

In the Second Letter, the Collective explains that "the very premise of our demands is to prevent the harm that *is* happening and that *will* continue to happen at APANO, especially to people with marginalized identities and to those who have the least amount of positional power." (Emphasis in original.) The Collective adds that "former staff and board members" can attest to "widespread culture of heterosexist patriarchal mismanagement among the board."

In the letters, the Collective does not provide any specifics to support its allegations. The Second Letter suggests that this is intentional: "We did not share specific stories because we shouldn't have to cut our wounds open and bleed for APANO leadership to substantiate ourselves - especially when the majority of the Board and executive leadership is aware of our pain and trauma." The Second Letter further explains:

"We understand that 'specifics' can be very useful in developing shared understanding and knowledge. But so often the demand for 'specifics' is used by perpetrators to buy time and dodge accountability. We live in a world where disclosing traumatizing 'specifics' is always required of the people harmed. We ask victims to bleed and recount every single detail in order for us to take them seriously. In light of the #MeToo movement,

we'd like you to understand that survivors of abuse and violence do not bring forth their stories lightly. We would like to shift that culture and practice, so the burden of proof is not always disproportionately, if not exclusively, on the people harmed. As we said before, APANO leadership has access to plenty of 'specifics,' especially if [the Executive Director], [the Associate Director], and long-term board members are actually willing to be forthcoming." (Emphasis in original.)

The Second Letter ends by asking the media to ask for the Collective's "consent before reporting on this, *especially* if you are a white journalist or a media outlet that is majority white. \* \* \* This is ultimately a story about a group of people who want to hold our leadership accountable for abusive, heterosexist, and patriarchal leadership that disproportionately harms women and queer people of color."

Because of these allegations and the current leadership's alleged failure to address them, in the Letter, the Collective asked for the immediate resignation of APANO leadership—Executive Director, Associate Director, and all current members of the Boards. Additionally, the Collective:

"urge[d] that an independent consultant of the community's choosing step in to support the work. Such a consultant should create a committee that involves staff, community members, and stakeholders and that centers the voices of women, LGBTQ staff and those most marginalized within our community--that is, the voices that have experienced marginalization and pain without redress. The committee's work would be to facilitate a path forward for the organization."

## **B. Investigation process.**

### **1. Outreach to current and former APANO Board members, staff, volunteers, and members of partner organizations.**

In the course of the investigation, we interviewed eight current and past Board members, eight current staff members, six former staff members, including one Board-appointed staff manager, two former consultants for APANO, two former volunteers, and six community partners, including partners that provide funding. These interviews were conducted via in-person meeting, Skype, telephone, and e-mail. After being reassured of confidentiality, these witnesses were generally cooperative, forthcoming, and candid during the interviews.

During the investigation, we encountered some individuals who refused to be interviewed. At least two individuals provided their reasons for refusing to participate in the investigation:

- "I do not wish to assist APANO in any way to be honest. They have been given this feedback several times in the past and have wasted the organization's resources and time for investigations and mediations that never materialized

into any corrective action in the past, even with the affected parties' participation."

"Speaking frankly, I do not trust any investigation that APANO has initiated—a result of being jerked around by the organization and its leadership many times in the past. I will not be participating in any part of the investigation moving forward[.]"<sup>39</sup>

- "I do not wish to talk to you because Elisa was selected unilaterally by the APANO board and you are her associate. This is not personal. I believe this process is flawed and do not want to participate in it."

"If you want to support the asian and pacific islander community to move forward with the healing process, I recommend you to encourage Elisa and APANO leadership to re-start the process and be more inclusive every step of the way including the initial step of selecting the community liaison."<sup>40</sup>

Despite provisions in the personnel policies that require cooperation in investigations, a number of staff members expressed concern that they would be retaliated against for speaking up; a majority expressed that they feared losing their jobs if they commented on their employment or concerns. That fear appeared to stem from the allegations in the Letter rather than from conduct by APANO leadership. We also learned that the staff's definition of the word "harm" was not synonymous with the legal definition of the word "harm," which is defined as "[i]njury, loss, damage; material or tangible detriment."<sup>41</sup> Based on our interviews, it appears that some define "harm" and its gravity as the subjective impact of someone's words or actions regardless of the actor's intent.

## 2. Outreach to the signatories.

At various stages of the investigation, we reached out to the signatories to the Letter via e-mail, by telephone, or in person. The majority of the signatories were not cooperative or forthcoming; the majority either did not return our telephone calls and voicemails or did not reply to our e-mails. Some common themes expressed by the Collective were a concern that the process was biased and that their words would be "twisted." There was also a sentiment that it was unfair for individuals to have to relive their "trauma." A number of the signatories responded to express why they refused to be interviewed; the following response is noteworthy:

"Your selection by APANO as a 'community liaison' circumvents our attempt to have a community-led and community-driven process. That would include the selection of mediators jointly with the Collective. Since you were not selected by us, I decline to interact with you or any representative of APANO excluding nonmanagerial staff members until

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<sup>39</sup> December 31, 2017, e-mail from [REDACTED].

<sup>40</sup> January 3, 2018, e-mail from [REDACTED].

<sup>41</sup> Black's Law Dictionary at 832.

such a time as we are included in both process design and selection in meaningful ways that include decision making power. That is transformative justice. Everything else - including this - is smoke and mirrors."<sup>42</sup>

We discovered that several signatories did not have firsthand experience with the allegations raised in the Letter; rather, some of the signatories were supporters of those who reported having firsthand experience. For example, one signatory stated, without citing specific examples, that they "know that what is written in the letter is true and affected a lot of people that [they] know." When asked for specifics, this individual replied that they were not comfortable speaking on behalf of others. Another signatory wrote, "I did not directly experience these concerns and only heard them from some of the signatories who are my friends, colleagues, and former students, and so, to continue to support them, it's best I don't engage with this process until they are ready to engage this process."

We also learned that, similar to the APANO staff, the signatories' definition of the word "harm" is not identical to the legal definition of the word.

Significantly, we were also told that at least one signatory had threatened a former staff member, R1. According to R1, R1 was approached by at least one signatory, who requested that R1 sign the Letter. R1 asked for more specifics about the allegations regarding, among other things, the reported "discrimination," "pattern" of harm, and "targeting of LGBTQ staff members" before R1 could sign the Letter. R1 asked for specifics because R1 had not witnessed or heard about that behavior at APANO. The signatories did not provide specifics. Then one of the signatories told R1 that "you should sign it or you will be accused." The signatory did not mention what wrong R1 had committed. R1 informed us that R1 felt "threatened" and "worried" about APANO because of the "vendetta against APANO." R1 noted that during R1's tenure at APANO, R1 had previously supported a former staff member with the staff member's Bureau of Labor and Industries ("BOLI") complaint against APANO and had advocated for the promotion of a female staff member to a director position.

A former staff member, R2, commented that one of the signatories, while at APANO, was "super aggressive" and in constant conflict with APANO's Executive Director. R2 added that the signatory was not able to handle themselves in "a professional way," including "point[ing] fingers," "mak[ing] accusations," and "burning bridges and severing internal and external relationships."

In short, out of the 14 signatories to the Letter, only [REDACTED] and [REDACTED] allowed us to interview them, and only one of them provided us with specific examples. Five other signatories with whom we spoke briefly declined to provide specifics.

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<sup>42</sup> January 11, 2018, e-mail from [REDACTED].

### 3. Creation and review of electronic surveys.

As noted, our investigation was obstructed by the refusal of several signatories (and their supporters) to be interviewed. We also learned that there were dozens of nonsignatory members of the Collective whose contact information we did not have. In an effort to gather as much information as possible, and to minimize the fear of retaliation and "word twisting," we created two 20-question surveys on SurveyMonkey, an online survey tool. With APANO's agreement, only we had access to the responses. The member survey was an attempt to give the Collective members—and all stakeholders—an equal opportunity to provide us with direct, unfiltered feedback regarding the allegations in the letters. Despite our numerous efforts to gather information, no signatory responded to the member survey.

In the staff survey, respondents had the option of providing their name and title. We received 24 responses, and out of those, only 13 provided their names. Out of the 24 staff responses, 6 answered that they had had firsthand experience with the assertions in the Letter, but none reported that APANO has "intentionally perpetrat[ed] harm and violence against" women or LGBTQ staff.

In the member survey, we asked respondents to provide their name and e-mail in question 1. We also asked them to indicate in question 2 of the survey whether they wished their responses to remain confidential to the maximum extent permitted by law. We defined "confidential" to mean that "(1) only the Community Liaison and her firm will know the identity of the responses and (2) the APANO Boards and APANO staff will not have access to identifying information."

We received 89 responses to our member survey.<sup>43</sup> Perspectives captured in the survey responses included those of current and former volunteers at APANO, members of partner organizations of APANO, and individuals who otherwise support APANO. Of the 89 responses, only one respondent, a former staff member, indicated that they actually had firsthand experience with the allegations in the Letter. The survey responses generally conveyed a variety of perspectives on the current internal work culture at APANO and the assertions in the Letter. Some responses conveyed a belief that the internal work culture at APANO is equitable and free from the negative and oppressive experiences alleged in the Letter. But others conveyed a belief that the work culture at APANO does exhibit the "deep seated patriarchy and heterosexism" reported in the Letter. Despite the differing member perspectives regarding APANO's perceived internal work culture, a majority of the members' survey responses characterized their actual experiences of working and volunteering at APANO as positive and free from the oppressive culture described in the Letter.

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<sup>43</sup> We received 20 responses to the electronic member survey after Tuesday, January 30, 2018.

4. Materials reviewed.

In the course of the investigation, we reviewed the following materials:

<b>No.</b>	<b>Document</b>	<b>No.</b>	<b>Document</b>
<b>1</b>	Letters, e-mails, and text messages to APANO from various individuals, including current and former APANO staff, current and former APANO volunteers, current and former APANO Board members, and community members	<b>12</b>	Staff evaluations
<b>2</b>	Facebook posts	<b>13</b>	A Resolutions Northwest assessment
<b>3</b>	Correspondence from former APANO staff	<b>14</b>	APANO's Gender Justice Staff Committee notes
<b>4</b>	APANO's strategic plan	<b>15</b>	HR Committee meeting minutes
<b>5</b>	Organizational charts	<b>16</b>	A written statement from a signatory
<b>6</b>	APANO Boards' governing documents	<b>17</b>	APANO Board meeting minutes
<b>7</b>	APANO's staff handbook	<b>18</b>	APANO's personnel files of current and former employees
<b>8</b>	APANO's Board nomination policies	<b>19</b>	A former staff member's written materials regarding their BOLI action
<b>9</b>	APANO's wage records	<b>20</b>	113 survey responses to surveys created by us, which were open to current staff and APANO's "full e-mail list"
<b>10</b>	APANO's exit interviews	<b>21</b>	State laws, including ORS 659A.030 and ORS 65.357(1)
<b>11</b>	APANO's confidential HR materials		

**VI. INVESTIGATION FINDINGS**

Below, we provide our findings as to each major assertion in the Letter. The findings are based largely on in-person and telephone interviews. The responses from the electronic surveys (especially anonymous responses) were afforded weight based on our ability to verify the statements provided.

**A. No evidence of "[I]imited opportunities for mobility for female and LGBTQ staff."**

We did not find evidence of "[I]imited opportunities for mobility for female and LGBTQ staff." We find that APANO has in the past relied heavily on a young workforce and that a majority of that workforce was female-identified staff and volunteers. But any lack of mobility can be attributed not to sex, gender, or any

protected status, but rather to funding, the flat structure at APANO, and unclear hiring and promotions policies. As a former Board member and HR Committee member put it, "APANO is small nonprofit. Upward mobility is not what you join for."

In addition, we find that despite long-standing concerns, APANO leadership has failed to provide clarity in employment and budgetary policies and practices. A majority of the staff reported, and emphasized, that some of their frustrations with APANO stem from a lack of clarity around APANO's hiring, promotions, grievances, funding, and grant-writing processes; job descriptions; and wage information.

APANO has existed since 2009, yet APANO's promotion process remains unclear, which has resulted in mistrust in APANO's leadership. A common frustration was supervisors' lack of follow-through regarding advancement inquiries and formal and informal grievances. The lack of follow-through has resulted in staff members' questioning their supervisors' motives. One current staff member, R3, reported, however, that the new HR Manager is helping develop promotions policies and "getting people on the same page." And in the last two years, APANO has promoted only female staff members to director-level positions. One female staff member has recently been promoted to a manager-level position, and APANO recently hired a female HR Manager. Out of the seven management positions, three identify as female, and of those three, two identify as LGBTQ.

#### **B. No evidence of wage disparity.**

We find no evidence of wage disparity based on gender or LGBTQ status. APANO's pay information shows that similarly situated employees are paid congruently regardless of gender. APANO's current salary rates for September 2017 for all 14 full-time staff by classification show the following:

- Seven full-time staff members identify as female.
- Three full-time staff members identify as LGBTQ—one director, one manager, and one coordinator.
- Seven individuals serve in director or manager positions. Out of those seven, four identify as male, three identify as female, and two identify as LGBTQ. Similarly situated employees are paid congruently regardless of gender, except that one female manager is paid more than a male manager even though the female manager has been at APANO for only three years and the male manager four years. That male manager earns only slightly more than the LGBTQ manager, who has been at APANO for only one year.
- At the coordinator level, two female coordinators (one of whom identifies as LGBTQ) earn significantly more than a male coordinator even though the male coordinator has been at APANO for one year longer than the female coordinators.

- APANO's highest earners are both male; the male Executive Director has been at APANO for eight years and earns \$65,000 a year, and the male Associate Director has been at APANO for five years and earns \$55,000 a year. Notably, a female director (who identifies as LGBTQ) has been at APANO for only two years, but earns \$50,000. The only other director is female and earns \$47,500 a year.

**C. No evidence of "[w]orkplace harassment from supervisors and board members."**

As defined by the law and the 2017 Policies, we find no evidence of workplace "harassment." We probed interviewees, but received no specifics or concrete examples that constituted "harassing" behavior. In other words, we do not find evidence of "conduct that has the purpose or effect of creating an intimidating, hostile, or offensive work environment; has the purpose or effect of substantially and unreasonably interfering with an individual's work performance; or otherwise adversely affects an individual's employment opportunities because of the individual's membership in a protected class."

As discussed further in Sections E and F below, we heard of frustrations regarding micromanagement, conflicts with supervisors, and other challenging interactions involving staff members and APANO leadership that were exacerbated by weak workplace policies, including recordkeeping, hiring, promotions, grievance, and anti-fraternization policies, and a lack of awareness of gender and power dynamics. APANO leadership has been aware of these shortcomings and appears to be in the process of addressing some of them. It is worth noting, however, that hurt feelings do not constitute "harassment" in the legal sense.

Overall, the interviews and survey responses suggest that APANO is "ahead of the curve" in terms of *striving* to create a healthy workplace.

**D. No evidence of "[t]hreats of demotion as a coercive tactic to force work upon a female staff member."**

Because of the signatories' refusal to speak with us, we can only assume that this allegation is related to the ongoing BOLI investigation by a former staff member. The BOLI complainant did not respond to our request for an interview, but based on what we learned from other interviewees, we found no evidence of any threat of demotion "as a coercive tactic to force work upon a female staff member." We did, however, find evidence of miscommunication regarding promotions and job expectations, some of which may stem from unclear communications and expectations regarding budgetary and staffing issues.

**E. No evidence of "constant minimizing, denying, and defensiveness regarding serious grievances involving gender and queer oppression and bad management."**

We find no evidence of "constant minimizing, denying, and defensiveness regarding serious grievances involving gender and queer oppression."

However, we did find evidence that management needs to improve in numerous areas. For example, we found evidence of APANO leadership's failure to (1) maintain adequate employment records, (2) ensure that proper employment policies were implemented and followed, and (3) resolve the perception of APANO's indifference to gender and power dynamics.

We found that almost all the staff, at one point or another, felt "micromanaged" by the Executive Director. They explained that the Executive Director would, at times, step in to take over a project, assume some of their responsibilities (at times, without advance notice), or get involved in a project without notice or warning—namely, policy and communications projects. Staff reported that the issue was exacerbated by nighttime e-mails from the Executive Director, which they felt compelled to reply to immediately. They admitted, however, that the Executive Director did not explicitly ask for prompt responses. One staff member, R4, explained that

"[the Executive Director] has micromanaged projects or decisions and asked for changes, explanations or additions at the last minute, particularly when working from the Philippines, which has been frustrating and [the Executive Director] can sometimes come across as curt or directive but which I would not characterize as a 'hostile work environment' or 'coercive control.' This has also improved following feedback given in [the Executive Director's] last two 360 evaluations."

Similar to R4, most other staff reported that the "micromanagement" issue has significantly improved over the last year.<sup>44</sup>

In addition, there is general agreement among the staff that the workload at APANO can be overwhelming. It is common for some staff members to work more than 40 hours a week, which includes late nights and early mornings.<sup>45</sup> Although the Executive Director told us that staff should receive and take "comp" time for that, no such policy appeared in the personnel policies.

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<sup>44</sup> Several partners and community leaders also complained about their interactions with APANO leadership, despite their broad support of the organization's mission, direction, and accomplishments. Both women and men noted that the Executive Director seems to attack disagreement by what is perceived as "undermining" decisions, rather than dealing with disagreements head on. One partner said that they "had every confidence in the Executive Director's theory of change and knowing what needs to get done," and that they "know I'm a better person because I listened to his viewpoints and learned. The difference is that if there's something he doesn't agree with or doesn't like, he generates questions about the other person's abilities or their critical lens."

<sup>45</sup> We received responses to our document request as early as 4:18 a.m. and as late as 2:14 a.m.

Overall, respondents opined that the Executive Director needs to be held accountable for mistakes made (intentional and unintentional). We also found that the Boards also bear some responsibility for contributing to the perceptions of indifference to gender and power dynamics. We noted that Board members do not have term limits and that some consider the Executive Director a friend. In particular, we found evidence that gender and management issues have been raised with the Board of Directors since at least 2011. Although some steps may have been taken to improve management issues, including providing some coaching and training, the enduring criticisms indicate that those steps have had an insufficient impact.

**F. No evidence of differing "expectations and standards for male, female, queer, and gender non-conforming staff" with regard to the different employee responsibilities.**

We find no evidence of differing "expectations and standards for male, female, queer, and gender non-conforming staff" with regard to the different employee responsibilities. Rather, we find that APANO has established high expectations of *all* staff, including a high degree of flexibility, a capacity to adapt to changing environments, and, at times, 40-plus-hour workweeks.

We find that there is a lack of awareness of gender and power dynamics at APANO. For example, concerns about "feminized work" have persisted since at least 2011. Staff generally agree that in the past, "feminized work" (e.g., taking care of logistical and operational details such as note-taking, facilitation, opening the front door to the building, and event preparation) was not equally distributed. Female-identified staff reported that they have observed more women and LGBTQ staff doing feminized work than male staff. Few male-identified staff shared this viewpoint, noting that everyone does a lot of work. Staff members also recognize that this issue is not unique to APANO.

Overall, most of the staff reported that since 2016, male staff members have assumed more of these responsibilities and duties. This is in part a result of the creation and implementation of a cleaning schedule in fall 2015 to ensure equal distribution of menial labor.<sup>46</sup> Nevertheless, staff report that, generally, the first individuals to volunteer to do "feminized work" are women or LGBTQ staff.

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<sup>46</sup> The September 11, 2015, calendar invitation regarding the implementation of the rotating office cleaning schedule provided:

"In an effort to have everyone take equal responsibility for the cleanliness of the office environment, each full time staff member has been assigned a rotating cleaning week. During this week, the assigned staff member should regularly check all shared spaces throughout the office (conference rooms, community room, restrooms, kitchen area) and ensure each area is clean, tidy, has minimal trash, and remains organized. If a staff member will be out of town during their assigned week, it is that staff member's responsibility to make arrangements to have their week covered. Thank you for your cooperation."

**G. No evidence of "[r]etaliatory and coercive behaviors against former staff who have raised grievances, and/or supported others with grievances against the organization."**

We find no evidence of "[r]etaliatory and coercive behaviors against former staff who have raised grievances, and/or supported others with grievances against the organization."

**H. No evidence of APANO leadership's "[p]reventing the success of former staffers [and] volunteers \* \* \* by blocking relationships, job opportunities, and refusing to write letters of recommendation."**

We find no evidence of APANO leadership's "[p]reventing the success of former staffers [and] volunteers \* \* \* by blocking relationships, job opportunities, and refusing to write letters of recommendation." Our interviews and survey responses indicate that APANO leadership has been professional in responding to former employees' and volunteers' requests for references.

We noted that a couple of respondents indicated that the Executive Director quashed a job opportunity for a former staff member (R1). But after interviewing R1, as well as leaders of the would-be-hiring entity, we determined that the respondents' characterizations were incorrect.

**I. No evidence of "[i]ntimidation, coercion, and threats to former (mostly female) staff[]," including limiting staff members' livelihoods in different partner organizations.**

We find no evidence of "[i]ntimidation, coercion, and threats to former (mostly female) staff[]," including limiting staff members' livelihoods in different partner organizations.

**J. No evidence that the Boards have "failed to take adequate steps to remedy the situation."**

Because we did not find evidence of a "situation," we find no evidence that the Boards "failed to take adequate steps to remedy the situation."

**K. Organizational concerns.**

Although we found no concrete facts supporting reports of discrimination in the legal sense, we identified several factors that may have contributed to misunderstandings, miscommunications, and dissatisfaction with the APANO workplace environment.

Since its formation, APANO has experienced exponential growth in terms of staff and funding. Indeed, from 2012 to 2018, APANO's staff increased from 3.5 FTE and a \$291,000 budget to 23.7 FTE (approximately 29 regular and limited staff

members) and a \$2.2 million budget. Despite that growth, structural changes have been slow at APANO. That said, the evidence suggests that APANO has incorporated feedback and started addressing concerns raised by former and current staff members.

1. Organizational changes since 2016.

First, in November 2016, APANO formed a Gender Justice Staff Committee to "[b]uild [gender justice] analysis across [APANO]" and "to recommend concrete changes or policies to advance gender justice at APANO."<sup>47</sup> The committee, composed of staff, including the Executive Director, has met regularly (in November 2016 and then nine times in 2017).

Second, since 2016, APANO has promoted two female-identified staff members to director positions. Notably, one of those directors identifies as LGBTQ and the other identifies as Southeast Asian.

Third, in the last two years, APANO has made notable hires. For example, APANO recently hired a staff member who identifies as Southeast Asian, and a staff member to focus on hate crimes. In November 2017, APANO hired a full-time HR Manager.<sup>48</sup> The Executive Director informed the Boards that

"[t]his is the first time we have had an experienced HR professional in the organization on staff. [The HR Manager] is conducting a comprehensive internal review of our HR practices, policies and records. [The HR Manager] is keeping staff directors informed and alerted of issues, and together we will bring a report forward to the Board HR Committee for any proposed policy action, and address at the February 10, 2018 Board meeting. We expect the internal review process to be completed by February 28, 2018."<sup>49</sup>

In the last three months, the HR Manager has revamped APANO's personnel policies and introduced an industry-standard promotions policy.<sup>50</sup> And at least one female staff member has already benefited from that policy.

Fourth, the often-raised concern regarding the distribution of "feminized work"—namely, "taking care of logistical and operational details," assisting support staff with background event setup, registration, and cleanup—is being discussed and addressed. Notably, male staff has assumed more of those responsibilities and duties.

The following three responses are noteworthy. A former APANO Director, R1, commented that "since July 2017, APANO has been on a course correction." R1

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<sup>47</sup> Gender Justice Staff Committee Notes (Ongoing), January 4, 2017.

<sup>48</sup> APANO has had an HR Committee, composed of APANO board members and staff, since at least August 2013. The HR Committee provides "direction/vision" for APANO's personnel policies. APANO HR Committee Minutes, February 6, 2013. The February 2013 minutes provide, "It is a priority for APANO to update the policies so they are consistent and support the larger organizational goals."

<sup>49</sup> December 13, 2017, e-mail from Executive Director to Boards.

<sup>50</sup> The proposed promotions policy is pending approval from the Boards.

cited the promotion of female staff members, the hiring of a Southeast Asian staff member, and the Executive Director's willingness to look for and hire a female Executive Director as a successor. R1 also emphasized that APANO is ahead of R1's previous employers (mainly, nonprofit organizations) in terms of awareness of power dynamics and women and LGBTQ issues.

Another former staff member, R2, commented that R2 first learned about the correct use of gender pronouns at APANO. R2 mentioned that APANO was trying to implement a culture in which people introduced themselves with their preferred pronouns and did not "misgender" individuals.<sup>51</sup> R2 commented that this was new for APANO staff and Board members and that people would correct one another in a "polite and kind" manner because everyone was "trying to get it right."

One current staff member, R4, commented, "As a queer person coming into APANO, I have always felt accepted, welcomed and supported by staff and members." R4 also opined that

"[o]ver the past three years, members and staff have led efforts to bring in performers and speakers who are LGBTQ or do work on gender justice, including Disoriented Comedy, Leah Lakshmi Piepzna-Samarasinha, Dark Matter, Gregory Cendana, and Eveline Shen, with full support from leadership ([the Executive Director], Boards). After a November 2016 staff retreat discussion on internal gender justice issues to work on, APANO formed a Gender Justice Committee to lead next steps."

2. APANO has not met the standards it has created, and some criticism can be attributed to APANO's own self-professed higher standards.

Through its mission, vision, and values, APANO has elevated the standards by which it is evaluated. There is general agreement among the staff (and former volunteers) that they have evaluated (and will continue to evaluate) APANO differently from other nonprofit organizations. Respondents explained that because of its mission and work, APANO should be "held to a different, higher standard."

Notably, some staff members who said that they were holding APANO to higher standards mentioned that APANO was their first job, second job, or first nonprofit job. One current staff member, R3, explained that R3 expected supervisors to make staff feel "empowered and capable," which R3's two previous supervisors at APANO (one female and one male) did.

During our interview, R3 reported that R3 felt "intimidated by the Executive Director." When we asked for specifics, R3 responded that early on, the

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<sup>51</sup> The term "misgendered" "is defined as referring to a transgender person by using a word, especially a pronoun or form of address that does not correctly reflect the gender with which they identify." Paul Jones, *Can I Play Too? Transgender Student Athletes' Inclusion in "Because of Sex,"* 39 Hastings Comm & Ent LJ 67, 71 n.45 (2017) (citing Oxford Dictionary, *Misgender*, [http://www.oxforddictionaries.com/us/definition/american\\_english/misgender](http://www.oxforddictionaries.com/us/definition/american_english/misgender)).

Executive Director assigned R3 a project. Shortly after, R3 e-mailed the Executive Director, asking for guidance on how to start and do the project. The Executive Director's response was curt, asking whether R3 had done preliminary research on how to do the project before e-mailing the Executive Director. R3 stated that the Executive Director's response made R3 "feel insecure." We asked whether R3 thought the Executive Director's behavior was motivated by gender, sex, race, or age. R3 replied: "I don't know if it had to do with age, gender, or race." R3 added, "I want to work for a place that sees you as a whole person when you are working for them. When you say something, people follow through. I don't know if that place exists or if APANO is that place."

One current staff member, R5, emphasized that the "problems" at APANO are not unique to APANO, but rather problems common to nonprofit organizations. R5 explained that out of the six nonprofit organizations that R5 has worked for, APANO is "ahead of the curve." R5 added that "APANO was unfairly targeted and that in comparison, APANO is doing very well and can set up systems that are more transparent and equitable."

3. There is a culture gap between "grassroots" expectations and APANO's strategic plan.

Many staff (and former volunteers) expressed that APANO "does not do enough with and for underserved populations." These individuals questioned whether APANO is "representing the community" and APANO's vision. One former volunteer commented that APANO "felt a little reactive, rather than proactive." These individuals also expressed that the majority of APANO staff identifies as East Asian. According to a current staff member, APANO needs to hire more non-East Asians (e.g., Cambodian, Laotian, Iu-Mienh, Indian, and Hmong). The individuals opined that APANO should "create more space for members of the community." A different former staff member commented that APANO needs to strike a balance between doing the work necessary to obtain funding and doing the work that is more aligned with APANO's mission, vision, and values—grassroots work.

But one current staff member, R6, stated that R6

"believe[s] that APANO has provided a valuable & unique space and voice for AAPIs [Asian Americans and Pacific Islanders] in Oregon that was not present before. Even now, APANO is a partner and recognized organization that leverages resources that connect working class immigrants in the Jade District to know their renters rights, helping AAPIs from all over OR to lobby at the state capitol and I believe that all the work that APANO does and continues to do is progress and is deeply meaningful for our AAPI communities."

A different current staff member, R7, noted that before joining APANO, R7 volunteered with APANO staff on an APANO project called "We are Oceans." That project "was a gender equity project where we addressed the silence around sexual health within the API community." R7 also mentioned that the staff R7 knew who had

left APANO expressed frustration with "the difficulties of organizing radically to the left in institutions that are just left of center, like Basic Rights Oregon, APANO and Causa."

The views of another staff member, R4, are also notable:

"Like many other API organizations, [APANO] skews East Asian, and general membership is not fully representative of the most impacted members of our communities—it has been more English-speaking, young professionals, college educated folks, and we could also do more to center transgender, gender non-conforming and non-binary APIs. We absolutely have major room to improve, and should work on, more meaningful interaction with Southeast and South Asian communities and Pacific Islander communities. That said, many of our organizing programs have directly focused on engaging these constituents, from our immigrant organizing groups engaging Chinese and Vietnamese immigrants to our neighborhood organizing in the Jade District with tenants at risk of displacement. Half of our Pacific Islander youth members identify as LGBTQ."

Based on the interviews we conducted and the information we received, we found that respondents' views and opinions about APANO's mission, vision, community engagement, work, and future were influenced, in large part, by their age, sex, gender, and past experiences (especially experience level with nonprofit organizations). Notwithstanding those differences of opinion, most commented that they cared about APANO; that they wanted to see APANO grow; and that they believed that APANO would get better.

Finally, we want to emphasize that by and large, respondents and interviewees (staff and community partners alike) expressed an overwhelming appreciation for the work that APANO has done for the API community. Each partner we spoke with stressed that they want APANO to come out of this investigation stronger, and that so long as they saw action, they would remain committed to partnering with and funding the organization.

4. Current and former APANO staff members have unusual workplace expectations.

The following are the workplace expectations reported by several current staff members.

A current staff member, R3, expressed dissatisfaction with the grant-funding process because "it doesn't matter what [APANO staff] say" regarding whether to pursue a particular grant. R3 explained that even though in the past, APANO has sought R3's input regarding grants, "they didn't listen." In other words, APANO applied for a grant despite R3's opinion. R3 also expressed frustration over not "know[ing] what the Executive Director or Associate Director do." Specifically, R3 wants to know "how does [the Associate Director]" do their job. R3 also mentioned that in R3's view, the

staff members "should have a say on who gets paid what and what is their job description."

A different current staff member, R9, commented that R9's supervisor should have been terminated one month after R9 filed complaints related to the supervisor's failure to "hear[] her," the supervisor's "lack of response," and being "anti-woman." R9 explained that in 2016, R9 "felt like [the supervisor] was expecting [R9] to follow what [the supervisor] wanted to get done."

Yet another current staff member, R10, expressed frustration about the unclear promotions process at APANO, commented that because R10 is doing the "work that a manager used to do, [R10] should be promoted." In R10's view, R10 would have been promoted faster if R10 had had a different supervisor, and it does not matter that R10 started at APANO in March 2016. R10 also expressed frustration about R10's supervisor's discussing R10's work plan with R10 only when R10 "would bring it up."

#### **L. Investigation recap.**

To recap: We do not find any evidence that overt discrimination against any protected class occurred. We do not find any evidence (1) of a pattern of ongoing and persistent harassment severe enough to alter the conditions of employment and that the harassment was because of an individual's sex, gender-identity or sexual orientation; (2) that APANO treated an individual disparately in the terms and conditions of employment because of their sex, gender-identity or sexual orientation; or (3) that APANO denied a position or a promotion because of an individual's sex, gender-identity or sexual orientation. Although some conduct over the years has not met the high expectations set by APANO (or imposed on APANO), the investigation did not reveal conduct motivated by gender or any other animus toward a protected class.

But as explained above, we did find evidence of challenging interactions that have occurred at APANO throughout the years. We find that, similar to other institutions, APANO has been susceptible to patriarchy and power dynamics. This is not an APANO-specific issue; instead, it is a systemic issue. Unlike other organizations, however, there is a strong "desire to hold APANO to a higher standard because of [APANO's] social justice mission and values."

4830-1303-6893.1



## Elisa J. Dozono

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Elisa J. Dozono is a litigation and government affairs partner at Miller Nash Graham & Dunn LLP, recognized by her peers as a "Top 25 Women Oregon Super Lawyer" in *Super Lawyers* magazine. She helps businesses solve problems from employment, to real estate, to intellectual property and regulatory disputes. Before law, she spent 11 years in public affairs with the Port of Portland, former Portland Mayor Vera Katz, former Oregon Governor John Kitzhaber, and Clinton/Gore '96, and worked for Channel 2 News. Building on that experience she also provides advice regarding elections law, public records, and other regulatory and administrative law issues.

A former extern for the Honorable Ann Aiken of the U.S. District Court of Oregon, Dozono is a co-founder and member of the Oregon Asian Pacific American Bar Association, and has served on several state and federal judicial screening committees. She is a former chair of the Oregon Lottery Commission and the Metro Expo Recreation Commission. The numerous non-profit boards Dozono has served on include Albina Opportunities Corporation, which provides gap-financing for women and minority owned businesses and Emerge Oregon, which she co-founded to recruit and train women to run for office. Dozono was chosen as a Woman of Influence Orchid Award winner (large business) by the Portland Business Journal in 2012 and received the Oregon Area Jewish Committee's Emerging Leadership Award in 2010.

### PRACTICE TEAMS

Business Litigation  
Government & Regulatory Affairs  
Intellectual Property Litigation  
Real Estate Litigation  
Securities Litigation  
Intellectual Property  
Class Action Defense

### INDUSTRIES

Government & Public Entities  
Manufacturing  
Education

### EDUCATION

Lewis & Clark Law School  
(formerly Northwestern School of Law), J.D.,

Member of the Business Roundtable

Certificate in general business law

Boston University, B.S., journalism, College of Communications

### Experience

#### Government and Elections

- Advised and litigated election law claims concerning public financing, campaign donations, and constitutional challenges to ballot measures and ordinances.
- Represented landlord in development proposal process with City of Portland.
- Provided advice regarding compliance with local City of Portland lobbying laws.
- Provided advice regarding compliance with new transportation network provider regulations.

#### Corporate Governance

- Represented publicly traded company in defending wrongful-termination claim by executive officer.
- Successfully resolved interest of minor league baseball team owner in minority shareholder oppression lawsuit.

#### Securities

- Successfully defended bank from multiple claims in Oregon and Montana related to tenant-in-common securities investments.
- Resolved claims of fraud, negligence, negligent misrepresentation, breach of fiduciary duty and securities fraud brought against investment firm for alleged failure to implement client's unique investment strategy.
- Successfully defended investment firm from allegations regarding failure to preserve funds

## BAR ADMISSIONS

Oregon

## COURT ADMISSIONS

U.S. District Court, District of Oregon

## Intellectual Property litigation

- Trademark: (1) Defeated on summary judgment the region's second largest lawsuit of 2014, brought by Nigerian distributor asserting trademark infringement against local manufacturer; (2) Defended apparel manufacturer in federal trademark infringement action over allegedly competing marks incorporating similar animal graphics. (3) Defended international French company in federal trademark infringement and unfair competition action related to home-brewing industry.
- Copyright: Defended bookseller from copyright infringement allegations related to retail sales of allegedly infringing products.
- Patent: (1) Defended electronics accessories company against alleged infringement regarding retail security technology; (2) Defended bookseller from patent infringement allegations related to retail sales of allegedly infringing products; (3) Prosecuted claims against software company related to digital security protocol.
- Cyberlaw: Defeated defamation claims brought against a business directory/networking Web site for comments posted by an anonymous third party. The court dismissed the claims based on Oregon's anti-SLAPP (Strategic Litigation Against Public Participation) statutes and the federal Communications Decency Act, 47 USC § 230.
- Trade Secrets: (1) Successfully prosecuted claims of misappropriation of trade secrets, breach of contract, and interference with economic relations against three former executives who covertly began a competing company two years before resigning; (2) resolved claims against investment bankers who departed for larger bank; (3) resolved claims against cleaning supply company and several of its salespeople for misappropriation of trade secrets, and breach of non-solicitation and non-competition agreements; (4) Represented plaintiffs in unfair trade practices class action regarding ticket resales.

## Employment

- Wage-and-Hour Class-Action Lawsuits: (1) Defended class action brought against a restaurant for tip calculations and lost equipment charges, and another against a food processor for time spent complying with health and safety regulation training; (2) defended class action brought against food processor alleging failure to pay for training time.
- Wage claims: regularly defend cases against employers brought by plaintiffs regarding failure to pay all wages at termination.
- Internal investigations: conducted independent investigation into sex discrimination claims against human resources executive.

## Education

- Won summary judgment regarding state and federal ADA claims related to testing procedures.
- Won summary judgment for public university regarding constitutional claims brought by graduate student.
- Successfully defended fair housing claims relating to therapy/assistant animals.

## Antitrust

Investigated and pursued antitrust claims, resulting in \$20 million settlement.

## Professional Activities

- Oregon Asian Pacific American Bar Association, cofounder and member
  - immediate past president (2012-2013)
  - president (2011-2012)
  - president elect (2010-2011)
- Oregon Minority Lawyers Association, member
- Oregon Women Lawyers, member

- Multnomah Bar Association, member
- Federal Bar Association, member
- American Bar Association, member
- Governor's Judicial Screening Committee (2011-present)
- Appointed by U.S. Senator Ron Wyden to assist in the recommendation process for Article III judicial candidates in 2008
- Appointed by U.S. District Court Chief Judge Ancer Haggerty to assist in the recommendation process for a U.S. Magistrate judge position in 2007
- Served as local counsel to the Hillary Clinton for President campaign in the 2008 presidential election

## Civic Activities

- Oregon Lottery Commission, chair (2012-2015)
- Metropolitan Exposition Recreation Commission (MERC), which oversees the regional convention, exposition, and performing arts facilities
  - Commissioner (2007-present)
  - Vice-chair (2011-2012)
  - Chair (2010-2011)
  - Secretary/budget committee chair (2009-2010)
- Albina Opportunities Corporation, board of directors
- Cascade AIDS Project, board of directors (2009-2012)
- Emerge Oregon, board of directors
  - Founding board president of Emerge Oregon, the premiere program for recruiting and training Democratic women to run for office, and current board member
- Oregon Business Association transportation committee, member
- World Affairs Council, member
- Portland City Club, member
- City of Portland Major League Soccer/AAA Baseball Task Force
- City of Portland Central City Urban Renewal Area Committee
- Travel Portland Multicultural Advisory Committee
- Elisa has spoken on several panels regarding diversity in the legal profession and donated hundreds of hours on pro-bono service to the ACLU and the Juvenile Rights Project
- Japan America Society of Oregon, board of directors, past member
- Democratic Party of Oregon, past finance chair
- Susan G. Komen Foundation Race for the Cure, past public relations chair
- Boys & Girls Clubs of Portland, Young Executive Board, past member
- Northwest District Association, board of directors, past member
- Jefferson High School, past mock trial coach

## Personal Activities

A fourth-generation Portlander, Elisa is a columnist for *The Asian Reporter*, and enjoys running, skiing, reading, films, and traveling.

## Publications

06.30.09      Wanted: Person of Supreme Experience

## Presentations

05.09.17      Queen's Bench Luncheon Speaker Series

04.27.17      Women's Development Network: Benefits of Board Membership

03.14.17      Femmes en Force

02.22.17      If I'd Known Then What I Know Now . . .

11.01.16      Becoming an Experienced Litigator: Art of Drafting Complaints and Answers

10.11.16      Oregon Women Lawyers Queen's Bench Lunch

10.07.16      Changing Winds: Reimagining The Sail

09.14.16      City of Portland OMF Speaker Series

09.08.16      Access to Justice Forum

04.30.16      Public and Elected Leadership

04.23.16      Law and Social Change

04.01.16      Board and Commission Service

10.05.15      Emerge Oregon Promotional Video

09.24.15      Fundamentals of Civil Trial Procedure: Complaint and Answer Drafting

05.13.15      Leadership Portland Board Service Training

04.23.15      *Asian Reporter* Foundation Scholarship and Awards Banquet

08.20.14      BallotPaloosa

08.08.14      Finding Your Path Through Law School

06.14.14      Judge Lynn Nakamoto Award

04.18.14      Portland City Club Friday Night Forum: Running for Office

04.07.14      Portland Business Journal: Bizwomen Mentoring Monday

04.03.14      Elisa Dozono to Speak at Consular Office of Japan

03.27.14      Emerge Oregon at the Soroptimist International of Gresham

02.04.14      Writing in Law Practice

11.20.13      Writing in the Law

11.14.13      Voter Mobilization & Women's Participation in Politics

10.21.13      Multnomah Bar Association Pro Bono Fair

05.29.13      PBA's new Public Service Leadership Program

04.15.13      APANO Legislative Day

04.09.13      Oregon Women Lawyers Queen's Bench Lunch

01.21.13      Skanner Martin Luther King Breakfast

01.17.13      Diversity Awareness Forum

06.19.12      OAPABA Annual Meeting, Elections and Social

06.07.12	MBA First Thursday Social with Specialty Bars
05.17.12	Increase Revenues for Your Business
12.02.11	Portland's Economic Recovery and the Role of Trade
10.25.11 and 11.01.11	Copying the Hard Drive on the Way Out: The Employer Strikes Back Against Employee Disloyalty
10.21.11	Working with the Legislature and Government Agencies

## Recognition

- Leader in Promoting Diversity 2015, Asian Pacific American Law Student Association at Willamette University
- Portland's Rising Stars 2013, *Portland Monthly Magazine* (Individuals making a meaningful impact in the social, political, and business sectors.)
- Women of Influence - Orchid Award 2012, *Portland Business Journal*
- Emerging Leadership Award 2010, Oregon Area Jewish Committee (OAJC)
- Up & Coming Lawyers Leaders Award for Outstanding Professional Organization Involvement 2010, *Daily Journal of Commerce*
- 40 Under 40 Award 2009, *Portland Business Journal*
- Cliff N. Carlsen Jr. Award for Outstanding Pro Bono Achievement 2009
- Elisa was selected by her peers for inclusion in *Best Lawyers*, the oldest peer-reviewed publication in the legal profession. *Best Lawyers* compiles lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. For more information visit [www.bestlawyers.com](http://www.bestlawyers.com).



- Elisa has been selected for inclusion in *Oregon Super Lawyers* magazine. Super Lawyers is a rating service of outstanding lawyers who have attained a high degree of peer recognition and professional achievement. For more information visit [www.superlawyers.com](http://www.superlawyers.com).
  - Top 25 Women Oregon *Super Lawyers* 2014-2015





## Iván Resendiz Gutierrez

Associate

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Iván is an associate in the litigation practice group. He focuses his practice on business litigation, representing local and national clients on a variety of complex civil matters, including securities, ERISA, class action, employment, and intellectual property disputes.

Diverse experiences before joining Miller Nash Graham & Dunn allow Iván to understand the big picture and find creative solutions to challenging issues. Following graduation, Iván served as a law clerk for the Honorable Lynn R. Nakamoto of the Supreme Court of Oregon, where he assisted in researching, writing, and editing opinions, and recommended action on petitions for review. Before working at the Supreme Court, Iván clerked for Judge Nakamoto at the Oregon Court of Appeals, where he gained a broad knowledge of Oregon law.

Experiences during law school gave Iván an early foundation in practice in both federal and state courts. For example, Iván represented the state as a court-certified law clerk at the Oregon Department of Justice—Civil Litigation Section, working on cases involving employment, commercial, and civil-rights litigation. There, he second-chaired a federal civil bench trial and resolved a state declaratory judgment action through a dispositive motion. Iván also served as a law clerk at the Lane County District Attorney's office as part of the University of Oregon School of Law's Criminal Prosecution Clinic.

Iván is a frequent contributor to Miller Nash Graham & Dunn's intellectual property blog, IP Law Trends.

### PRACTICE TEAMS

Business Litigation  
Securities Litigation  
Intellectual Property Litigation  
Appellate  
Intellectual Property

### EDUCATION

University of Oregon School of Law, J.D., 2015,

*Oregon Law Review*, Staff Editor

Tax Law Concentration

University of Oregon, B.A., psychology and political science, 2012,

Diversity Excellence Scholarship

### BAR ADMISSIONS

Oregon, 2015

### COURT ADMISSIONS

U.S. District Court, District of Oregon, 2016



### Experience

#### Civil Rights

Researched and contributed to briefing on a class action challenge to the constitutionality of Executive Order 13769, relating to the immigration and travel ban of individuals from predominantly Muslim countries to the United States. This was a pro-bono matter.

### Professional Activities

- Oregon Hispanic Bar Association, president-elect
- Oregon Minority Lawyers Association, board member
- Oregon State Bar
  - Business Litigation, Appellate section member
  - Appellate Practice Section - Executive Committee, member
- Multnomah Bar Association, member
  - Young Lawyers Section Membership Committee, member

- Oregon Asian Pacific American Bar Association, member
- Hispanic National Bar Association, member
  - Law Student Division, regional vice president (2014-2015)
- American Bar Association, member
- Federal Bar Association, member
  - Young Lawyers Division, member
- Willamette University College of Law, mentor
- University of Oregon School of Law, moot court coach

### Civic Activities

- Hispanic Metropolitan Chamber, member

### Personal Activities

Iván enjoys working hard and playing hard—not letting one interfere with the other. A former rugby player, Iván also enjoys running marathons and boxing.

### Publications

- 06.29.17 USPTO Switches Gears on Registration of Disparaging Marks, but Not on Scandalous Marks
- 06.20.17 Portland Band The Slants Singing a Happy Tune After the Supreme Court Unanimously Holds That the Disparagement Clause Violates the First Amendment
- 05.17.17 Co-Author, *Tips and Tricks for Challenging Online Service Providers That Host Infringing Material*, American Intellectual Property Law Association
- 02.24.17 Contributor, *2016 Broker-Dealer Litigation Survey*, American Bar Association
- 01.26.17 The Supremes Hear Oral Argument in Portland Band The Slants' Trademark Case
- 12.19.16 The Supremes Unanimously Limit the Galactic Design-Patent-Infringement Damages Award in One of the Apple v. Samsung Design-Patent Wars
- 12.05.16 Federal Circuit Serves a Slice of Victory to Apple and Domino's Pizza
- 11.22.16 Christian Faith Fellowship Church is Going 12 Rounds with adidas AG in David-versus-Goliath Trademark Battle

### Presentations

- 01.27.18 The Road from Summer Job to Long Term Career
- 10.12.17 Road to the Bench - An Evening with Our Distinguished Judges
- 08.05.17 Lawyer Support Services Panel
- 08.04.17 Importance of Networking
- 04.27.17 An Evening with Los Jueces (the Judges)

### Recognition

- Outstanding Mentor 2016-17, Willamette University College of Law



## Brandon Reeves

Associate

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T: 503.205.2304

Brandon Reeves is a member of the firm's general litigation team. He began his career at Miller Nash Graham & Dunn in 2016 as a summer associate where he assisted local, national, and international clients in a variety of disputes in state and federal courts.

Brandon earned his J.D. from the University of Washington School of Law and his masters degree of speech pathology from Vanderbilt University. While attending law school, Brandon worked as a legal intern at the Seattle Community Law Center where he consulted on the Social Security Administration appeals process for receiving disability benefits. In 2012, he worked at the Boulder Valley School District as a speech language pathologist who evaluated and treated communication disorders for K-12 students.

### PRACTICE TEAMS

Employment & Labor Litigation

Business Litigation

Trusts and Estates Litigation

### INDUSTRIES

Education

### EDUCATION

University of Washington School of Law, J.D., 2017

Vanderbilt University, M.S., Speech Language Pathology, 2012

University of Kentucky, B.S., Communication Disorders, 2010

### BAR ADMISSIONS

Oregon, 2017

### Professional Activities

Oregon State Bar, member

### Personal Activities

Brandon enjoys quiet nights, listening to music, and rooting for the Kentucky Wildcats.