

C A M P A I G N F O R ACCOUNTABILITY

January 31, 2017

Omar Ashmawy
Staff Director and Chief Counsel
Office of Congressional Ethics
1017 Longworth HOB
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BY FAX: 202-226-0997

Re: Request for Investigation of House Staff Role in Crafting Immigration Order

Dear Mr. Ashmawy:

Campaign for Accountability (“CfA”) respectfully requests that the Office of Congressional Ethics (“OCE”) immediately open an investigation into whether employees of the House of Representatives violated House rules or federal law by drafting the executive order issued by President Donald Trump on January 27, 2017 restricting the travel of citizens of seven Muslim majority countries.

Background

According to *Politico*, several Republican House Judiciary Committee staff members helped President Trump’s aides draft the executive order.¹ Apparently, the staff members did not inform either Committee Chairman Bob Goodlatte (R-VA) or House leadership.² The aides began working on the issue after the election, but before the president was inaugurated.³ The staffers who worked on the matter signed nondisclosure agreements, that were either identical or similar to those signed by transition staff.⁴

After the secret work of the staffers was revealed, Rep. Goodlatte apparently defended the staff members in a closed-door Republican conference.⁵ He claimed he had approved the staff providing policy advice to the Trump transition team, but that their work had ended on January 20.⁶ Rep. Goodlatte has not, however, addressed the nondisclosure agreements, which

¹ Rachel Bade, Jake Sherman and Josh Dawsey, Hill Staffers Secretly Worked on Trump’s Immigration Order, *Politico*, January 30, 2017 (available at <http://www.politico.com/story/2017/01/trump-immigration-congress-order-234392>).

² *Id.*

³ *Id.*

⁴ *See id.*

⁵ Rachel Bade, GOP Panel Chairman Defends His Staff Working on Trump Immigration Order, *Politico*, January 31, 2017 (available at <http://www.politico.com/story/2017/01/bob-goodlatte-staff-trump-immigration-order-234424>).

⁶ *Id.*

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would have barred staff from discussing their work on the policy either with him or House leadership.⁷

Violations of House Rules

Details regarding the number and names of the staff members involved, the consideration, potentially including compensation, they may have received for signing the nondisclosure agreement, and the exact timing of their work remain unknown and merit inquiry as there is a strong likelihood they acted in violation of House rules and, perhaps, federal law.

Prohibition Against Use of Congressional Resources

Pursuant to 31 U.S.C. § 1301(a), “[a]ppropriations shall be applied only to the objects for which the appropriations were made.” The House Ethics Manual expounds upon this principle, providing, “House resources acquired with such funds – including the office telephones, computers, fax machines and other equipment, office supplies, office space, and staff while on official time – are to be used for the conduct of official House business.”⁸ While the House Administration Committee provides an exception for minor, incidental personal use of equipment and supplies, it “does **not** allow their use for outside employment or business purposes.” (emphasis in original) Further, Rule 23, clause 8 states, “A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.”

Additionally, ¶ 3 of the Code of Ethics for Government Service provides employees must “give a full day’s labor for a full day’s pay.” Thus, any outside employment that prevents employees from giving full time and attention to their House jobs would violate this standard.⁹ When the demands of outside employment result in a reduction of the time devoted to congressional duties, “a commensurate reduction in the individual’s congressional pay is required.”¹⁰

Assisting President-elect Trump’s transition team with the preparation of an immigration order that was kept secret from House members, who were neither consulted about nor informed of it in advance, clearly does not and cannot qualify as official House business. Further, the fact that the staff members signed nondisclosure agreements suggests they may have received some form of consideration for their signatures and certainly indicates they were actively engaged in work on the order.

As a result, OCE should investigate whether House staff members used any House resources while drafting the immigration ban, whether they were paid for the services, and how

⁷ *Id.*

⁸ House Comm. on Standards of Official Conduct, House Ethics Manual, at 197 (110th Cong. 2008).

⁹ *Id.* at 207.

¹⁰ *Id.*

much time they expended on this matter during House office hours to determine whether and to what extent these staff members violated 31 U.S.C. § 1301(a) and House rules.

Practice of Law

The House Ethics Manual notes that “the lawyer’s duty of undivided loyalty to clients makes the practice of law particularly susceptible to conflicts with the wide-ranging responsibilities of members and staff.”¹¹ House rules also prohibit senior staff “from receiving compensation for practicing a profession that involves a fiduciary relationship.”¹² This prohibition extends “to **consulting and advising**,” (emphasis in original) which “clearly” applies to “professional fields such as law . . .”¹³

While press reports do not specifically state that the professional staff members who assisted the Trump transition were lawyers, many Judiciary Committee staff members are, indeed, lawyers. By assisting the Trump transition with the executive order – particularly if they did not inform the committee chairman, to whom they owed a duty of loyalty, of the details of their work – these staff members may have violated House rules and, perhaps also the Rules of Professional Conduct to which lawyers must adhere. Further, if these staff members were paid by the Trump transition for legal consulting, they violated House rules.

Proper Performance of Congressional Duties

The House Ethics Manual notes that because a staff member’s duties and terms of employment are within the discretion of the employing member of the House, that member’s perspective as to whether any specific outside employment would impair the staffer’s ability to perform his or her duties or would otherwise be inappropriate is very important.¹⁴ As a result, staff members are to consult with their employing members before undertaking outside employment.

In this case, Chairman Goodlatte now claims to have known of the staff members work. This appears to pose some conflict, however, with the fact that the staffers signed nondisclosure agreements, which putatively would have prevented them from discussing their work with the chairman or anyone else. The OCE should investigate to determine exactly what the staff members told Chairman Goodlatte and/or any other member for whom any of them may work or may have worked, and when they provided information about the terms of their work with the Trump transition. OCE also should inquire as to the exact period the staffers worked on the immigration order, specifically, whether they consulted with White House officials after the inauguration as well as during the transition.

¹¹ *Id.* at 197.

¹² House Ethics Manual at 216, *citing* House Rule 25, cl. 2(c); 5 U.S.C. app. 4 § 502(a)(3).

¹³ *Id.* at 217.

¹⁴ *Id.* at 207.

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Conclusion

At this juncture, few details are available about the nature, timing and extent of the work done by House staff members on the president's immigration order. Because they signed nondisclosure agreements, it is possible little else will be revealed publicly.

Americans and members of the House of Representatives, have the right to expect congressional staff are engaged in the work of the Congress and that they are not surreptitiously engaging in activities that in lieu of their congressional obligations or that may even conflict with their House duties. The Office of Congressional Ethics should immediately undertake an investigation of this matter and inform both Congress and the public of the results.

I am aware that the False Statements Act, 18 U.S.C. §1001, applies to complaints made to the Office of Congressional Ethics.

Sincerely,



Daniel E. Stevens
Acting Executive Director