

APPENDIX B

November 2, 2018

Via E-Mail

Thomas A. Rust, Esq.
Staff Director and Chief Counsel
Committee on Ethics
U.S. House of Representatives
1015 Longworth House Office Building
Washington, D.C. 20515-6328

Re: In the Matter of Allegations Relating to Representative Ruben Kihuen

Dear Mr. Rust:

Attached is the Response of our client, Rep. Ruben Kihuen (D-Nev.), to the Report of the Investigative Subcommittee issued on September 26, 2018, in the above-referenced matter (the "ISC Report"). Congressman Kihuen respectfully requests that his response be included in any report of the full Committee to the House in this matter.

In addition to his Response, the Congressman objects to the finding, in the ISC Report, that he actually violated clauses 1 and 2 of House Rule XXIII, and requests that either the ISC or the full Committee make clear that it has not adopted any such finding. Rule 19(f) provides that if an ISC determines that "a violation of the Code of Official Conduct...has occurred," the ISC is to adopt a Statement of Alleged Violation. The ISC in this case has not adopted any Statement of Alleged Violation-- as confirmed by the letter from the Committee to the Congressman dated October 2, 2018, indicating that the Report is being transmitted pursuant to Committee Rule 19(g). Had the ISC adopted a Statement of Alleged Violation, the Congressman would of course have been entitled to the procedural protections of Rule XI, clause 3(p) of the Rules of the House and Committee Rules 22 and 23.

The ISC does not have authority to find that the Congressman actually violated the Code of Official Conduct without adopting a Statement of Alleged Violation. We are aware of no precedent for such an action. The only other case relied upon by the ISC as precedent—involving conduct towards an individual who was not an employee of the Member's office or campaign—was *In the Matter of Representative Gus Savage*, H. Rep. No. 101-397, 101st Cong.2d Sess. (1990). In that case, the Committee did *not* find that Rep. Savage had violated any House rule.

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The finding was that his conduct was “contrary to the standard of conduct expressed in House Rule XLIII, clause 1.” *Id.* at 14.

Accordingly, the Congressman respectfully requests that the ISC Report either be amended to indicate a finding that the Congressman’s conduct was contrary to the standard of conduct in clauses 1 and 2 of the Code of Official Conduct and/or violated the spirit of those clauses; or such a clarification should be set out in any report of the full Committee adopting the ISC Report.

Thank you for your time and attention to these matters.

Sincerely yours.

A handwritten signature in black ink, appearing to read "J. E. Sandler". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Joseph E. Sandler

RESPONSE OF U.S. REPRESENTATIVE RUBEN KIHUEN TO REPORT OF INVESTIGATIVE SUBCOMMITTEE

I appreciate the opportunity to submit a response to the Report of the Investigative Subcommittee. I request that this response be incorporated in the Report of the Committee to the House.

Since graduating from college, I have worked for former Senate Majority Leader Harry Reid (D-NV), for the Nevada Democratic Party and for the College of Southern Nevada. I served for four years as a member of the Nevada State Assembly and for six years as a member of the Nevada State Senate, becoming Chair of the Standing Committee on Revenue and Economic Development and Majority Whip. I was elected to Congress in 2016 and am completing my first term.

In over a decade of public service as an elected official, not a single allegation of inappropriate behavior towards *any* employee of those offices has ever been previously raised. Nor was there any such allegation ever made against me during my entire professional career working for the Democratic Party, Senator Reid, or the College of Southern Nevada.

The allegations set forth in the ISC Report are extremely painful to me. I now know and understand that the issue before this Committee was not the intentions behind my behavior, but the way my actions were perceived by the women who came forward. Those were experiences they should never have had to endure.

With this understanding, I deeply regret my conduct towards these women and wish to publicly apologize to each of them. I hope that this ISC investigation will make other Members of Congress cognizant of possible unintended consequences of their actions and will improve the working environment for all who interact with Members, whether as employees or not.

Because I was and remain confident that I never intentionally engaged in any such behavior, I welcomed the Committee's investigation. I appreciate the ISC's acknowledgement that "Representative Kihuen appeared voluntarily before the ISC and fully cooperated with the investigation." (ISC Report, p. 2).

While it is not necessary for me to respond individually to each allegation and finding in the ISC Report, I do believe it is important to put some of the findings into context.

A. D.C. Firm Employee

The Committee's finding was partially based on interactions with an employee of a Washington, D.C. fundraising firm – an individual who was never employed by my office, by my campaign or in any other way in any capacity (the "D.C. Firm Employee"). I retained the fundraising firm to help raise contributions for my campaign.

Those interactions with this woman were limited to one conversation at the elevator of her office; one email and one text message thanking her for offering to bring me lunch while I was at the firm's office; and a brief conversation at a fundraising event in October 2017, with numerous other people present.

Although I regret that my brief encounters with this individual made her feel "uncomfortable," "surprised" or "dismayed," I still deny that I ever kissed, touched, or pursued a romantic relationship with her.

The ISC Report documents but gives short shrift to statements by D.C. Firm Employee that she had a "plan" to get me to resign and to "blackmail" me. (ISC Report p. 8). The Report notes that the D.C. Firm Employee does not allege any physical contact at the elevator. My only other in-person interaction with this woman was at a widely-attended public event, but no one witnessed or corroborated the allegations that I kissed her.

Despite this, it is now clear that D.C. Firm Employee felt uncomfortable with the limited interactions I had with her. Although I never intended it, I understand that my position as a Member of Congress and a client of her firm made her feel concerned and pressured by my interactions. For this reason, I regret my conduct, and extend my sincere apologies to her.

B. Campaign Staffer

With respect to the former Campaign Staffer, my recollection of events differs from her testimony. Nevertheless, based on her statements to the Committee, it is now clear that some comments I made to her, or in her presence, made her feel uncomfortable and disrespected. And for that I do apologize to her.

My former Campaign Manager's testimony that he made me aware of the Staffer's allegations at the time of her departure is both apocryphal and *wholly inconsistent with the Staffer's own testimony*. The former staffer made it clear that she told him that she was leaving the campaign because "her mother was sick and that she found another position closer to her parents, both of which were true statements." (ISC Report, p. 13). This was the reason relayed to me by my former Campaign Manager, who continued to manage my campaign through my election and served as my Chief of Staff in the House of Representatives until his departure in October, 2017.

Now that all of this has been brought to my attention, I sincerely regret that my behavior made her uncomfortable and led to her departure. She never should have been made to feel that way, and I apologize.

C. Nevada Lobbyist

As the Committee may be aware, there have been reports of sexual misconduct involving members of the Nevada Legislature towards staff and others. I have never been the subject of any of those reports. Not a single complaint was ever filed against me, publicly or privately, during my service in the State Assembly or State Senate.

There is no doubt that I pursued a romantic relationship and engaged in flirtatious and highly personal text messages with the Nevada lobbyist who was quoted in press accounts and spoke to the Committee. However, I never touched her. Based on the hundreds of texts we exchanged over a two-year period, I was never made aware by her or anyone that my messages were unwelcome or made her feel uncomfortable. As Nevada Lobbyist informed the ISC, “I don’t think he realized it was my job to be nice to him.” (ISC Report p. 20).

In fact, I certainly did *not* realize at the time that she wanted me to stop any joking and flirtatious messages and felt she could not say so outright because of my position. However, I realize that now. I can now understand and appreciate how she felt and how she experienced those communications. I never intended to be uncomfortable for her and that I never realized were unwanted. For that reason, I regret my conduct towards her and apologize for the discomfort and difficulty it caused her.

CONCLUSION

In summary, I do not believe my conduct while serving as a Member of the House—towards the D.C. Firm employee—in any way violated any House rule or failed to reflect creditably upon the House. However, I now appreciate she felt my conduct was inappropriate and for that I sincerely apologize.

Likewise, even though my conduct towards the other two women did not occur while I was a Member of the House, and is outside the Committee’s jurisdiction, what matters is how the two women experienced it—and again, their experience was real. It should not have occurred and I am sorry for it. In that regard, I accept the determination of the ISC Report. This has been a humbling experience, and the lessons learned from this will guide my conduct for the rest of my life.