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COMMITTEE ON ETHICS

Perkins
Coie

700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

PHONE 202.654.6200

FAX: 202.654.6211

www.perkinscoie.com

Brian G. Svoboda
PHONE: (202) 434-1654
FAX (202) 434-1690
EMAIL: BSvoboda@perkinscoie.com

June 3, 2011

Daniel A. Schwager, Esq.
Marc Borodin, Esq.
Committee on Ethics
United States House of Representatives
1015 Longworth House Office Building
Washington, DC 20515

Dear Messrs. Schwager and Borodin:

We are counsel to Representative Gregory W. Meeks. We appreciate the opportunity to respond to the Report and Findings that the Office of Congressional Ethics transmitted to the Ethics Committee regarding Rep. Meeks. Thank you also for providing us with a copy of the Findings, which we had requested previously from OCE, only to be refused.

INTRODUCTION

OCE correctly recommends dismissal of an allegation regarding a 2010 loan. It wrongly recommends investigation of another allegation about his financial disclosure reports, arising from a 2007 loan. OCE did not authorize a preliminary review of the financial disclosure allegation. Indeed, OCE never told Rep. Meeks it was reviewing this allegation, until it sent him the Report on May 18. And, in fact, Rep. Meeks brought this very same issue to the Committee's attention over a year ago in an effort to self-correct. OCE repeatedly violated its own rules while handling this matter, and it lacked jurisdiction to make its referral to the Committee.

The Committee should not act on the Report and Findings, which are not properly before it. It can resolve any outstanding issues regarding Rep. Meeks' financial disclosure reports through its own procedures.¹ We would ask that it do so promptly. For the past several months, Rep. Meeks has faced damaging and unsubstantiated press reports that he is under ethics

¹ See Committee R. 17A(a).

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investigation.² Moreover, he has had to incur great expense to respond to OCE's investigation, which violated its own rules and authorizing resolution. We would respectfully request that the Committee dismiss the OCE allegations, resolve whatever issues remain regarding his financial disclosure reports, and close this matter.

DISCUSSION

This matter was triggered by Rep. Meeks' efforts to self-correct. A review of his financial affairs led him to determine that he had not disclosed a \$40,000 personal loan received from Edul N. Ahmad in 2007. To put his financial affairs in order, while taking advantage of low interest rates, Rep. Meeks took out another loan from Four M Investments LLC ("Four Investments") that was secured against his personal residence. Rep. Meeks used the proceeds of the Four Investments loan to pay off the 2007 loan.

On June 21, 2010, he amended his 2007 and 2008 financial disclosure statements to note the 2007 loan, as well as an additional \$15,000 loan with the Congressional Federal Credit Union.³ These amendments elicited inquiries from the Ethics Committee, to which he responded. He filed a second amendment on June 23, 2010.

OCE initiated a preliminary review against Rep. Meeks on January 25, 2011. But its investigation was marred by repeated violations of House and OCE rules. Because OCE failed to follow its own rules, and lacked jurisdiction over this matter when it referred it to the Committee, its Report and Findings are not properly before the Committee, and the Committee should not accept its recommendations.

A. OCE Violated Its Own Rules When It Investigated and Referred an Allegation Outside Its Jurisdiction

OCE began its investigation of Rep. Meeks by noticing an allegation that was outside its jurisdiction:

In 2007, Representative Gregory Meeks received a personal \$40,000 loan. In 2010, Representative Meeks received an additional \$59,650 home equity loan from "Four Investments."

² Isabel Vincent & Melissa Klein, *House Ethics Panel Probing Meeks' Money*, N.Y. POST, (Jan. 30, 2011); *Meekly Probing Meeks*, N.Y. POST (Feb. 20, 2011).

³ OCE alleged no violation with respect to disclosure of the \$15,000 credit union loan.

If Representative Meeks accepted a home equity loan from an individual without prior approval from the Committee on Standards of Official Conduct [sic] or from a commercial institution on terms not available to the general public, he may have violated House rules and standards of conduct.⁴

The review as stated was outside OCE's jurisdiction. The OCE Resolution and OCE rules prohibit an OCE investigation into "any alleged violation that occurred before" March 11, 2008.⁵ Yet OCE initiated a review into whether, *inter alia*, Rep. Meeks' receipt of a loan in 2007 violated House rules. Moreover OCE sought "[a]ll files, correspondence, emails, notes, and any other documents related to a 2007 \$40,000 loan"⁶

When told that this was a clear violation of its own rules, OCE responded with a flurry of post-hoc justifications. First, it said that the 2007 loan was relevant to evaluating the 2010 loan.⁷ But it never explained why this was so. Ultimately, OCE concluded that the 2007 loan warranted further investigation and the 2010 loan did not – belying its initial explanation for why it reviewed the 2007 loan in the first place.⁸

Then, at the very last minute, OCE refashioned the initial, improper inquiry about the 2007 loan into an entirely different allegation about Rep. Meeks' financial disclosure statements. This was a transparent attempt to take an illegal review, and dress it up as a legal one. It allowed OCE to disclaim repeatedly any finding that "Representative Meeks violated House gift rules in 2007," while still finding – as it was barred from doing – that he received "a \$40,000 gift . . . in 2007. . . ."⁹ The final Report was the very first time OCE indicated that Rep. Meeks' financial disclosure

⁴ Letter from Omar Ashmawy to the Honorable Gregory Meeks (Jan. 25, 2011) (Exhibit A) (emphasis added). As it has done in the past – see *In the Matter of Representative Sam Graves*, Report of the Committee on Standards of Official Conduct, at 15 (Oct. 29, 2009) (hereinafter, "Graves Report") and *In the Matter of Allegations Relating to Fundraising Activities and the House Vote on H.R. 4173*, Staff Report, 12, 19 (Jan. 26, 2011) – OCE misstated the applicable law. As OCE was told on February 18, the House Ethics Manual says plainly that Members who do not seek prior approval for noncommercial loans do not *automatically* violate the gift rule, but instead "run a risk of being found in violation" because of the myriad facts and circumstances that can affect their commercial reasonableness. House Ethics Manual at 383. If OCE could have properly investigated the 2007 loan, the correct inquiry would have been whether Rep. Meeks paid market value for that loan – which he did. See House Ethics Manual at 382.

⁵ See H. Res. 895, 110th Cong. § 1(e) (2008). See also Office of Cong. Ethics R 1.

⁶ Letter from Omar Ashmawy to the Honorable Gregory Meeks (Jan. 26, 2011) (Exhibit B).

⁷ See Letter from Brian Svoboda to Omar Ashmawy (Mar. 25, 2011), at 2 (Exhibit H).

⁸ See Report at 2; Findings ¶¶ 55, 59. The Report and Findings are attached as Exhibit N.

⁹ See Findings ¶¶ 2 n.1, 51, 59 n.58.

statements were under review.¹⁰ Among nine OCE requests for documents and testimony from Rep. Meeks, not one pertained to his financial disclosure reports.¹¹

The OCE Resolution is clear. It prohibits OCE from investigating alleged, pre-2008 violations. But OCE began an investigation that was improper on its face. And when Rep. Meeks objected, OCE tried to reach the same result by reframing the allegation. This Committee has said before that, "[i]f OCE acts in contravention of its authorizing resolution, OCE loses jurisdiction over a matter."¹² This is plainly the case here.

B. Despite Repeated Requests, OCE Violated Its Own Rules and Refused to Disclose to Rep. Meeks the Allegations Against Him

Under the OCE Resolution, Members have the right to know and confront the allegations against them. To begin a preliminary review, OCE must find a reasonable basis to believe an "allegation" of a violation by a Member, and must disclose that allegation to the Member.¹³ It may only authorize a second-phase review if it finds probable cause to believe that the alleged violation occurred, and it may only refer the matter to the Ethics Committee if there is substantial reason to believe *that same allegation*.¹⁴ OCE has no authority to review allegations that are not noticed through this process. While it asserts the authority to address other violations discovered in the course of a review, it still has the duty to disclose new allegations to a Member, and to provide an opportunity to respond.

OCE never disclosed that it was considering allegations regarding Rep. Meeks' financial disclosure reports. Moreover, OCE was repeatedly asked whether it was considering other allegations besides those set forth at preliminary review, and it repeatedly refused to admit that it

¹⁰ Had OCE informed the Committee that it was reviewing an allegation about Rep. Meeks' personal financial disclosure reports – a matter then before the Committee – the Committee might well have notified OCE that it was investigating the same matter, and that it should "refer the matter to the Committee for its consideration immediately." See Committee R. 17A(k)(1).

¹¹ See Letter from Omar Ashmawy to the Honorable Gregory Meeks (Jan. 26, 2011) (Exhibit B). Just as OCE made no allegation regarding the disclosure of the 2007 loan, it made no allegation regarding the disclosure of the \$15,000 credit union loan that was initially omitted from the Congressman's personal financial disclosure reports. Nor did it refer the nondisclosure of that loan to the Committee.

¹² Graves Report, at 23.

¹³ H. Res. 895, 110th Cong. § 1(c)(1)(A); Office of Cong. Ethics R. 7(A).

¹⁴ H. Res. 895, 110th Cong. § 1(c)(1)(C); Office of Cong. Ethics R. 8(A), 9(A).

was, or say to what they were.¹⁵ On May 18, OCE told Rep. Meeks for the first time that it had reviewed an allegation about his financial disclosure reports.

This is not the first time OCE has failed to disclose allegations under review. For example, when the Committee dismissed the Graves matter in 2009, it was aware that "OCE failed to accurately advise Representative Graves of the rules or standards of conduct that he was alleged to have violated."¹⁶ Here, OCE could easily have disclosed the financial disclosure allegation without prejudicing its review in any way. By failing to disclose it until after the review was over, OCE broke its own rules. It had no legal basis to refer it to the Committee, which – in any event – had already considered the very same issue.

C. OCE Reached a Prohibited Conclusion About the Validity of the Allegation, Which Was Not Supported by the Facts

OCE's Findings may not contain "any conclusions regarding the validity of the allegations upon which it is based or the guilt or innocence of the individual who is the subject of the review"¹⁷ OCE repeatedly violated this rule. It drew a "negative inference that Representative Meeks received a \$40,000 gift in 2007 on a basis other than a legitimate loan . . ."¹⁸ The Findings even declare, in bold print: "Representative Meeks Failed to Disclose a \$40,000 Gift He Received in 2007 . . ."¹⁹

Even if OCE were allowed to reach such conclusions or to draw negative inferences, it had no sound basis to do so here. When it notified Rep. Meeks of its preliminary review, he complied with its request for information and timely produced responsive documents.²⁰ His counsel did note that OCE lacked jurisdiction over the 2007 loan, and that he would not produce documents regarding that loan, except for a copy of the check issued to pay it off. OCE was told of the character of these documents, which was correspondence between his staff and the Ethics Committee.²¹ OCE responded by threatening Rep. Meeks with a "negative inference."²²

¹⁵ See Email from Brian Svoboda to Paul Solis (Mar. 9, 2011) (Exhibit F); Letter from Brian Svoboda to Omar Ashmawy (Mar. 25, 2011) (Exhibit H); Letter from Omar Ashmawy to Brian Svoboda (Apr. 1, 2011) (Exhibit I).

¹⁶ Graves Report, at 30.

¹⁷ H. Res. 895, 110th Cong. § 1(c)(2)(C)(ii)(II).

¹⁸ Findings ¶ 2.

¹⁹ Findings at 18.

²⁰ See Letter from Brian Svoboda to Omar Ashmawy (Feb. 18, 2011) (Exhibit C).

²¹ See *id.*

Ironically, it cited the very same paragraph of the OCE Resolution that expressly prohibits "any conclusions regarding the validity of allegations or the guilt or innocence of the individual ..."²³

In the Graves matter, the Ethics Committee found that OCE violated the resolution and reached a prohibited conclusion when OCE said that Rep. Graves had shown "lack of candor" in an interview.²⁴ Here, OCE's violations are even more stark. In the Findings, it says flatly that Rep. Meeks "Failed to Disclose a \$40,000 Gift He Received in 2007." It drew a prohibited negative inference against him because he would not waive a valid jurisdictional objection, and would not agree to an interview until the allegations were disclosed. Nowhere in its Findings did OCE even acknowledge his reasons for not meeting its demands. OCE's prohibited conclusions and negative inference are not properly before this Committee.

D. OCE Again Ignored its Timetables for Review, Rendering its Referral Ultra Vires

The Resolution requires OCE to transmit a written report to the Committee "[u]pon the completion" of a second phase review.²⁵ The legislative history makes clear that this must be done promptly. The Capuano Report stated that "the timeline requirements instituted by the new process are critical: matters will spend at most three months under consideration by the board of the OCE before being referred to the Standards Committee for resolution."²⁶ To allow otherwise would needlessly extend the time in which a Member remains under investigation, and, depending on the circumstances, could impair this Committee's work.

The Committee has repeatedly found that OCE failed to comply with these requirements.²⁷ In the Graves matter, OCE began preliminary review on March 26, 2009. According to the Ethics Committee's calculation, while the second phase review was to end on June 9, OCE did not vote to extend it beforehand. OCE continued to hold interviews beyond this date, and did not adopt a

²² Letter from Omar Ashmawy to Brian Svoboda (Mar. 9, 2011) (Exhibit G).

²³ See *id.* (citing H. Res. 895, 110th Cong., § 1(c)(2)(C)(i)(II)(bb)). OCE also asked to interview Rep. Meeks, but Rep. Meeks wanted assurance that OCE was observing its jurisdictional limits, and that it had disclosed all of the allegations under review – which, as it turns out, it had not. See Letter from Brian Svoboda to Omar Ashmawy (Mar. 25, 2011) (Exhibit H).

²⁴ Graves Report, at 35.

²⁵ H. Res. 895, 110th Cong. § 1(c)(2)(C).

²⁶ Report of Members of the Special Task Force on Ethics Enforcement at 17 (Dec. 2007).

²⁷ See Graves Report, at 32-33; *In the Matter of Representative Fortney "Pete" Stark*, Report of the Committee on Standards of Official Conduct, at 2 and n.8 (Jan. 29, 2010) (hereinafter "Stark Report").

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report and findings until July 24. The Committee found that, because OCE did not vote to extend before June 9, 2009, its review legally terminated on that date, and its later actions were *ultra vires*.²⁸

Similarly, in the Stark matter, OCE completed the second phase review on August 28, 2009, voted to refer on October 23, 2009, and did not send its findings to the Committee until November 12, 2009. The Committee noted that, by not transmitting the report "upon the completion" of the review as the OCE Resolution required, OCE acted "[i]n contravention of this directive."²⁹

OCE made the same mistakes here. The second phase review period ended on April 23, 2011.³⁰ But the Board invited Rep. Meeks to provide a statement to the board after this date – by April 25 – and did not vote to refer the matter to the Ethics Committee until April 29.³¹ By the Committee's reasoning in the Graves matter, this review ended on April 23, and OCE's subsequent actions were outside of its jurisdiction.

Even then, OCE failed to transmit the report promptly to the Ethics Committee "[u]pon the completion" of the second phase review.³² It transmitted the report and findings to the Committee on May 18 – 25 days after the end of second phase review, and 19 days after it voted. All in all, 114 days elapsed between the initiation of preliminary review and the Report's transmission. The effect was to extend by an additional month the period under which Rep. Meeks remained under ethics review.³³

CONCLUSION

As Rep. Meeks has said publicly, and as he told OCE, he regrets the circumstances that made it necessary for him to amend his financial disclosure statements. It was nearly a year ago that he

²⁸ Graves Report, at 32-33.

²⁹ Stark Report at n.8.

³⁰ See Findings ¶ 9.

³¹ *Id.* ¶ 11.

³² H. Res. 895, 110th Cong. § 1(e)(2)(C).

³³ The Findings give no reason for this untoward delay. By its own account, OCE received documents from only two witnesses, and testimony from only one. See Findings ¶¶ 13-16. The lone interview was conducted more than two months before the Report and Findings were transmitted, and lasted only one hour. See Findings, Exh. 3 (hereinafter "Memorandum of Interview").

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corresponded through staff with the Committee in response to its questions about the amended reports.

OCE's review has needlessly prolonged this process. Its Report and Findings provide no new reason for Committee action. The lone new "fact" that it offers to support further investigation is double-hearsay – a Memorandum of Interview in which an OCE attorney describes conversations with Dennis Mehiel – which OCE tries to present as the basis for its conclusion that the 2007 loan lacked indicia of legitimacy.³⁴ The Committee has noted the problems with such double-hearsay before.³⁵

The Committee has the discretion to resolve the question of the Member's financial disclosure reports under its own rules.³⁶ We would respectfully request that the Committee do that, and we are willing to assist toward that end. But there is no sound legal basis for the Committee to act on OCE's Report and Findings. They are not properly before the Committee. They began and ended with violations of OCE's rules. Their publication would compound these errors, unfairly prejudice the Member, and would not serve the Committee's interest in impartial and effective enforcement.

We appreciate the Committee's attention to these matters.

Very truly yours,



Brian G. Svoboda
Andrew H. Werbrock

³⁴ See Memorandum of Interview ¶ 16.

³⁵ See Stark Report, at n.56; Graves Report, at n.200 ("The Standards Committee notes that OCE's witness interviews are neither transcribed nor videotaped. Instead, the only record of OCE's witness interviews is found in memoranda of interviews reflecting OCE's staff's impressions of the interview.")

³⁶ See Committee R. 17A(a).