

June 2, 2017

Brian G. Svoboda
@perkinscoie.com
D. +1.202.434.
F. +1.202.654.9150

The Honorable Susan W. Brooks, Chairwoman
The Honorable Theodore E. Deutch, Ranking Member
U.S. House of Representatives Committee on Ethics
1015 Longworth House Office Building
Washington, DC 20515

Re: Review No. 17-7171

Dear Chairwoman Brooks and Ranking Member Deutch:

On behalf of Representative John Conyers, Jr., we respectfully ask the House Committee on Ethics (the “Committee”) to dismiss the above-referenced Referral from the Office of Congressional Ethics (“OCE”). We appreciate the opportunity to respond to OCE’s Report and Findings.

INTRODUCTION

This is the second time this Committee has received a referral from OCE over this very same allegation.¹ Both referrals arose from Mr. Conyers’ termination of a longtime aide. When that aide pled guilty to a misdemeanor entirely unrelated to her official duties, Mr. Conyers decided that it was necessary for her to separate from his office. He contacted the Office of House Employment Counsel (“OHEC”) to effect the separation. OHEC drafted, and Representative Conyers and the aide entered into a Settlement Agreement and Release that ended her House employment.

Mr. Conyers believed then—and still believes—that the Settlement Agreement and Release was proper. Members are accorded substantial discretion over compensation and leave policies, so that they can manage their offices efficiently in the interests of their districts. The House Rules and federal law permitted Representative Conyers to reach the Settlement Agreement and Release. Far from intending to violate any standard of conduct, or acting unreasonably or recklessly, Mr. Conyers consulted with and relied on the advice of OHEC attorneys to effect a proper separation.

While Mr. Conyers acted reasonably to separate from his longtime aide in consultation with OHEC like many other Members have done, OCE repeatedly derogated his rights. It reviewed this same allegation in the previous Congress without giving him proper notice, referred that

¹ See OCE, Review No. 16-1190 (Sept. 23, 2016).

allegation to the Committee during the blackout period before his election, initiated this new review over the same matter, and published the first referral in violation of House rules while this review was ongoing. It is true that Mr. Conyers did not cooperate with OCE: it had already repeatedly violated his rights and he had no confidence it would handle his matter properly.

For these reasons, we respectfully request the Committee to dismiss the Referral.

FACTUAL BACKGROUND

This matter springs from a misdemeanor plea entered into voluntarily by Ms. Cynthia Martin, a long-serving aide to Representative Conyers. On March 30, 2016, about three weeks after an Information was filed against her in superior court, Ms. Martin pled guilty to receiving stolen property through funds that had been mistakenly transferred into her bank account. Her conduct was unrelated to her official duties and did not involve the operation of Mr. Conyers' office. At the time of the misdemeanor, Ms. Martin had served in Mr. Conyers' office for nearly two decades, and had been his chief of staff for eight years.

The criminal charge forced Mr. Conyers to make a difficult decision about how to serve his district's interests, while dealing fairly and reasonably with a longtime aide who had played a crucial role in the work he did for that same district. On April 4, 2016, the Congressman informed Ms. Martin that she had been placed on unpaid administrative leave until further notice. On the same day, Mr. Conyers communicated extensively with an OHEC attorney, who drafted a letter to Ms. Martin memorializing the change in her employment status; that attorney reaffirmed to the Congressman that OHEC would be "the attorneys for your office, if there were to be litigation" Representative Conyers directed his Office's financial administrator to withhold Ms. Martin's pay while on leave. Two days later, when asked for a statement by reporters, Mr. Conyers indicated that he was "disappointed to learn of this matter" and had "placed Ms. Martin on unpaid leave pending my further review."

Over the following two weeks, Representative Conyers deliberated about what to do next. On April 19, 2016, following extensive consultation with OHEC, Mr. Conyers informed Ms. Martin by letter that: (1) her employment in the Office was ending, (2) she would receive two months of severance, and (3) the Office would provide a payment for accrued annual leave, provided the amount "does not exceed the Speaker's pay order." Shortly thereafter, the Office's financial administrator submitted two Payroll Authorization Forms, one indicating that the unpaid leave status should be rescinded and the other indicating that Ms. Martin should be terminated effective June 14, 2016. In effect, Ms. Martin was placed back on payroll in order for her to receive severance and accrued annual leave.

This framework was codified in a Settlement Agreement and Release between Ms. Martin and the Office of Representative Conyers that was signed on June 7, 2016. In exchange for Ms. Martin's release and discharge of any and all claims and other valuable consideration, the Office

agreed to pay Ms. Martin her accrued annual leave (a period of two months and six days), and severance for a period of two months (lasting from June 26, 2016 until August 25, 2016). Thereafter, the Agreement stated that Ms. Martin would be placed on leave without pay status for two months and would be permanently removed from the Office's payroll on October 25, 2016. On August 11, 2016, the Office's financial administrator submitted a Payroll Authorization Form that placed Ms. Martin in a leave without pay status, effective August 25, 2016 to October 25, 2016. On October 25, 2016, Ms. Martin was permanently removed from the Office's payroll.

PROCEDURAL HISTORY

OCE previously sent this allegation to the Committee on October 13, 2016, in Review No. 16-1190. This new review simply re-casts and re-sends the same allegation, which OCE published while the new review was underway.

a. Review No. 16-1190

OCE began investigating Ms. Martin over the circumstances leading to her departure on June 25, 2016.² Even though that review concerned a member of Representative Conyers' staff, the Board did not tell Representative Conyers it was reviewing Ms. Martin's conduct until three weeks into second-phase review. On August 16, 2016, Representative Conyers received a Request for Information ("RFI") that sought records related to Ms. Martin's employment history and compensation; the RFI told Representative Conyers that he himself "may have engaged in conduct that may violate federal law, House rules, or standards of conduct."³ The RFI did not inform Representative Conyers of: (1) the nature of the review, (2) whether the Board had communicated notice of the review to the Committee, or (3) the Congressman's right to counsel.⁴ Instead, OCE warned Representative Conyers that it "may draw a negative inference from any refusal to cooperate."⁵ Representative Conyers' counsel identified these deficiencies and told OCE that the circumstances did not permit the Member to respond.⁶ Counsel also reminded OCE that its Rules and Committee Rules do not permit OCE to transmit a referral in which the subject of the referral is a candidate during the sixty days preceding an election.⁷

Less than four weeks before Representative Conyers' re-election, on October 13, 2016, OCE transmitted the referral in Review No. 16-1190 to the Committee.⁸ The Board gave Representative Conyers no opportunity to present a statement before transmitting the referral.

² *Id.* at ¶ 6.

³ OCE, Request for Information, Review No. 16-1190 (Aug. 16, 2016).

⁴ *See id.*; *see also* H. Res. 895, 110th Cong. §§ 1(c)(1)(A), 4(d)(5).

⁵ OCE, Request for Information, Review No. 16-1190 (Aug. 16, 2016).

⁶ Letter from Brian G. Svoboda & David J. Lazarus to Office of Congressional Ethics (Sept. 20, 2016).

⁷ *See* OCE Rule 10; Committee Rule 17A(i).

⁸ OCE, Review No. 16-1190, at ¶ 12 (Sept. 23, 2016).

Nor did the Board provide Representative Conyers with the report or findings. While the referral was styled as against Ms. Martin, it was unmistakably adverse to Mr. Conyers: it recommended that the Committee investigate whether she “accepted compensation that was not commensurate with the work she performed.”⁹ On November 23, 2016, the Committee provided Mr. Conyers with a copy of the Report and Findings, noting that it no longer had jurisdiction over Ms. Martin because she was no longer a House employee. The Committee did not inform Mr. Conyers of any adverse action it was taking as to him.

b. Review No. 17-7171

On February 7, 2017, OCE informed Representative Conyers that it had opened the instant review over the same conduct involving Ms. Martin’s compensation. It simply transposed the allegation in the earlier review, asking whether Mr. Conyers “paid compensation to [Ms. Martin] during a time when the services she performed were not commensurate with her level of compensation.”¹⁰ On February 8, OCE published *sua sponte* the referral in the earlier review, even while the new one was pending.¹¹

Because OCE had repeatedly derogated Mr. Conyers’ rights—both in the prior review, and by publishing the referral in that review while the new one was ongoing—and because it had already transmitted the alleged violation to the Committee, Representative Conyers’ counsel requested that the Board terminate its review.¹² On March 6, 2017, OCE authorized a second-phase review.¹³ OCE rebuffed Mr. Conyers’ objections in a letter to his counsel the next day. It denied that the allegations were the same; it said it was powerless to disclose information to him about the previous review while it was underway; it said he was entitled to no further notice during the prior review because he was only a witness; it said it was not bound by the “blackout” period before his election because he was not the subject; and it said finally that it was fully justified in publishing the Martin Report and Findings.

The Board transmitted the Report and Findings in this review on May 11.¹⁴ As in the previous review, OCE recommended that the Committee review whether Ms. Martin was provided “with compensation that was not commensurate with the work she performed.”¹⁵

⁹ *Id.* at ¶¶ 39, 40.

¹⁰ OCE, Initiation of Preliminary Review, Review No. 17-7171 (Feb. 7, 2017).

¹¹ See OCE, *Referral Regarding Ms. Cynthia Martin*, Feb. 8, 2017, <https://oce.house.gov/oce-referral-regarding-ms-cynthia-martin/>.

¹² See Letter from Brian G. Svoboda & David J. Lazarus to Omar Ashmawy & Paul Solis, Mar. 2, 2017.

¹³ OCE, Review No. 17-7171, Notice of Second-Phase Review (Mar. 6, 2017).

¹⁴ OCE, Review No. 17-7171, Report and Findings, at ¶¶ 8-9 (May 5, 2017).

¹⁵ *Id.* at ¶ 21.

LEGAL DISCUSSION

I. REPRESENTATIVE CONYERS COMPLIED WITH HOUSE RULES WHEN HE ACTED REASONABLY TO END THE EMPLOYMENT OF A LONGTIME AIDE

A. House Members Have Substantial Discretion To Manage Their Offices and Set Compensation and Leave

House Members possess substantial latitude to establish employment rules and policies for their offices. The “general terms, conditions, and specific duties of House employees traditionally have been within the discretion of the employing Member.”¹⁶ Federal courts have recognized this principle, finding that the House “has in large measure vested Members with discretion to fix the terms and conditions of employment of staff members.”¹⁷ The Members’ Handbook likewise declares that “the Member determines the terms and conditions of employment and service for their staff.”¹⁸

Members and other House employing authorities possess similar discretion with respect to setting compensation and leave policies and practices for their offices. Members have broad authority to set the terms of compensation for their staff, as long as they comply with applicable federal laws and the House Rules.¹⁹ Members may “adjust, in any month, an employee’s pay to reflect exceptional, meritorious, or less than satisfactory service.”²⁰ They have “broad authority to make lump sum payments.”²¹ They may pay bonuses.²² And, Members may determine leave policies for their offices.²³

Unsurprisingly, compensation and leave policies and practices vary substantially from one employing authority to another. A staff assistant in one office can earn substantially more than a staff assistant in another office. The number of days of annual leave permitted by one office can be substantially greater than the number of days of annual leave permitted by another office. The House Rules, Committee on Administration regulations, and Committee on Ethics guidance do not supplant the Members’ traditional power to set the terms, conditions, and specific duties of their staff. As a result, variation in compensation and leave policies among employing authorities is commonplace.

¹⁶ House Ethics Manual (2008) at 267; *see also id.* at 207 (terms of a staff person’s employment “are within the discretion of his or her employing Member”).

¹⁷ *See United States v. Rostenkowski*, 59 F.3d 1291, 1309 (D.C. Cir. 1995) (internal citation omitted).

¹⁸ Members’ Handbook (115th Cong.) at 3.

¹⁹ *See id.* at 3, 9-10.

²⁰ *Id.* at 10.

²¹ House Ethics Manual (2008) at 283.

²² *See id.* at 240.

²³ Members’ Handbook (115th Cong.) at 11.

At the same time, Members must comply with a broad range of restrictions in their personnel practices, such as anti-discrimination rules, minimum wage and overtime protection for certain employees, and limits on staff numbers and salaries.²⁴ Many of these restrictions take the form of clear and specific rules. For instance, Members may not discriminate in their hiring and management decisions on the basis of race, color, religion, sex, disability, age, or national origin.²⁵ Members may not provide compensation that exceeds “the amount specified in the Speaker’s Pay Order.”²⁶ Retroactive pay adjustments are prohibited.²⁷ And, lump sum payments may not exceed the monthly pay of the employee receiving the payment.²⁸

Other restrictions on compensation and leave, including the standard of conduct at issue in this Referral, are more flexible in application. House Rule 23, Clause 8 establishes that a Member “may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation such employee receives.”²⁹ While this standard sets forth the unobjectionable principle that every government employee should give “a full day’s labor for a full day’s pay,”³⁰ the House has not established precise requirements for an office’s compensation and leave practices. Thus, by design of the House Rules, Members retain substantial discretion to set the terms and conditions of staff employment. Simply because offices vary in their compensation and leave policies and practices, it does not necessarily mean that employees are receiving compensation that is not commensurate with their duties, or that the Members are violating the standards of conduct.

B. The Office’s Reasonable Compensation to Ms. Martin Did Not Violate House Rule 23 or Any Other Specific Rule of Conduct

Under the House regulations and Committee guidance, the payments to Ms. Martin did not present any of the concerns that animate House Rule 23, Clause 8. The authorities show that House Rule 23, Clause 8 has three primary functions. *First*, the rule requires that appropriated funds for congressional staff “be used only for assisting a Member in his or her legislative and representational duties,” meaning such compensation may not be provided “to perform nonofficial, personal, or campaign activities”³¹ *Second*, relatedly, when it is anticipated that a congressional employee will “be assuming significant campaign duties, it may be necessary for the employing Member to make an appropriate reduction in the employee’s House pay.”³² Compensation, including lump sum payments and bonuses, may not “serve as compensation or a

²⁴ See generally House Ethics Manual (2008) at 267-78; Members’ Handbook (115th Cong.) at 3-13.

²⁵ House Rule XXIII, cl. 9.

²⁶ Members’ Handbook (115th Cong.) at 4.

²⁷ *Id.*

²⁸ *Id.* at 10.

²⁹ House Rule XXIII, cl. 8(a).

³⁰ See Code of Ethics for Government Service ¶ 3.

³¹ House Ethics Manual (2008) at 279.

³² *Id.* at 140.

reward for campaign work.”³³ *Third*, the Committee has indicated that when an employee’s official responsibilities will be reduced, compensation should “be reduced proportionately” to account for the change.³⁴ Thus, the House regulations and Committee guidance indicate that House Rule 23, Clause 8 does not permit official salaries to be used to support campaign, nonofficial, or personal activities, and requires employing authorities to proportionately reduce official salaries to account for reductions in official duties.

None of these concerns are at issue here. It is not alleged that Representative Conyers paid Ms. Martin to “perform nonofficial, personal, or campaign activities.” This referral is completely unlike those cases in which Members have been investigated or punished for directing staff members to perform personal services.³⁵ Nor is there any evidence or reason to believe that Ms. Martin was paid for campaign activities or as “a reward for campaign work.” Rather, the reasonable compensation that the Office of Representative Conyers provided to Ms. Martin was for accrued annual leave and a lawful and reasonable severance.

The House Rules, Committee on Administration regulations, Committee guidance, and related authorities do not indicate that the forms of compensation provided by Representative Conyers were prohibited or violated a standard of ethical conduct. Nor do these authorities indicate that reasonable payments for accrued annual leave and severance would constitute compensation that is not commensurate with an employee’s duties or responsibilities, in violation of House Rule 23. In fact, as discussed below, a range of authorities expressly permit House Members to provide precisely these forms of compensation.

C. It Was Lawful To Pay Ms. Martin for Her Accrued Annual Leave

Representative Conyers did not violate any standard of conduct by compensating Ms. Martin for the unused annual leave she had accrued. Federal law expressly permits Members and other employing authorities to pay congressional employees for their accrued annual leave. Section 4537(a) of Title 2 of the U.S. Code provides: “Upon the approval of the appropriate employing authority, an employee of the House of Representatives may be paid [] for the accrued annual leave of the employee” The Members’ Handbook recognizes that “cash reimbursement for accrued annual leave” is one of many forms of eligible compensation that a Member may provide to a congressional employee.³⁶ The House’s Model Employee Handbook specifies that “[u]pon separation from employment, the Office will pay the employee a lump sum equal to the number of days of unused annual leave”³⁷ The House’s Payroll Authorization Form lists “Accrued Annual Leave” as a permissible form of compensation.³⁸ And, the Information Booklet

³³ *Id.*

³⁴ *Id.* at 142.

³⁵ *Cf. id.* at 282 (“personal services included bailing hay, running and repairing farm equipment”).

³⁶ Members’ Congressional Handbook (115th Cong.) at 4.

³⁷ Committee on House Administration, *Model Employee Handbook* (2010) at 44.

³⁸ See U.S. House of Representatives, *Lump Sum Payment Authorization Form* (Rev. Feb. 11, 2011).

issued by the House to separating employees specifies that employing authorities shall determine whether a departing employee is eligible to receive a payment for unused leave.³⁹ Thus, by compensating Ms. Martin “for her unused annual leave for the period of two months and 6 days,” Representative Conyers clearly acted within his authority and did not violate any law or standard of conduct.

d. It Was Lawful To Pay Ms. Martin Reasonable Severance Payments for Two Months

Representative Conyers acted consistently with the broad range of authorities that allow House Members to make severance payments and lump sum payments to congressional employees. Various provisions in federal law, regulations promulgated by the Committee on House Administration, and payroll forms issued by the Chief Administrative Officer of the U.S. House of Representatives all recognize that payments of this nature are permissible.

Federal law expressly authorizes employing authorities to make severance payments to congressional employees. The head of any office in the legislative branch may make “voluntary separation incentive payments [] to eligible employees of the office to encourage such employees to separate from service voluntarily (whether by retirement or resignation)”⁴⁰ A congressional employee may be eligible for these severance payments if he or she “is serving under an appointment without time limitation and has been currently employed for a continuous period of at least 3 years.”⁴¹ Here, Ms. Martin was eligible for such payments, given that she had served for a continuous period of far longer than 3 years and had not been serving in a time-limited position. As a result, Representative Conyers acted lawfully in providing reasonable severance for a two-month period.

A separate provision in federal law similarly permitted Representative Conyers to pay Ms. Martin a reasonable severance payment for a two-month period. Federal law authorizes House Members to pay their congressional staff “a lump sum . . . for any [] purpose.”⁴² Pursuant to this authority, the Payroll Authorization Form issued by the Chief Administrative Officer specifically lists “Severance Pay” as a permissible form of compensation.⁴³ In exercising his broad authority under federal law, which is consistent with the general principle that Members may establish the

³⁹ House of Representatives, *Separating Employee Information Booklet*, http://www.house.gov/content/jobs/former_employees.php.

⁴⁰ 2 U.S.C. § 4505(a).

⁴¹ *Id.* § (e) (citing 5 U.S.C. § 2107) (defining congressional employee to include “an employee of either House of Congress”).

⁴² *Id.* § 4537(a).

⁴³ See U.S. House of Representatives, *Lump Sum Payment Authorization Form* (Rev. Feb. 11, 2011).

“general terms, conditions, and specific duties of House employees,” Representative Conyers did not violate any federal law or standard of conduct.⁴⁴

Finally, the dispute resolution mechanism in the Congressional Accountability Act specifically permits personnel disputes brought by congressional employees to be resolved through settlement agreement.⁴⁵ That provision does not preclude the House of Representatives from establishing “rules governing the process by which a settlement may be entered into by [] any employing office of such House.”⁴⁶ While these laws have not been interpreted by the House or Senate, they reflect Congress’ considered judgment that settlement agreements and severance payments are not proscribed.

Because House Rule 23, Clause 8 does not prohibit severance payments made pursuant to a settlement agreement, and has not been construed by the Committee as extending to such forms of compensation, Representative Conyers had no reason to believe that such compensation could violate a standard of conduct. As discussed above, the compensation at issue was not impermissibly provided to subsidize personal services or reward campaign activities—the issues at the heart of House Rule 23, Clause 8. Nor was the payment used “to evade the financial disclosure requirements, the outside earned income limitation and restrictions, or the post-employment restrictions,” three other concerns discussed by the Committee.⁴⁷ Rather, the payment constituted a reasonable approach to securing the smooth transition of a longtime congressional employee. In this respect, the compensation resembled a “lump sum end-of-the-year bonus or other one time payment recognizing a particular accomplishment,” payments that the Committee has recognized are “generally permissible.”⁴⁸

To further underscore that the compensation at issue in the Referral was reasonable and appropriate, the laws governing executive branch compensation also authorize agencies to provide severance pay.⁴⁹ Employees in the executive branch who have been employed for at least 12 months and have been involuntarily separated from service are “entitled to be paid severance pay in regular pay periods by the agency from which separated.”⁵⁰ Such pay may amount to up to “1 year’s pay at the rate received immediately before separation.”⁵¹ Here, as the Office of Representative Conyers provided compensation for a far shorter duration than is permitted for executive branch employees, the Committee should not find the compensation to have been unreasonable or prohibited by House Rule 23.

⁴⁴ House Ethics Manual (2008) at 267; *see also id.* at 207 (terms of a staff person’s employment “are within the discretion of his or her employing Member”).

⁴⁵ 2 U.S.C. § 1414

⁴⁶ *Id.*

⁴⁷ House Ethics Manual (2008) at 284.

⁴⁸ *Id.*

⁴⁹ *See, e.g.*, 5 U.S.C. § 5597 (separation pay for certain employees of defense agencies).

⁵⁰ *Id.* § 5595(b).

⁵¹ *Id.* § (c).

e. Members Must Be Able To Rely on Reasonable Advice from Competent House Administrative Offices

The Committee should not find Representative Conyers to have violated any standard of ethical conduct or House Rule, given that his Office engaged in extensive consultations with OHEC prior to agreeing to provide compensation to Ms. Martin. Over an extended period of time, Representative Conyers' Office conferred with OHEC attorneys to determine its obligations and lawful options. In fact, OHEC assisted significantly in drafting the Settlement Agreement and Release and the April 19, 2016, letter from Representative Conyers to Ms. Martin. Both documents specified that Ms. Martin would receive two months of severance and payments equivalent to her unused annual leave. The Settlement Agreement and Release specified that the signed document should be returned to OHEC by email.

It was reasonable and appropriate for Representative Conyers to rely on the advice he received from the House administrative office responsible for advising Members and other employing authorities on the House's employment rules. The Office of House Employment Counsel "provides advice about employment practices and acts as legal representation for all employing authorities in the House."⁵² OHEC is authorized to "enter an appearance in any proceeding before any court of the United States" for the purpose of "providing legal assistance and representation to employing offices of the House of Representatives."⁵³ In this circumstance, while seeking guidance as to the Office's legal obligations, OHEC counsel at one point acknowledged that it was acting as "the attorneys for your office." Thus, not only does OHEC have delegated responsibility and expertise in the substantive area of House employment law, its attorneys provided counsel to the Office, including with respect to the payment of compensation.

Representative Conyers' engagement with OHEC establishes two reasons why the Committee should not find a violation of a standard of conduct:

First, it shows that Representative Conyers sought legal advice from the House's experts in this area before proceeding. At a minimum, this shows that he acted in good faith, did not intend to violate any standard of conduct, and sought to heed the complex rules that govern congressional employment. In other words, any type of wrongful mental state was lacking.⁵⁴

Second, the advice received by Representative Conyers shows the reasonableness of the severance agreement itself. The House Ethics Manual and Members' Handbook do not prohibit severance payments, while multiple provisions in federal law expressly permit them. Likewise, the fact that the Payroll Authorization Form specifies that Members may make payments for "Severance" further shows the reasonableness of the agreement. Any review of a matter like this

⁵² Office of the Clerk, *Offices & Services*, <http://clerk.house.gov/about/offices.aspx>.

⁵³ 2 U.S.C. § 1408(d)(1).

⁵⁴ See generally *United States v. Wenger*, 427 F.3d 840, 853 (10th Cir. 2005) (good faith reliance on the advice of counsel may show that conduct was not willful).

should conclude that further guidance is warranted, well before claiming that the Member somehow violated laws, rules and standards of conduct.

II. THE REFERRAL IS IMPROPERLY BEFORE THE COMMITTEE GIVEN OCE'S REPEATED FAILURE TO FOLLOW HOUSE RULES

This matter should be dismissed because Mr. Conyers acted reasonably and complied with House rules. However, by repeatedly violating Mr. Conyers' rights under House and OCE rules, OCE compounded the injury to Mr. Conyers that resulted from an unsupported claim of supposed misconduct.

H. Res. 895 and subsequent measures provide Members with the following enumerated rights, including but not limited to:

- The right to receive a statement of the nature of the review.⁵⁵
- The entitlement to notice that the Member has the right to counsel, and that invoking that right will not be held against him.⁵⁶
- The right to know that OCE will not transmit a report adverse to the Member during the 60 days before an election in which the Member is a candidate.⁵⁷

When OCE first reviewed this same allegation last year, it deprived Representative Conyers of each of these rights, professing to treat him as a witness only, when he was really a subject of the review:

- It provided him with no notice of the alleged violation, saying specifically how he was supposed to have violated "federal law, House rules or standards of conduct."⁵⁸
- It did not inform Representative Conyers of his right to counsel and that the invocation of this right would not be held against him; rather, the RFI urged the Congressman to keep the request confidential, and told him simply that it "does not prevent [him] from seeking counsel"⁵⁹

⁵⁵ H. Res. 895, 110th Cong. § 1(c)(1)(A)(ii).

⁵⁶ See H. Res. 5, 114th Cong. § 4(d)(5).

⁵⁷ See H. Res. 895, 110th Cong. § 3.

⁵⁸ See OCE, Request for Information, Review No. 16-1190 (Aug. 16, 2016).

⁵⁹ See *id.* at 2.

- It gave Mr. Conyers no opportunity to present a statement to the Board⁶⁰ and gave him no copy of the Report and Findings when it referred the allegation of errant compensation to the Committee.⁶¹
- It violated the so-called “blackout” period by which the Board “shall not transmit any referrals to the Ethics Committee within 60 days” before an election in which the subject of the referral is a candidate. Instead, it transferred a referral to the Committee “on October 13, 2016,” 26 days before Representative Conyers’ election.⁶²

After sending a referral that effectively alleged a violation by Mr. Conyers, while denying him all of the OCE Resolution’s protections, OCE initiated this review, a separate and redundant investigation of the very same allegation. OCE then published the Report and Findings in the first review, while the new, second review was underway. While Mr. Conyers might have hoped that cooperation with OCE would lead to an appropriate resolution of the matter, he had no reason for confidence that it would handle this review appropriately, given the lapses that had occurred in its handling from the beginning.

CONCLUSION

Through this referral, OCE invites the Committee to second-guess the legitimate discretion that Members have in making personnel decisions, including those involving compensation and leave. The Committee should resist that invitation. Given that there is no reason to believe that Mr. Conyers paid Ms. Martin for anything other than the performance of official duties, no prohibition on payments for accrued vacation or lump-sum severance, and no question that Mr. Conyers acted reasonably by seeking professional advice in the House, the Committee should not disturb the conscientious handling of a sensitive personnel matter.

⁶⁰ Office of Congressional Ethics, *Rules for the Conduct of Investigations*, Rule 9(B), Jan. 23, 2015; *see also* H. Res. 895, 110th Cong. § 1(f)(3).

⁶¹ Office of Congressional Ethics, *Rules for the Conduct of Investigations*, Rule 11(D), Jan. 23, 2015; H. Res. 895, 110th Cong. § 1(c)(2)(C)(ii).

⁶² OCE, Review No. 16-1190, at ¶ 12 (Aug. 16, 2016).

June 2, 2017
Page 13

For the foregoing reasons, we urge the Committee to dismiss this Referral. Mr. Conyers is committed to cooperate with the Committee in the resolution of this matter. Please let us know if we can assist the Committee in any way.

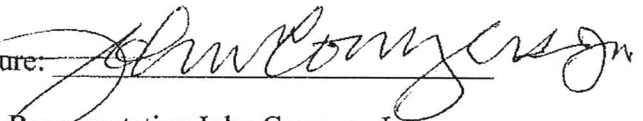
Very truly yours,

A handwritten signature in blue ink, appearing to read "B. G. Svoboda" followed by a long horizontal flourish.

Brian G. Svoboda
David J. Lazarus
Counsel to Representative John Conyers, Jr.

Declaration

I, Representative John Conyers, Jr., declare under penalty of perjury that the response and factual assertions contained in the attached letter dated June 2, 2017, relating to my response to the May 12, 2017, Committee on Ethics letter, are true and correct.

Signature: 
Name: Representative John Conyers, Jr.
Date: 6.1.17