

# Ethics Roundup: The Pace Picks Up in the House

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September 2011

July and August were unusually active and - in one respect - groundbreaking months in the House ethics arena. The House Committee on Ethics announced actions in seven separate investigative matters. These included the matter of Representative Maxine Waters (D-CA), for which the Committee hired an outside counsel not only to complete its long-delayed investigation of the Congresswoman but also - in an unprecedented move - to review the conduct of the Committee's own Members and staff. These developments are worth a closer look.

## **Ethics Committee Appoints Outside Counsel in Waters Case**

On July 20, 2011, Chairman Jo Bonner (R-AL) and Ranking Member Linda Sanchez (D-CA) announced the Committee's hiring of high-profile defense attorney and former federal prosecutor Billy Martin as outside counsel "to review, advise, and assist the Committee in completing the matter of Representative Maxine Waters."

The Waters matter - which involves allegations that the Congresswoman took official actions benefiting a bank where her husband had a substantial financial interest - had been scheduled for an adjudicatory hearing on November 29, 2010. On November 19, however, the Committee announced its decision to "recommit the matter . . . to the investigative subcommittee due to materials discovered that may have had an effect on the investigative subcommittee's transmittal of the matter to the Committee" for adjudication; the Committee added that the scheduled adjudicatory hearing "will not be held."

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Since cancellation of the Waters adjudicatory hearing, "serious allegations have been made about the Committee's own conduct in this matter by Representative Waters and others," as stated by the Chairman and Ranking Member in announcing the hiring of Billy Martin as outside counsel. Many of these allegations - concerning both Committee Member and Committee staff conduct - were made in press reports that appeared to cite confidential information and documents from the Committee. In response, the Committee took the unprecedented step of directing that the investigation of its own conduct "will be the very first task of the outside counsel's engagement." Only after receiving Martin's findings and conclusions on this point will the Committee determine whether the matter concerning Representative Waters should proceed.

### **House Ethics Committee Announces New Hires and Takes Action on Seven Matters**

On June 28, 2011, the House Committee on Ethics announced the hiring of six new attorney staff, including the selection of Deborah S. Mayer to fill the newly created position of Director of Investigations. Ms. Mayer came to the Committee after extensive service as a federal prosecutor, including three years at the Public Integrity Section of the Department of Justice. After hiring this complement of new counsel, the Committee - between July 15, 2011 and August 5, 2011 - took action in seven pending matters. Apart from its action in the Waters matter, the Committee:

- Voted on July 14, 2011 to reauthorize an investigative subcommittee in the matter of former Congressman Eric Massa (D-NY). An investigative subcommittee in this matter was authorized by the previous Congress, but the matter appeared to be inactive for some time. Because the Committee lost jurisdiction over Congressman Massa when he resigned his seat prior to the empanelling of the original investigative subcommittee, this inquiry focuses on whether any current Member, officer or employee of the House violated any standard of conduct in connection with Congressman Massa's alleged sexual misconduct.
- Voted on August 1, 2011 against empanelling an investigative subcommittee to look into the July 26, 2011 arrest of Representative Luis Gutierrez (D-IL) while protesting outside the White House.
- Announced on August 5, 2011 the resolution of separate matters concerning receipt of excess outside earned income, and the failure to properly report such income, by two House Chiefs of Staff. In the case of Michael Collins, Chief of Staff to Representative John Lewis (D-GA), Collins admitted to failing to report income he received between 2005 and 2010 (from the Lewis campaign) on either his House financial disclosure statement or on his federal income tax return; Collins agreed to accept a Letter of Reproval from the Committee and agreed to other measures to remedy his failure to disclose income.

On August 5, 2011, the Committee also announced resolution of an inquiry into allegations referred by the House Office of Congressional Ethics (OCE) that Representative Jean Schmidt (R-OH) violated the gift rule by accepting approximately \$500,000 from the Turkish Coalition of America (TCA) in payment of legal services in connection with litigation over statements about the Congresswoman made by her opponent in the 2008 campaign. The Committee determined that Congresswoman Schmidt did receive an impermissible gift from TCA of payment of legal services but also found that Representative Schmidt did not know she was receiving a gift because her "lawyers failed to inform her of their payment arrangement with TCA" and "made false and

misleading statements to her about their relationship with" TCA. The Committee therefore determined that no sanction was appropriate, but it did require Representative Schmidt to repay the legal bills paid by TCA and provided detailed guidelines to her on how to do so in an August 5, 2011 letter. The Committee's resolution of this matter without a sanction may have been influenced by the perception that the pace of the Committee's own advisory process contributed to uncertainty over how Representative Schmidt's legal bills could be paid: the Committee acknowledged in its public report that the Congresswoman "first sought guidance related to payment of legal services" in September 2009 and that she did not receive a written response from the Committee until February 2010; for her part, Congresswoman Schmidt took the view that the requested Committee guidance was not forthcoming for "nearly two years," that is, until the Committee's letter and report of August 5, 2011.

Also on August 5, the Committee announced its response to a referral from the OCE concerning Representative Gregory W. Meeks (D-NY). The Committee accepted the OCE's recommendation to dismiss an allegation that in 2010, Representative Meeks had received an improper loan from a New York industrial real estate firm, apparently intended to repay a \$40,000 payment received in 2007 from Edul Ahmad, a real estate broker and friend of the Congressman. However, the Committee also accepted OCE's recommendation that it conduct further review of an allegation that Representative Meek failed to timely disclose the 2007 payment from Ahmad as a gift on his financial disclosure statements.

Interestingly, the OCE referral on Representative Meeks to the Ethics Committee does not include a separate formal allegation that acceptance of the \$40,000 from Ahmad in 2007 constituted a violation of the gift rule by the Congressman. This apparent omission reflects the fact that, under its authorizing resolution, the OCE does not have jurisdiction over conduct alleged to have occurred before the March 11, 2008 date of that resolution. (Note, however, that the Ethics Committee does have jurisdiction to review whether the 2007 payment constituted an improper gift.) Notwithstanding the lack of an overt referral to the Ethics Committee on this allegation, Representative Meeks, through a June 3, 2011 letter from his counsel to the Committee, contends that: allegations about the 2007 payment improperly motivated OCE's entire investigation; the referral to the Committee on financial disclosure allegations was an improper and after-the-fact attempt by OCE to bring the 2007 payment within its limited jurisdiction; and OCE otherwise and repeatedly violated its own rules in investigating Representative Meeks, including by drawing a negative inference of guilt from the Congressman's alleged failure to cooperate with the OCE.