

CHARLES B. RANGEL
16TH CONGRESSIONAL DISTRICT
New York

COMMITTEE:
WAYS AND MEANS
JOINT COMMITTEE
ON TAXATION



GEORGE H. HENRY
CHIEF OF STAFF

JAMES E. CAPEL
DISTRICT DIRECTOR

Congress of the United States
House of Representatives

October 15, 2010

The Honorable Zoe Lofgren
Chairwoman,
Committee on Standards of Official Conduct
HT2 Capitol
Washington, DC 20515

Dear Chair Lofgren:

As you know, I am no longer represented by counsel in this matter, and am not in a position to address the substance of your letter (dated October 12, 2010) in a detailed manner at this time.

Under these circumstances, it would be impossible for me to meet the Committee's hearing schedule and deadlines.

Your letter requires that I object to the procedures by today, and this letter serves the purpose of preserving all my rights to object until I am able to prepare a defense. I am working diligently to see if I can secure new counsel and will not delay this effort.

Finally, the Committee's tight deadline schedule forces me to leave my re-election campaign in order to spend the last two weeks before the general election.

While I am very eager to have this matter heard, I need to have a fair opportunity to meet the Subcommittee's expectations and respond to the evidence that the Committee's counsel expects to introduce.

Sincerely,

Charles B. Rangel
Member of Congress

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ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

October 22, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. McCAUL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 225-7103

CONFIDENTIAL

Representative Charles B. Rangel
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, DC 20515

Re: In the Matter of Representative Charles B. Rangel

Dear Colleague:

As Chair of the Adjudicatory Subcommittee (ASC) in the Matter of Representative Charles B. Rangel, I am responding to your letter to me dated October 15, 2010. You stated in your letter that it would be "impossible for [you] to meet the Committee's hearing schedule and deadlines." You also said that by sending your letter, you intended to "preserv[e] all [your] rights to object until [you are] able to prepare a defense." In addition, you stated that you are "working diligently to see if [you] can secure new counsel and will not delay this effort."

Legal standard

Under Committee Rule 23(i)(2), the Chair "shall rule upon any question of admissibility or relevance of evidence, motion, procedure, or any other matter." By this letter, I am responding to the objection to the adjudicatory hearing schedule in your October 15 letter. Such rulings may be appealed by a "witness, witness counsel, or a member of the subcommittee."¹ In the event that a ruling of the Chair under this provision is appealed, a majority vote of the members present at the proceeding at which the ruling is appealed shall govern the question of admissibility, and no appeal shall lie to the Committee.² The Ranking Member of the ASC, Representative Michael McCaul, and the Committee Chief Counsel, R. Blake Chisam, will also be served copies of this letter.

ASC schedule

Under Committee Rule 5(e), a "subcommittee shall meet at the discretion of its Chair." Pursuant to Rule 5(e) and Rule 23(e) of the Committee and Clause 2(g)(3) of House Rule XI, the Chair of an ASC is required to make a public announcement in advance of an adjudicatory hearing.

¹ Committee Rule 23(i)(2).

² *Id.*

On October 7, 2010, as Chair of the ASC in this matter, I issued a public statement announcing that the adjudicatory hearing in this matter will begin on November 15, 2010, at 9:00 a.m. At that time, I also noted that substantial actions must be taken before a public hearing can begin. Accordingly, I publicly stated that I would notify you and Committee counsel of the schedule and other procedural issues. On October 12, 2010, consistent with Committee precedent, I sent a letter to the parties scheduling various pre-hearing procedural deadlines.³

Throughout this matter, which has been ongoing for more than two years, you have been aware of your right to counsel, and have in fact been represented by counsel. You have also long had access to most of the evidentiary record developed during the ISC's investigation.

Since the ASC was designated in this matter, you have made numerous public statements calling on the Committee to expedite its resolution of this matter. Similarly, in your October 15 letter, you also state that you are "very eager to have this matter heard."

The adjudicatory subcommittee process is not complete upon the conclusion of an adjudicatory hearing. After the hearing, the members of the ASC must conduct deliberations, vote on each count alleged in the SAV, and send a report of findings to the full Committee. If the adjudicatory hearing in this matter were to be postponed or rescheduled, it would be unlikely that the Committee would be able to bring this matter to a resolution during this Congress.

Accordingly, in light of these factors, pursuant to Committee Rule 23(i)(2) I am hereby overruling your objection to the hearing schedule. The adjudicatory hearing in this matter will proceed on November 15, 2010, at 9:00 a.m. as previously scheduled and announced.

Adjustments to deadlines

As has been previously noted, you must be allowed the opportunity to adequately defend yourself against the evidence presented by Committee counsel. You have indicated that you are interested in retaining new counsel and that you are actively working to identify possible counsel. In addition, the previously scheduled deadline for Committee counsel to provide you with certain materials was stayed. Accordingly, although the adjudicatory hearing will proceed on November 15, I am hereby modifying certain deadlines established by the October 12 scheduling letter. Unless otherwise specified in this letter, all deadlines announced in the October 12 scheduling letter are unchanged and remain in effect for both parties.

As you have been previously advised, pursuant to Committee Rule 23(f)(1), Committee counsel are required to provide you with access to the evidence they intend to use as evidence against you at the adjudicatory hearing, the names of witnesses Committee counsel intend to call, and a summary of their expected testimony no less than 15 calendar days prior to the hearing. The October 12 scheduling letter established a deadline of October 19, 2010, for Committee counsel to provide those materials to you.

³ As you were still represented by your former counsel at that time, the letter was sent both to you and to your former counsel.

However, on October 19, 2010, I stayed the October 19 deadline, and directed Committee counsel to provide you with notice of that fact. I understand that Committee counsel were prepared to meet the deadline, but did not provide you with the materials per the stay of the deadline. By this letter, I am notifying both parties that the deadline for Committee counsel to provide you with copies of the evidence, their intended witness list, and a summary of the witnesses' expected testimony is rescheduled for today, **October 22, 2010**. It is my understanding that since Committee counsel were prepared to meet the October 19 deadline before I stayed that deadline, Committee counsel will be able to meet the rescheduled deadline.

Under the terms of the October 12 scheduling letter, you were required to submit any objections you may have pursuant to Committee Rule 23(i)(1) to the evidence provided to you by Committee counsel, including both exhibits and anticipated witness testimony, in writing to the Chair of the ASC by 10:00 a.m. on October 26, 2010. Per this letter, that deadline will be rescheduled to **12:00 p.m. on October 29, 2010**.

Under the terms of the October 12 scheduling letter, you were also required to submit copies of documents or other evidence you will seek to use during the hearing, a list of the witnesses you expect to call, and summaries of the witnesses' expected testimony to Committee counsel by 10:00 a.m. on October 26, 2010. Per this letter, that deadline will also be rescheduled to **12:00 p.m. on October 29, 2010**.

Under the terms of the October 12 scheduling letter, you were also required to submit any application by you for subpoenas, should you choose to request subpoenas, in writing to the ASC by 12:00 p.m. on October 29, 2010. Per this letter, that deadline will remain **12:00 p.m. on October 29, 2010**.

Under the terms of the October 12 scheduling letter, Committee counsel were required to submit any objections they may have pursuant to Committee Rule 23(i)(1) to the evidence provided to Committee counsel by you, including both exhibits and anticipated witness testimony, in writing to the Chair of the ASC by November 1, 2010. Per this letter, that deadline will be rescheduled to **November 2, 2010**.

Under the terms of the October 12 scheduling letter, since subcommittee approval is required for any stipulations, you and Committee counsel were required to jointly submit any proposed stipulations to the ASC in writing by October 29, 2010. Per this letter, that deadline will be rescheduled to **12:00 p.m. on November 3, 2010**.

Counsel

Committee counsel has informed me and the Ranking Republican Member of the ASC that since sending your October 15 letter to me, in a telephone conversation with the Committee's Chief Counsel you advised Committee counsel that you have had substantial discussions with at least one attorney about representing you in this matter. However, an agreement between you and prospective counsel had not yet been reached. Please provide the

ASC with written notice of whether you will be represented by counsel at the adjudicatory hearing or if you will appear *pro se* by 12:00 p.m. on October 29, 2010.

Consistent with prior Committee precedent, you are advised that if you elect to proceed *pro se* at the adjudicatory hearing, any statements, questions, or arguments you make will not be considered as evidence in this matter, except to the extent that a statement made by you is under oath or affirmation and subject to the rules applicable to all witness testimony, including the requirement that you submit to cross-examination by Committee counsel.

Other procedures

Finally, given the relative infrequency with which aspects of the Committee's rules relating to the ASC process have been employed, it is possible – if not likely – that the parties may have questions about the ASC process and procedure. The consideration that such questions may not have been anticipated or resolved to date, in addition to other remaining pre-hearing procedural steps, was taken into account in setting the adjudicatory hearing schedule.

The parties are strongly encouraged to raise any questions that may arise from perceived ambiguities or other issues relating to ASC procedures with one another. To the extent that the parties may reach agreement between themselves about how to resolve a procedural question, the parties could submit a joint filing to the Chair for consideration. If either party wishes to raise a question regarding ASC procedure other than in a joint filing, that party should submit an appropriate motion to the Chair and serve the other party.

With that in mind, I would like to take this opportunity to address several specific aspects of hearing procedure. First, given the adversarial nature of the ASC process and its current posture, both parties should treat any pre-hearing filings as adversarial filings that should be both filed with the Chair and served on the opposing party.

Second, the parties will not be expected to file written responses to the opposing party's pre-hearing filings. To the extent that a party may wish to file such a written response and it is possible to do within the deadlines established by the October 12 scheduling letter, the modifications to the schedule announced in this letter, and any subsequent modifications or additions to the schedule, the parties may file such responses with the Chair. As noted above, such responses should be filed with the Chair, and also served on the opposing party.

Third, as noted in the October 12 scheduling letter, you and Committee counsel will each be allowed ten hours to present your respective cases, exclusive of the time allotted for opening and closing arguments. Time used by a party for raising or responding to objections or cross-examining witnesses will count against that party's overall allotted time of ten hours. Although your objection to the hearing schedule is overruled, the ten hour limitation on presentation of each side's case will remain subject to reconsideration based upon a reasonable request for additional time.

Representative Charles B. Rangel
October 22, 2010
Page 5 of 5

Sincerely,

A handwritten signature in black ink, appearing to read "Zoe Lofgren", with a long horizontal flourish extending to the right.

Zoe Lofgren
Chair

cc: Representative Michael T. McCaul, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct



Congress of the United States House of Representatives

October 25, 2010

The Honorable Zoe Lofgren
Chairwomen
Committee on Standards of Official Conduct
U.S. House of Representatives
Room HT-2, The Capitol
Washington, DC 20515

Dear Chairwomen Lofgren:

On October 14, 2010, you were sent a letter from my then-counsel, the law firm of Zuckerman Spaeder, indicating they had withdrawn from my representation. On October 15, 2010, I wrote to you indicating that their departure put me at an enormous disadvantage. The Committee wanted to begin a process in which my counsel and Committee counsel exchanged documents, designated exhibits, worked out evidentiary stipulations, agreed on witnesses, and worked towards a hearing process. These are steps in the hearing process which, if a Member is to be given his rights to a fair defense, require experienced counsel. The problem is that I am without any.

Over the past 2 years, I have had to respond to a series of allegations that have generated their own issues in the media and in my re-election campaign. I spent nearly every dollar I could raise on this effort, as legal fees alone have been over \$2 million. As you know, a campaign is never inexpensive. Now that the Committee wants to go ahead on its schedule, I do not have sufficient funds to proceed when there is so much left to do. That leaves me with few choices:

I can proceed without counsel at this most critical stage. This would make any proceeding against me so one-sided as to call into question the fairness of the process and any result that would occur. This is not what I hope will happen and would send a terrible message about a Member's rights now and an equally bad precedent for the future.

As an alternative, I could seek counsel who would be able to represent me on a *pro bono* or reduced fee basis, and hope someone or some firm will agree to this arrangement (and be given reasonable time to prepare). Even then, the Committee has taken the position in the past that such representation itself amounted to a gift that could violate House rules. What a vicious cycle this then

creates with the Committee getting the advantage of having counsel and staff while denying a Member the same ability.

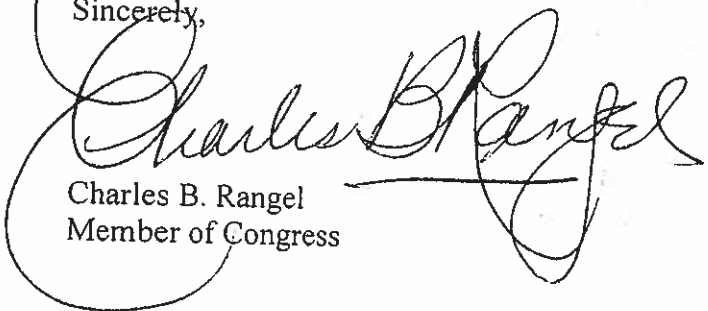
So, by this letter, I am asking the Committee to approve my seeking such counsel without me or the counsel being accused of seeking, receiving or providing gift representation. In the alternative, the Committee can arrange for the House to pay for my counsel. The House often hired outside counsel to help in its legal proceedings. Right now, the Committee is relying on its own counsel and staff and is spending funds for that purpose. So, it would be fair for the Committee to make sure I can be properly and adequately represented. In an analogous situation, where charges are filed against any person in this country, an attorney would be appointed for someone who needs such representation and has no funds to pay for it.

I have not delayed seeking new counsel. Those with whom I have met or spoken realize that the record at this point involves over 20,000 pages of transcripts, thousands of documents, a witness list of over 15 people, and a great deal of work that still needs to be done. Competent and experienced counsel is, justifiably, reluctant to become involved and do the work that will be needed without any fees and without enough time to provide me the representation I seek.

I do not want to end up without counsel and be unable to defend myself against the charges that have been filed; I do not want to have to seek any additional help or time from the Committee; and I do not want to delay what has been the most difficult time I have had in almost 40 years in Congress. However, this is the reality.

In the name of basic fairness and due process, to give me the chance to defend myself, and to insure whatever proceedings occur are seen to be seeking justice and not just a steamroller result, I ask for the consideration of my request.

Sincerely,



Charles B. Rangel
Member of Congress

cc: The Honorable Michael T. McCaul, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct

ZOE LOFGREN, CALIFORNIA
CHAIR
BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT
DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR
R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

October 28, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. MCCAUL, TEXAS

KELLE A. STRICKLAND,
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SUITE HT-2, THE CAPITOL
(202) 225-7103

CONFIDENTIAL

Representative Charles B. Rangel
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, DC 20515

Re: In the Matter of Representative Charles B. Rangel

Dear Colleague:

As Chair of the Adjudicatory Subcommittee (ASC) in the Matter of Representative Charles B. Rangel, I am responding to your letters to me dated October 25 and 28, 2010. In your October 25 letter you stated "I am asking the Committee to approve my seeking . . . counsel [on a *pro bono* or reduced fee basis] without me or the counsel being accused of seeking, receiving or providing gift representation." You also stated, "In the alternative, the Committee can arrange for the House to pay for my counsel."

Under rules of the Committee on Standards of Official Conduct (Committee), your request should be construed by the Committee as a request for an advisory opinion from the Committee's Office of Advice and Education.¹ Advisory opinion requests may be resolved by the Chair and Ranking Member of the full Committee.² The Committee is considering your October 25 letter as a request for an advisory opinion and will respond accordingly.

In the meantime, no further changes will be made to the adjudicatory hearing schedule at this time. On October 7, 2010, as Chair of the ASC in this matter, I issued a public statement announcing that the adjudicatory hearing in this matter will begin on November 15, 2010, at 9:00 a.m. On October 12, 2010, consistent with Committee precedent, I sent a letter to the parties scheduling various pre-hearing procedural deadlines.³

As you know, by letter on October 22, 2010, your objections to the schedule were overruled. However, in light of the withdrawal of your previous counsel in this matter, the schedule for several pre-hearing deadlines was modified to provide you with additional time to respond, including rescheduling several deadlines that apply to you as the respondent until tomorrow, October 29, 2010.

¹ See House Rule 11, cl. 3(a)(4); Committee Rule 3(b), 3(m).

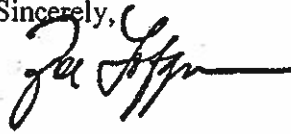
² Committee Rule 3(i).

³ As you were still represented by your former counsel at that time, the letter was sent both to you and to your former counsel.

Representative Charles B. Rangel
October 28, 2010
Page 2 of 2

The schedule as announced in the letter of October 12, 2010, and modified in the October 22 letter remains unchanged. The adjudicatory hearing in this matter will proceed on November 15, 2010, at 9:00 a.m. as previously scheduled and announced.

Sincerely,

A handwritten signature in black ink, appearing to read "Zoe Lofgren", with a long horizontal flourish extending to the right.

Zoe Lofgren
Chair

cc: Representative Michael T. McCaul, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct

ZOE LOFGREN, CALIFORNIA
CHAIR

BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
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PETER WELCH, VERMONT

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SUITE HT-2, THE CAPITOL
(202) 225-7103

October 29, 2010

The Honorable Charles B. Rangel
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, DC 20515

Dear Colleague:

This responds to your letter of October 25, 2010, requesting Committee guidance on seeking and accepting *pro bono* or reduced-fee legal representation in connection with the disciplinary proceedings currently pending against you before the Committee.

In your letter, you state, "I am asking the Committee to approve my seeking . . . counsel [on a *pro bono* or reduced fee basis] without me or the counsel being accused of seeking, receiving or providing gift representation." You also state, "In the alternative, the Committee can arrange for the House to pay for my counsel." We have construed your request as a request for an advisory opinion from the Committee's Office of Advice and Education.¹

While House Rules authorize the Committee to consider requests for advisory opinions, such authority is limited to "the general propriety of any current or proposed conduct" of the inquiring individual.² Moreover, in providing written responses to requests for an opinion, the Committee has a long-established policy of addressing "the conduct only of the inquiring individual, or of persons for whom the inquiring individual is responsible as [the] employing authority."³

Because your letter does not provide specific details about how or from whom you would seek legal representation, we cannot definitively address whether the activities described in your letter are permissible under applicable House rules, laws, regulations or other applicable standards of conduct. We can, however, offer you some general guidance on the rules and standards of conduct applicable to Members of the House that are relevant to your inquiry.

I. FACTUAL BACKGROUND

According to your letter and publicly-available materials, the background on this matter is as follows. The Committee has been conducting formal disciplinary proceedings into allegations that

¹ See House Rule 11, cl. 3(a)(4); Committee Rule 3(b).

² House Rule 11, cl. 3(a)(4).

³ Committee Rule 3(d).

you violated House rules, laws, regulations, or other applicable standards of conduct. On July 22, 2010, an investigative subcommittee transmitted a Statement of Alleged Violation (SAV) to the full Committee. You are currently scheduled to appear before an adjudicatory subcommittee on November 15, 2010, for an adjudicatory hearing on the allegations charged in the SAV.

During the course of the proceedings, you were represented by the Washington, D.C., law firm of Zuckerman Spaeder. To date, this representation has generated legal bills of over \$2 million. To date, you have largely used funds from your principal campaign committee to pay those expenses. However, as of October 14, 2010, Zuckerman Spaeder withdrew from serving as your counsel. As of the date of your letter, you have been unable to secure new counsel to represent you in this matter.

Your October 25, 2010, letter inquires about the permissibility of two options for securing and accepting legal assistance: (1) having the House pay for your counsel; or (2) allowing you to solicit private counsel to represent you on a *pro bono* (free) or reduced-fee basis. The remainder of this letter provides general guidance on each of these options in turn.

II. LEGAL AUTHORITY AND ANALYSIS

A. Counsel Paid by the House

Your first proposal is that the Committee or the House of Representatives as a whole pay for any further legal costs incurred in connection with the adjudication of this matter. A provision in the Committee's rules provides a respondent in disciplinary proceedings before the Committee with the right to be represented by counsel.⁴ However, the rule also expressly provides that any such representation is "to be provided at the respondent's own expense."⁵ Thus, the Committee, in promulgating its rules, has weighed and rejected the option of the government paying for legal representation for individuals whom the Committee is investigating.

A federal statute also restricts the use of House funds to the purposes for which those funds were appropriated.⁶ Pursuant to this statute, any funds of the House may be used only to perform, or pay for, the official governmental duties of the Member, committee, or other office to whom the funds were appropriated. Because your legal representation for purposes of the disciplinary proceedings before the Committee is a matter wholly related to your own official duties, no funds of the House other than funds appropriated to your congressional office for the conduct of official congressional business (*i.e.*, your Member's Representational Allowance, or MRA) could be expended for that purpose under the statute. However, we note that the Committee on House Administration, rather than this Committee, has jurisdiction over the approval of reimbursements from your MRA.⁷

⁴ Committee Rule 26(a).

⁵ *Id.*

⁶ 31 U.S.C. §1301(a).

⁷ We understand that the Committee on House Administration has determined that the cost of legal representation of a Member in a Committee adjudicatory proceeding is not reimbursable from the Member's official funds because such expenses are not considered to be "ordinary and necessary" expenses. See Comm. on House Admin., *Member's Handbook*, at 1 ("Ordinary and necessary expenses incurred by the Member . . . in support of the

In sum, it appears that Committee rules, House regulations, and a federal statute would prohibit the House from providing you with legal representation for the remaining phases of the disciplinary proceedings before the Committee.⁸

B. Soliciting or Accepting Free or Reduced-Fee Legal Services

The second option addressed in your letter involves you seeking private counsel to represent you on a no-cost or reduced fee basis. This proposal implicates ethics provisions governing both acceptance of gifts and solicitation of things of value.

House rules define the term “gift” to mean:

a gratuity, favor, discount, entertainment, hospitality, loan forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.⁹

The definition of gift expressly includes gifts of services. Thus, the value of legal services provided to a Member at no cost would be deemed to be a gift under the gift rule.¹⁰ Members may not accept any gift, except as specifically permitted by House rules.¹¹

One of the permissible exceptions to the prohibition on gifts is for contributions to a legal expense fund by someone other than a registered lobbyist or agent of a foreign principal.¹² This exception provides that a Member, officer, or employee may accept “a contribution or other payment to a legal expense fund established for the benefit of a Member, . . . officer, or employee of the House that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct.”¹³ The Committee has expressly stated that such a fund is permissible for legal expenses that arise in connection with a matter concerning “[t]he individual’s duties or position in Congress (including a matter before the Standards Committee).”¹⁴ If you did establish a valid legal expense trust in relation to this matter, you would be permitted to solicit donations to the trust of money or in-kind services (including free or discounted legal services), provided such solicitations and donations were

Member’s official and representational duties to the district from which elected are reimbursable”) (emphasis added).

⁸ General ethics principles for the legal profession also may restrict the House from serving as counsel to both the Committee and counsel to the defense in this matter. *See, e.g.*, ABA, Model Rules of Professional Conduct R. 1.7.

⁹ House Rule 25, cl. 5(a)(2)(A).

¹⁰ As a general matter, the amount of any discount on the cost of legal fees offered to a Member based on that individual’s official status would be deemed a gift for purposes of the gift rule. *See* House Rule 25, cl. 5(a)(2)(A).

¹¹ House Rule 25, cl. 5(a)(1)(A)(i); *see also* House Rule 23, cl. 4.

¹² *See* House Rule 25, cl. 5(a)(3)(E).

¹³ *Id.*

¹⁴ 2008 *House Ethics Manual* at 64.

made in compliance with Committee regulations regarding legal expense trusts.¹⁵ The rules for establishing, maintaining, and providing public disclosure about such a fund are contained in the appendices to the *2008 House Ethics Manual*.¹⁶

In addition, because an important aspect of a Member's responsibility is representing the interests of his constituents in matters in which the federal government has an interest, the Committee has determined that *pro bono* assistance to participate in certain actions involving the federal government falls within the gift rule exception for contributions to legal expense funds.¹⁷ Specifically, as stated in the *2008 House Ethics Manual*, a Member may accept *pro bono* legal assistance, without limit, for the following purposes:

- To file an amicus brief in his or her capacity as a member of Congress;
- To participate in a civil action challenging the validity of any federal law or regulation; or
- To participate in a civil action challenging the lawfulness of an action of a federal agency, or an action of a federal official taken in an official capacity, provided that the action concerns a matter of public interest, rather than a matter that is personal in nature.¹⁸

The Committee has permitted the acceptance of *pro bono* legal services for the purposes listed above because such services would be to enable a Member to fulfill his official duties as an advocate for the greater good of his constituents due to the subject matter of the litigation.¹⁹ That principle of serving the greater good would not be met through providing legal services to defend an individual Member against allegations of misconduct by an individual Member in a disciplinary action by the Committee.²⁰

¹⁵ See Comm. on Standards of Official Conduct, "Legal Expense Fund Regulations" ¶ 1 (June 10, 1996), reprinted in *2008 House Ethics Manual* at 394.

¹⁶ See generally *id.*, reprinted in *2008 House Ethics Manual* at pages 394-96.

¹⁷ See *2008 House Ethics Manual* at 65.

¹⁸ *Id.*

¹⁹ See *id.* at 64, 65; see also *Black's Law Dictionary*, 8th ed. (West 1999) at 1240-41 (defining "pro bono" as "[b]eing or involving uncompensated legal services performed [especially] for the public good").

²⁰ Because your letter does not provide specific details about how or from whom you would seek such representation, we cannot, as noted above, definitively address whether any other exceptions to the House gift rule may potentially apply in this matter. See House Rule 25, cl. 5. For example, we note that the Committee has, in the past, approved an unsolicited reduced fee arrangement offered by a law firm to a Member. However, it should be noted that the approved arrangement involved a fee structure regularly offered to other clients of the firm in similar circumstances. We also note that the Committee has permitted House employees to accept unsolicited *pro bono* legal representation in personal matters based on the personal friendship exception to the gift rule. See House Rule 25, cl. 5(a)(3)(D).

In any case, a federal statute prohibits Members and House staff from soliciting anything of value.²¹ This statute gives this Committee, as the supervising ethics office for the House, the authority to issue rules or regulations providing for reasonable exceptions to this prohibition.²² Under this authority, the Committee has permitted Members to solicit for a legal expense fund that has been established and approved by the Committee in accordance with the Legal Expense Fund Regulations.²³ The Committee has never approved the solicitation of *pro bono* legal services incurred in connection with a disciplinary matter before the Committee, unless the solicitation was for the donation of goods or services to a valid legal expense trust established for that purpose.

Based on the foregoing authority and precedent, because the subject matter of the Committee investigation concerns your conduct, rather than the actions of the federal government, it would not be permissible for you to solicit or accept *pro bono* or reduced-fee legal representation in connection with the ongoing disciplinary proceedings, absent the establishment of a legal expense fund for such purpose.

III. CONCLUSION

Accordingly, as explained more fully above, House and Committee rules and the applicable federal statutes would prohibit the House from paying for your legal representation. In addition, it is likely that, absent the establishment of a valid legal expense fund for that purpose, you may not solicit or accept *pro bono* or reduced-fee representation related to the disciplinary proceedings before the Committee. While not proposed as an option in your letter, it would be permissible for you to establish a legal expense fund to accept contributions of: (1) money that could be used to defray any legal expenses incurred in connection with the ongoing Committee disciplinary proceedings; or (2) in-kind donations of free or discounted legal services for the same purpose. As stated above, any such legal expense fund would have to be established and maintained in accordance with the Committee's Legal Expense Fund Regulations.

IV. LIMITATIONS

The response above constitutes an advisory opinion concerning the application of House Rule 11, clause 3; House Rule 23, clause 4; House Rule 25, clause 5; Committee Rule 3; Committee Rule 26; the Legal Expense Fund Regulations, 5 U.S.C. § 7353; and 31 U.S.C. § 1301. The following limitations apply to this opinion:

- This advisory opinion is issued only to Representative Charles B. Rangel, the requestor of this opinion. This advisory opinion cannot be relied upon by any other individual or entity.

²¹ See 5 U.S.C. § 7353(a).

²² See *id.* § 7353(b)(1).

²³ See Legal Expense Fund Regulations, reprinted in 2008 House Ethics Manual at 394-96; see also 2008 House Ethics Manual at 63-64.

- This advisory opinion is limited to the provisions of House rules and regulations and federal statute specifically noted above. No opinion is expressed or implied herein regarding the application of any other federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the proposed conduct described in this letter.
- This advisory opinion will not bind or obligate any entity other than the Committee on Standards of Official Conduct of the United States House of Representatives.
- This advisory opinion is limited in scope to the specific proposed conduct described in this letter and does not apply to any other conduct, including that which appears similar in nature or scope to that described in this letter.

The Committee will take no adverse action against you in regard to any conduct that you undertake, or have undertaken, in good faith reliance upon this advisory opinion, so long as you have presented a complete and accurate statement of all material facts relied upon herein, and the proposed conduct in practice conforms with the information you provided, as addressed in this opinion.

Changes or other developments in the law (including, but not limited to, the Code of Official Conduct, House rules, Committee guidance, advisory opinions, statutes, regulations or case law) may affect the analysis or conclusions drawn in this advisory opinion. The Committee reserves the right to reconsider the questions and issues raised in this advisory opinion and to rescind, modify, or terminate this opinion if required by the interests of the House. However, the Committee will rescind an advisory opinion only if relevant and material facts were not completely and accurately disclosed to the Committee at the time the opinion was issued. In the event that this advisory opinion is modified or terminated, the Committee will not take any adverse action against you with respect to any action taken in good faith reliance upon this advisory opinion so long as such conduct or such action was promptly discontinued upon notification of the modification or termination of this advisory opinion.

* * *

If you have any further questions, including further information on establishing a legal defense fund, please contact the Committee's Office of Advice and Education at extension 5-7103.



Zoe Lofgren
Chair

Sincerely,



Jo Bonner
Ranking Republican Member



Congress of the United States
House of Representatives
November 1, 2010

The Honorable Zoe Lofgren
Chairwoman
Committee on Standards of Official Conduct
U.S. House of Representatives
Room HT-2, The Capitol
Washington, DC 20515

Dear Chairwoman Zofgren:

Thank you for your October 29, 2010 letter setting forth the ways in which I might secure counsel to advise me with respect to the scheduled proceedings.

I am grateful that the Committee has agreed that under the Rules (Rule 26(a)) and precedents that "a respondent in disciplinary proceedings before the Committee [has] the right to be represented by counsel." The question is how is it possible, under the present circumstances, for me to obtain counsel who could provide me with effective and meaningful assistance.

Today I am initiating the process of establishing a Legal Expense Fund, in accordance with your October 29, 2010, Advisory Opinion, on establishing a Fund consistent with the Committee's Regulations. I will seek a trustee or trustees who can carry out that function without conflict and establish a separate bank account to do so. We then will seek an in-kind or reduced fee contribution of legal services along with other solicitations. Under the best of circumstances, this process will require the expenditure of precious time.

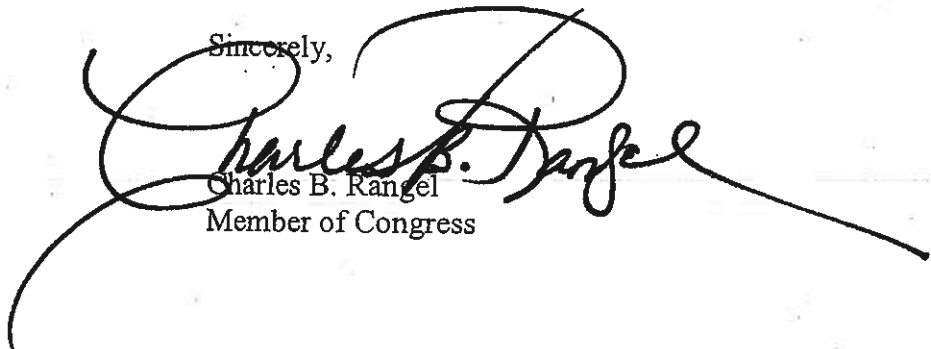
Based on the Committee's Advisory Opinion that setting up a Fund is the only way for me to seek and obtain counsel on a reduced fee or pro bono basis, it would be impossible for me to meet the hearing schedule until I secure adequate representation after the Fund is in place, approved and operating. While I may be able to obtain counsel, such counsel could not, among other things, be expected to: review the record, secure additional testimony, exchange documents, and designate exhibits. It is without question that any counsel I might be able to secure must be afforded adequate time to prepare for the disciplinary proceeding. To afford me less, would, in my view, deny me of my right to receive procedural due process.

My counsel, too, should have the right to interview the witnesses before the hearing and be afforded the opportunity to have the same level of understanding of the record as your counsel and staff. After two (2) years of this prolonged investigation, the Committee has interviewed close to 50 witnesses and accumulated a voluminous amount of documents, which consist of over 20,000 pages of transcripts and 547 exhibits. No one has a better understanding of the record than the Ethics Committee's counsel.

Therefore, in light of the Committee's letter acknowledging my right to obtain counsel and setting out the way for me to proceed, I am again asking the Committee to afford counsel the time to prepare a proper defense; otherwise, that right to counsel is not very meaningful.

I appreciate your continued attention to this matter.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Charles B. Rangel". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Charles B. Rangel
Member of Congress

cc: The Honorable Michael T. McCaul, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct

ZOE LOFGREN, CALIFORNIA
CHAIR
BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT
DANIEL J. TAYLOR,
COUNSEL TO THE CHAIR
R. BLAKE CHISAM,
CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

November 2, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. McCAUL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 225-7103

CONFIDENTIAL

Representative Charles B. Rangel
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, DC 20515

Re: In the Matter of Representative Charles B. Rangel

Dear Colleague:

As Chair of the Adjudicatory Subcommittee (ASC) in the Matter of Representative Charles B. Rangel, I am responding to your letter to me dated November 1, 2010. In your letter you state that effective November 1, you are "initiating the process of establishing a Legal Expense Fund." You further state that "it would be impossible for me to meet the hearing schedule until [you] secure adequate representation after the Fund is in place, approved and operating." Accordingly, you request that "the Committee afford counsel the time to prepare a proper defense."

As you know, you have made other previous requests to delay the hearing schedule in light of the withdrawal of your previous counsel on October 14, 2010, each of which has been denied. Letters sent to you on October 22, 2010, and October 28, 2010, set forth a number of reasons for denying those requests.


For example, throughout this matter, which has been ongoing for more than two years, you have been aware of your right to counsel, and have in fact been represented by counsel. You have also long had access to most of the evidentiary record developed during the Investigative Subcommittee's investigation. Since the ASC was designated in this matter, you have made numerous public statements calling on the Committee to expedite its resolution of this matter. In addition, in consideration of the withdrawal of your previous counsel in this matter, the schedule for several pre-hearing deadlines was modified to provide you with additional time to respond, including rescheduling several deadlines that apply to you as the respondent.

In addition to your prior requests for a delay of the hearing, on October 25, 2010, you requested Committee guidance on seeking and accepting *pro bono* or reduced-fee legal representation in connection with the disciplinary proceedings currently pending against you before the Committee. The Committee responded by providing you with an advisory opinion on October 29, 2010. You previously sought and received formal Committee guidance regarding payment of legal fees associated with this matter in September 2008 and March 2009.

Representative Charles B. Rangel
November 2, 2010
Page 2 of 2

In view of the considerations addressed in our previous exchanges on this issue, no further changes will be made to the adjudicatory hearing schedule at this time. The schedule as announced in the letter of October 12, 2010, and modified in the October 22 letter remains unchanged. The adjudicatory hearing in this matter will proceed on November 15, 2010, at 9:00 a.m. as previously scheduled and announced.

Sincerely,



Zoe Lofgren
Chair

cc: Representative Michael T. McCaul, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct

CHARLES B. RANGEL
15TH CONGRESSIONAL DISTRICT
NEW YORK

COMMITTEE:
WAYS AND MEANS
JOINT COMMITTEE
ON TAXATION



GEORGE H. HENRY
CHIEF OF STAFF

JAMES E. CAPEL
DISTRICT DIRECTOR

Congress of the United States House of Representatives

November 3, 2010

The Honorable Zoe Lofgren
Chairwoman
Committee on Standards of Official Conduct
U.S. House of Representatives
Room HT-2, The Capitol
Washington, DC 20515

Dear Chairwoman Zofgren:

I am writing this letter in response to your November 2, 2010, letter indicating several objections to my request to reschedule the hearing. Your letter states that I have had the benefit of counsel during this inquiry. That is obviously true but it begs the point. It would be like telling someone accused of a crime to be grateful that he had counsel during the grand jury stage of an investigation but would have to stand alone once an indictment had been issued and a trial was scheduled. The work produced by my former counsel has some usefulness to me now, but it neither suffices nor substitutes for my capacity to answer and defend the actual allegations with actual hearing testimony.

Moreover, to say as you do that I have had access to "most of the evidentiary record" is not a fair way of addressing my issues. The review and knowledge my former counsel had to any of the evidence is not helpful to me now. There are over 20,000 pages of transcripts, thousands of pages of exhibits, 15 - 17 people witnesses to be interviewed (including some who have no transcripts), and my need to understand who the Committee is not calling and why (and then to consider calling them as my witnesses). Under these circumstances, I have no ability to do this myself; and any half competent attorney, to do even a marginally competent job, would need more than a few days to prepare.

You again quote earlier statements I had made asking for expedition in the Committee's proceedings. What I said and wanted then is what I want now. However, that was when I had counsel. My circumstances have changed drastically now. The Committee continues to have its staff and counsel and subpoenas and preparation, while I have none.

WASHINGTON OFFICE
2354 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3215
TELEPHONE: (202) 225-4365
FAX: (202) 225-0816

PLEASE RESPOND TO OFFICE CHECKED

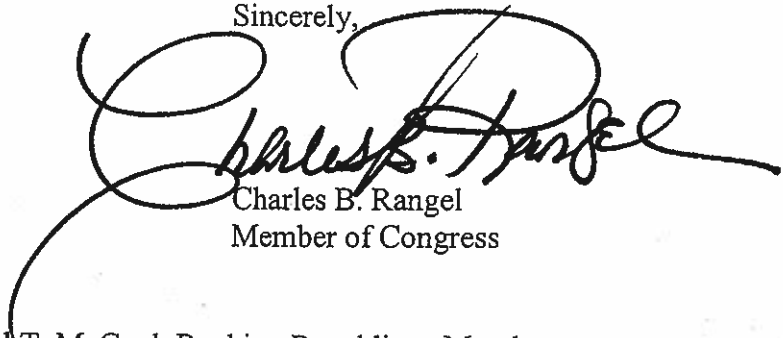
DISTRICT OFFICE
163 WEST 125TH STREET
NEW YORK, NY 10027
TELEPHONE: (212) 663-3900
FAX: (212) 663-4277

Page Two

Apparently, there is nothing I can say or do that will persuade you to give me the time I need (even to do as the Committee instructed with respect to setting up a fund or means to get new counsel). Nevertheless, I am following the Committee's advice in its October 29, 2010 letter on how to set up a defense fund so that I can retain and have the benefit of counsel. In accordance with the Committee's advisory opinion of October 29, 2010, I am submitting the attached Charles B. Rangel Legal Expense Fund Trust for your review and approval. As you know, I am restricted from soliciting legal representation for my disciplinary hearing until a legal expense fund has been established and approved by the Committee. Without your approval of the Fund, it is impossible for me to exercise my due process and equal protection rights for a fair hearing.

So, again, I ask that you to give me sufficient amount of time to prepare an adequate defense.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Charles B. Rangel". The signature is written over the typed name and title.

Charles B. Rangel
Member of Congress

cc: The Honorable Michael T. McCaul, Ranking Republican Member
R. Blake Chisam, Chief Counsel, Committee on Standards of Official Conduct

ZOE LOFGREN, CALIFORNIA
CHAIR

BEN CHANDLER, KENTUCKY
G. K. BUTTERFIELD, NORTH CAROLINA
KATHY CASTOR, FLORIDA
PETER WELCH, VERMONT

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CHIEF COUNSEL AND STAFF DIRECTOR

ONE HUNDRED ELEVENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

November 5, 2010

JO BONNER, ALABAMA
RANKING REPUBLICAN MEMBER

K. MICHAEL CONAWAY, TEXAS
CHARLES W. DENT, PENNSYLVANIA
GREGG HARPER, MISSISSIPPI
MICHAEL T. McCAUL, TEXAS

KELLE A. STRICKLAND,
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 225-7103

The Honorable Charles B. Rangel
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, DC 20515

Dear Colleague:

This responds to your letter of November 3, 2010, in which you seek Committee approval of the Charles B. Rangel Legal Expense Trust, a copy of which was enclosed with your letter.

Under the Committee's Legal Expense Fund Regulations, contributions for a Legal Expense Fund may neither be solicited nor accepted prior to the Committee's written approval of a completed trust document that includes the identity of the trustee (Committee Regulations 1 and 11). The trustee named in your agreement is the Honorable David Dinkins, in New York, New York. According to your letter, you have no family, business, or employment relationship with Mr. Dinkins.

Your letter indicates that the fund will be used to pay legal expenses incurred in connection with your matter before the Committee on Standards of Official Conduct. Section 1.3 of the trust agreement contains a statement that you intend to use the fund to pay legal fees incurred in connection with your "official duties and position in Congress, and matters bearing on (your) reputation or fitness for office." The Committee should be contacted for guidance before any trust funds are used for any purpose other than to pay legal expenses resulting from the matter before the Committee on Standard of Official Conduct.

The Committee hereby approves the trust provided with your letter. In accordance with Committee Regulation 12, a copy of the executed agreement should be filed with the Legislative Resource Center (B-106 Cannon House Office Building) within one week of Committee approval. In accordance with Committee Regulation 13, you (not the Trustee) are responsible for filing quarterly reports with the Committee regarding certain receipts and expenditures. The original version of your quarterly reports must be filed with the Committee and a copy must also be filed with the Legislative Resource Center for public disclosure. In addition to the quarterly reports, any contributions of more than \$335 in a calendar year from a single source (other than a relative) must also be disclosed on Schedule VI of your annual financial disclosure statement.

The Honorable Charles B. Rangel
Page 2

If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-7103.

Sincerely,



Zoe Lofgren
Chair



Jo Bonner
Ranking Republican Member

ZL/JB:haj