

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 7, 2024

To: Joan Sullivan
Associate General Counsel, Division of Operations-Management

From: Kevin Thomas
Acting Inspector General

Subject: Report of Investigation – OIG-I-580

This report addresses an investigation conducted by the Office of Inspector General (OIG) involving Carolyn McConnell (subject), Field Attorney, Region 19.

The investigation was initiated after the OIG received information that the subject, outside of her official duties, petitioned the Federal government on behalf of an organization in their dealings with the Federal government. Our investigative efforts substantiated the allegation. The appropriate U.S. Attorney's Office declined prosecution. We also determined that the subject failed to obtain Agency approval for outside employment in violation of the *Standards of Conduct for Employees of the Executive Branch (Standards)* and Agency policy.

This report, with the attached investigative exhibits (IE), is provided to you for review and consideration of appropriate administrative action.

FACTS

1. The subject began working as a Field Attorney in Region 19 in October 2012. (IE 1 page 7)
2. The subject is Vice President of the North Cascades Conservation Council. (IE 1, page 9)
3. The stated mission of the North Cascades Conservation Council is to “protect and preserve the North Cascades’ scenic, scientific, recreational, educational, and wilderness values.” (IE 2)
4. On February 14, 2024, the subject sent an email message to the Region 19 Director requesting approval to publish an opinion – editorial (op-ed) on behalf of the North Cascades Conservation Council. (IE 3)
5. On February 14, 2024, the Region 19 Director forwarded the subject’s email message, along with a draft of the op-ed as an attachment, to the Ethics Office in which he stated that, in his opinion, the subject’s request did not require his approval, and sought confirmation from the Ethics Office. (IE 3)

6. The attached draft op-ed referenced a petition that the North Cascades Conservation Council was circulating which would be submitted to “the Secretary of the Interior Deb Haaland and National Park Service Director Charles F. Sams III to fully staff Stehekin with rangers this summer, keep the Golden West Visitor Center open, and commit to continue providing these services as the Park... .” (IE 3)

7. On February 16, 2024, the following series of events occurred:

a. The Region 19 Director sent the subject the following email message: (IE 4)

From: Hooks, Ronald K. <Ronald.Hooks@nlrb.gov>
Sent: Friday, February 16, 2024 1:18 PM
To: McConnell, Carolyn <Carolyn.McConnell@nlrb.gov>
Subject: RE: requesting approval of publication of op-ed

The Ethics Office has requested that I ask: 1. Do you plan on signing the petition yourself? And 2. How will the organization communicate to the National Park Service?

b. The subject replied to the Region 19 Director’s email message as follows: (IE 4)

From: McConnell, Carolyn <Carolyn.McConnell@nlrb.gov>
Sent: Friday, February 16, 2024 1:49 PM
To: Hooks, Ronald K. <Ronald.Hooks@nlrb.gov>
Subject: RE: requesting approval of publication of op-ed

I have signed the petition.

How will the organization communicate with the National Park Service? In all the ways one does with a government entity—email, phone, potentially in-person.

Please tell the Ethics Officer I am becoming quite uncomfortable with these questions, which seem to intrude significantly on my First Amendment rights of speech and petitioning my government and to potentially constitute prior restraint. Is there a First Amendment officer I can speak to?

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c. The Region 19 Director forwarded the subject’s email message reply to the Supervisory Ethics Specialist; (IE 4)

d. The Agency’s Designated Agency Ethics Official sent an email message to the Region 19 Director in which she explained the Ethics Office’s concerns regarding the subject’s conduct involving the circulation and submission of the petition to a federal agency, including the subject’s potential violation of 18 U.S.C. 205; (IE 5)

e. After receiving the Region 19 Director’s email message regarding the subject’s request to publish an op-ed, the Supervisory Ethics Specialist sent an email message to the Region 19 Director seeking additional information from the subject regarding her outside employment with the North Cascades Conservation Council; (IE 6) and,

f. The subject submitted her responses to the request for additional information regarding her outside employment with the North Cascades Conservation Council in an email message to the Region 19 Director, who, in turn, forwarded the subject’s email message to the Supervisory Ethics Specialist. (IE 6)

8. On February 21, 2024, the following series of events occurred:

a. The Agency's Designated Agency Ethics Official sent an email message to the Region 19 Director in which she sought an update on the status of subject's request to submit an op-ed; (IE 7)

b. In response, the Region 19 Director sent the Agency's Designated Agency Ethics Official the following email message: (IE 7) and,

From: Hooks, Ronald K.
Sent: Wednesday, February 21, 2024 8:55 AM
To: Ketcham, Lori <Lori.Ketcham@nirb.gov>
Cc: Burow, Kathy <Kathy.Burow@nirb.gov>; Allen, Jamal <Jamal.Allen@nirb.gov>
Subject: RE: Carolyn McConnell -Op Ed Piece

Lori,

I will check with Carolyn to see if she has already submitted her paper or plans to do so in any event, or whether she would like the results of your research before she submits it. I will let you know her response.

Ron

c. After speaking with the subject, the Region 19 Director sent the Agency's Designated Agency Ethics Official the following email message: (IE 7)

Lori,

I have spoken with Carolyn, and it appears that for deadline reasons that, unless she is prohibited from doing so, she is willing to take the risk and plans to submit her op-ed paper so it doesn't seem it would be worth your while to expend the time doing extensive research. Let me know if need anything else. Thanks!

Ron

9. On March 4, 2024, the Seattle Times published the article co-written by the subject. (IE 8)

10. On March 6, 2024, the Independent Ethics Counsel sent an email message to the subject and her union representative in which he provided additional information regarding the conversation held between the parties the previous day. (IE 9)

11. On March 6, 2024, the subject replied to the Independent Ethics Counsel's email message in which she raised a defense to her actions under Van Ee v. E.P.A., 202 F.3d 296, 298-99 (D.C. Cir. 2000). (IE 10)

12. On April 8, 2024, the Ethics Office provided a memorandum to the subject under the subject "Risks of violating 18 USC § 205 in your role as Vice President of North Cascades Conservation Council's Board of Directors" which described the Ethics Office's, in consultation with the Agency's desk officer with the U.S. Office of Government Ethics (OGE), determination that the subject's conduct was "clearly distinguishable from the special situation implicated in Van Ee." (IE 11)

13. When interviewed, the subject provided the following information: (IE 1)

a. She knows that the National Labor Relations Board is a federal agency; (pages 8-9)

b. She knows that she is a federal employee; (page 9)

c. She is a member and Vice President of the North Cascades Conservation Council; (page 9)

d. As part of her responsibilities as Vice President she “communicate[s] with federal agencies regarding their actions... .”; (page 10)

e. The federal agencies with which she communicates include the Forest Service and the National Park Service; (page 11)

f. She communicates with federal agencies through: (1) formal comments; (2) letters; (3) in person; and (4) video communications; (page 11)

g. The issues about which she communicates with federal agencies include, but are not limited to, land management; (page 11)

h. In her position as Vice President, she “represent[s] the [North Cascades Conservation Council] and its membership in advocating for actions being taken or not taken by these agencies.”; (page 12)

i. In her position as Vice President, she co-wrote an article that was printed in the Seattle Times on March 4, 2024; (pages 12-14)

j. She was authorized by the North Cascades Conservation Council to write and submit the article on its behalf; (page 14)

k. She did not co-write the article as part of her duties and responsibilities as a Field Attorney with the Agency; (page 14)

l. The purpose of the article was to “express our views and the views of our membership regarding the staffing of Stehekin with rangers and keeping the Golden West Visitor Center open.” (page 15)

m. She described the process of her requesting permission from the Region 19 Director to submit the article for publication; (pages 16-23)

n. In addition to the article that she co-wrote, she also signed and circulated to her friends and family members for their signatures a petition that was sent by the North Cascades Conservation Council to the Secretary of the Interior and the National Park Service Director; (pages 22-23 and IE 12)

o. She was authorized by the North Cascades Conservation Council to circulate the petition on its behalf; (page 27)

p. She circulated and submitted the petition in her capacity as both Vice President of the North Cascades Conservation Council and as a private citizen; (page 27)

q. She did not circulate and submit the petition as part of her duties and responsibilities as a Field Attorney with the Agency; (pages 26-27)

s. She stated that the petition's purpose was to "gather public support and pressure [] the National Park Service and the Secretary of the Interior to fully staff Stehekin and keep the Golden West Visitor Center open," which would require that the Secretary and Director change their current position on staffing; (pages 27-28)

t. She described meetings in which she participated as Vice President of the North Cascades Conservation Council in an advocacy position that involved federal agencies; (pages 29-41)

u. She stated that during the above-referenced meetings she spoke with employees of the federal agencies in her capacity as Vice President of the North Cascades Conservation Council; (pages 32-33 and 37-38) and,

v. Prior to April 23, 2024, despite being employed by the Agency since October 2012, she had not received permission to engaged in outside employment as Vice President of the North Cascades Conservation Council. (pages 43-47)

14. On April 21, 2024, counsel for the subject submitted a four page "Counter Complain [sic] against the NLRB Ethics Office" to the OIG. (IE 13)

ANALYSIS

The following analysis is provided to assist you in understanding the basis for the investigation. Managers should consult with the Agency's Special Counsel and the Office of Human Resources to determine what, if any, administrative action should be taken as a result of an OIG investigation.

We find that the subject engaged in misconduct by representing an organization before the Department of the Interior and the National Park Service, in violation of 18 U.S.C. § 205(a)(2). An employee of an agency of the United States, other than in the course of their official duties, may not act as an "agent... for anyone before any... agency... in connection with any covered matter in which the United States is a party or has a direct and substantial interest[.]" 18 U.S.C. § 205(a)(2).

As an initial matter, the Department of the Interior is a department of the United States government. The Secretary of the Interior is nominated by the President and confirmed by the Senate. The Department of Interior is central in the manner in which the United States stewards its public lands. The National Park Service is a bureau of the Department of the Interior and is led by a Director who, like the Secretary of the Interior, is nominated by the President and confirmed by the Senate.

The National Labor Relations Board is an independent federal agency created in 1935 to administer the National Labor Relations Act. The subject is a Field Attorney with the National Labor Relations Board and, as she admitted during her interview, is a federal employee.

The North Cascades Conservation Council is an organization that was created to “protect and preserve the North Cascades’ scenic, scientific, recreational, educational, and wilderness values.” The subject admitted that she is the Vice President of the North Cascades Conservation Council. As Vice President, the subject stated that she had both direct and indirect contact with employees who worked for both the Department of the Interior and the National Park Service through meetings that were held throughout her employment with the Agency.

The subject satisfied the definition of an “agent” under 18 U.S.C. § 205(a)(2). In O’Neill v. Dep’t of Housing & Urban Dev., 220 F.3d 1354, 1360 (Fed. Cir. 2000), the Court of Appeals defines the term “agent” to mean “one who is authorized to act for another, or a business representative empowered to bring about contracts. In short, an agent is a person given the authority to speak or act on behalf of someone else.” (quoting, Refine Const. Co., Inc. v. U.S., 12 Cl.Ct. 56, 61 (1987)). During her interview, the subject acknowledged that she was authorized by the North Cascades Conservation Council to both co-write and submit for publication an article that sought support from the public demanding that the Department of the Interior and the National Park Service reverse its decision to eliminate staffing at the Stehekin National Park and keep the Golden West Visitor Center open. The subject also admitted that she was authorized by the North Cascades Conservation Council to both circulate and submit a petition to the Secretary of the Department of the Interior and the Director of the National Park Service demanding that they reverse the current positions and fully staff Stehekin and keep the Golden West Visitor Center open. The subject stated that, in neither of the above-described instances, was she acting within her duties as an employee of the Agency.

Further, the subject’s representation of the North Cascades Conservation Council before the United States government was not limited to this specific matter. During the interview, the subject detailed additional meetings that she participated in as Vice President of the North Cascades Conservation Council involving federal agencies, including the National Park Service. Specifically, the subject referenced three instances: (1) the reintroduction of Grizzly bears to the North Cascades; (2) the possibility of building a new road within the Stehekin Valley; and (3) the relicensing of the Skagit Dams. The subject stated that, in each of these matters, she directly participated in meetings in her capacity as Vice President of the North Cascades Conservation Council and advocated for policy positions held by the organization. Consequently, the subject has repeatedly acted as an authorized agent of the North Cascades Conservation Council.

The subject further admitted that the purpose of the article and the petition was to influence the decision-making process of the Secretary of the Department of the Interior and the Director of the National Park Service. Specifically, the subject stated during her interview that the intent of the article that was published in the Seattle Times was to “express our views and the views of our membership regarding the staffing of Stehekin with rangers and keeping the Golden West Visitor Center open.” Similarly, the purpose of the petition that was submitted to the Secretary of the Department of the Interior and the Director of the National Park Service was to “gather public support and pressure [] the National Park Service and the Secretary of the Interior to fully staff Stehekin and keep the Golden West Visitor Center open.” Both the article and the petition were designed to compel the Secretary of the Department of the Interior and the Director of the National Park Service to reverse the position each then held on the staffing decision regarding Stehekin National Park.

The subject acknowledged that the petition was submitted to the Secretary of the Department of the Interior and the Director of the National Park Service on behalf of the North Cascades Conservation Council.

As noted, the subject stated in her interview that she attended meetings in her capacity as Vice President of the North Cascades Conservation Council with senior management of the National Park Service, including its Director. During the interview, the subject described having direct conversations with the Director and others of the National Park Service.

The term “covered matter” means “any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or **other particular matter**.” See 18 U.S.C. § 205(h) (emphasis added). The meaning of “particular matter” is defined by 5 C.F.R. 2640.102(l) and (m) as follows:

(l) Particular matter involving specific parties includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.

(m) Particular matter of general applicability means a particular matter that is focused on the interests of a discrete and identifiable class of persons but does not involve specific parties.

The determination of staffing levels and facility operations is part of the Department of the Interior’s and the National Park Service’s essential functions. As such, the subject’s submission of the petition for the restoration of staff to the Stehekin National park and the demand to keep the Golden West Visitor Center open, on behalf of the North Cascades Conservation Council constituted a “covered matter.”

Further, the subject’s actions had a “direct and substantial” impact on the Federal government. There is no statutory definition of the phrase “direct and substantial” as used in 18 U.S.C. § 205(a)(2). Given what the subject sought to achieve with the article and petition, however, it is apparent that her actions would have a direct and substantial impact on both the Department of the Interior and the National Park Service. Specifically, if the Department of the Interior and the National Park Service were to reverse their decision, then the salaries and benefits of the staff stationed at the national park would have a direct impact on the budgets of these agencies. Additionally, the logistics of reversing the decision not to staff the national park and to reopen the visitors center would have a substantial impact on how these agencies allocate their limited resources.

Both the subject and her Counsel cited the Van Ee decision in support of her position that her conduct did not violate 18 U.S.C. § 205(a)(2). The April 8th memorandum that the Ethics Office issued to the subject set forth the important distinction between the subject's conduct and that of the party in Van Ee. The OIG concurs with the Ethics Office's analysis which was reached after consultation with the desk office for the OGE.

In aggravation, the subject was fore warned by the Ethics Office of the potential risks of her actions regarding the publication of the op-ed and submission of the petition. Nevertheless, despite the concerns raised by the Ethics Office, the subject chose to publish the op-ed and submit the petition, both on behalf of the North Cascades Conservation Council. The subject's conduct exhibited a disregard for the advice offered by the Ethics Office to potentially shield the subject for unnecessarily violating a criminal statute.

A preponderance of the evidence also exists that the subject failed to obtain appropriate Agency approval for outside employment.

The subject engaged in outside employment without first obtaining the appropriate permission from her Regional Director in violation of Agency policy which requires that approval "shall be requested in writing in advance of engaging in outside employment." See 5 C.F.R. 7101.102. As she admitted during her interview, the subject was Vice President of the North Cascades Conservation Council before beginning her tenure with the Agency in October 2012. Nevertheless, the subject was required to obtain the requisite approval for outside employment once she began her employment with the Agency. The subject admitted that she was cognizant of the Agency's outside employment policy. Despite being aware of the Agency's policy, the subject did not receive permission to engage in outside employment until April 23, 2024. Consequently, we find that prior to April 23, 2024, the subject failed to obtain the mandatory written approval to engage in outside employment.

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