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MEMORANDUM

TO: TO WHOM IT MAY CONCERN
FROM: Elliot S. Berke
DATE: September 5, 2020
RE: Internal Review of Office of Congressman Hagedorn Franking Issues

Berke Farah LLP was engaged by Congressman Hagedorn on June 18, 2020 to conduct an internal review of costs his office incurred by franked mail vendors after he became concerned about the extent of the charges. During the review, Congressman Hagedorn and members of his official staff and his campaign team were interviewed and nearly 2,000 pages of documents provided by his office were reviewed. On July 30, 2020, Congressman Hagedorn notified the Committee on House Administration (“House Administration Committee”) about this internal review and stated that he may need additional guidance as it proceeded. On August 10, 2020, Congressman Hagedorn filed a self-report with the Committee on Ethics (“Ethics Committee”) in accordance with its Rule 18(c), and the Ethics Committee informed Congressman Hagedorn that it appreciated his diligence in self-reporting the matter and would consider it under its Rule 18(a) (“Self-Report”). Congressman Hagedorn appreciates the Ethics Committee’s oversight of this matter and will provide these findings to it for its consideration.

Findings

On June 8, 2020, an article appeared in *LegiStorm* entitled “Rep. Hagedorn spent 40 percent of his 2020 budget in just 3 months.”¹ Out of the abundance of caution and to make certain that his office’s franking charges during this quarter were consistent with all House Rules and Standards of Conduct, Congressman Hagedorn engaged this law firm to conduct an internal review (“Internal Review”). Nine franking vouchers were identified for scrutiny, six of which were performed by vendor Abernathy West LLC (“Abernathy West”) and three of which were performed by vendor Invocq Technologies LLC (“Invocq”).

¹ See https://www.legistorm.com/pro_news/view/id/2586.html? (visited on September 3, 2020).

The Congressman's then-Chief of Staff, Peter Su, was responsible for contracting with both Abernathy West and Invocq, as Congressman Hagedorn had delegated that task to Mr. Su. Congressman Hagedorn generally weighed in on franking content but was not involved with selecting the vendors or negotiating the costs. No actual contracts were located for either vendor, but the fees charged by Abernathy West and Invocq were compared against three independent firms recognized in the industry. Based on these objective comparisons, it appears that Abernathy West and Invocq charged Congressman Hagedorn's office significantly more than the fair market for franking services.

Upon determining that the congressman's office was charged significantly more than fair market for these franking services, an attempt to determine why said charges deviated from the industry norm was undertaken. While the House Administration Committee offers guidance to Members of Congress on franking issues, it does not set rates for franking vendors. Based on a review of office expenditures, Congressman Hagedorn has not overspent his \$1.4 million annual office allotment and is presently on target to operate at a surplus for 2020.

The Internal Review revealed a potential familial interest in Abernathy West by one senior office employee and a direct ownership interest in Invocq by a part time office employee. According to a provision in the House Administration Committee *Member's Congressional Handbook*:

Unless specifically authorized by an applicable provision of federal law, House Rules, or Committee Regulations, no Member, relative of the Member, or anyone with whom the Member has a professional or legal relationship may directly benefit from the expenditure of the MRA.²

Congressman Hagedorn had no knowledge of the potential interest or the direct staff interest prior to the Internal Review. Upon learning of them, he suspended the two employees until further notice while the Internal Review was pending and barred the two staffers from returning to the official office. He also ceased all franked mail contracts. Congressman Hagedorn

² See <https://cha.house.gov/member-services/handbooks/members-congressional-handbook> (visited on September 3, 2020). Although Congressman Hagedorn has accepted responsibility for the contracts even though they were executed without his knowledge of the potential and direct staff interests, the actual impact of the expenditures when applied against this provision is by no means settled. The Ethics Committee, in the *House Ethics Manual*, has offered some insight into the scope of this provision but it does not appear to be conclusive: "While the application of these rules is within the jurisdiction of the House Administration Committee, *it appears* that these rules preclude a Member or committee from contracting with a staff member for the acquisition of goods, or of any services outside of the employment context." See https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf (visited on September 3, 2020)(emphasis supplied).

consulted with the House Administration Committee about the potential interest and direct interest by the employees and included the information in the Self-Report to the Ethics Committee so that it could evaluate the relationships against this provision. Congressman Hagedorn fully agrees that he is ultimately responsible for actions of those in his employ, even when undertaken without his knowledge, and conveyed that sentiment to the Ethics Committee. He has directed his office staff to receive additional training and reestablished an office policy to prevent any contracts to be executed without his prior approval.

Abernathy West

It was determined that Abernathy West shared the same co-working address, phone service, and registered agent as Artemis ESB, whose CEO is Mr. Su's brother Szu-Nien Su. Although registered in Delaware (which does not require LLC's to disclose its members or ownership), Abernathy West and Szu-Nien's interest was not denied by Mr. Su or by counsel for Szu-Nein Su and Abernathy West. When initially approached about this matter, Mr. Su agreed to cooperate fully with the Internal Review. Mr. Su's employment with Congressman Hagedorn's office ceased on June 19, 2020.

Over the next few weeks, both Mr. Su and Szu-Nien Su through counsel promised cooperation on multiple occasions. That cooperation never materialized. Mr. Su's counsel authorized direct contact with Mr. Su, but Mr. Su did not respond. Counsel for Szu-Nien Su and Abernathy West consistently stated that their clients would cooperate with the Internal Review but never responded to multiple requests for information (and Congressman Hagedorn has no ability to compel said information at this time). This recalcitrance served to frustrate the Internal Review and delayed Congressman Hagedorn's Self-Report to the Ethics Committee by several weeks. Due to the limited documents that existed within Congressman Hagedorn's office, it could not be determined why Mr. Su selected Abernathy West as a vendor or if he had any relationship with it beyond his brother's apparent connection with it as discussed herein. Abernathy West does not appear to have engaged in franking work for any other Member of Congress.

Invocq

John Sample, a part time employee of Congressman Hagedorn's office, owned Invocq equally with Catherine Keszei. Mr. Sample submitted to multiple interviews during the Internal Review. He explained that Invocq, a two member LLC, became a vendor to the office after Mr. Su expressed dissatisfaction with vendor franking proposals because they were "too cookie

cutter.” Mr. Sample said the office felt it was under time pressure to get the franking “out the door.” Mr. Sample told Mr. Su that he was part owner of Invocq, a graphic design firm, with Catherine Keszei and that the firm could likely design and produce the franking content in a time effective manner. Invocq had not undertaken any franking work for any Member of Congress.

According to Mr. Sample Ms. Keszei performed the actual services for the LLC. Mr. Sample showed Mr. Su examples of Ms. Keszei’s work, and Mr. Su decided to award the franking work to Invocq. While Invocq’s hourly rates were higher than competitors as franking vendors, Mr. Sample provided a client comparison for Ms. Keszei demonstrating that the rate charged by her was commensurate to other non-franking graphic design production clients.

Shortly after Invocq completed its work, Ms. Keszei died. According to Mr. Sample, her passing rendered Invocq essentially defunct with no financial assets. While the documents surrounding its work for the Congressman’s office were limited (further complicated by Ms. Keszei’s death), it was determined that a \$0.25PP postage charge was incorrectly applied to vouchers 01239479 and 01246586. Mr. Sample apologized for this inadvertent charge, and on behalf of Invocq, agreed to adjust the rates accordingly and return the difference of \$8,800.00 and \$7,700.00, respectively. He agreed to reimburse the U.S. Treasury for the postage Invocq erroneously charged to Congressman Hagedorn’s office. As part of its consideration of this matter, Congressman Hagedorn requested guidance from the Ethics Committee on how Mr. Sample should effectuate that transaction and awaits its response.

Mr. Sample stated he did not believe his ownership interest, which was disclosed to Mr. Su, raised any concerns under the *Member’s Congressional Handbook* or any other House Rules or Standards of Conduct. Mr. Sample said he talked with Mr. Su about the permissibility of Invocq taking on the franking work. He also said he generally recalled asking about the permissibility of earning outside income as a part-time employee during an Ethics Committee training session but did not specifically discuss Invocq or franking work. He stated he did not perform services on the Invocq franking matter during official time beyond facilitating the relationship. If Mr. Sample’s ownership interest in Invocq rendered it ineligible to serve as a vendor to Congressman Hagedorn’s office in accordance with the *Member’s Congressional Handbook* provision discussed herein, it did not enter into contract with Congressman Hagedorn’s office with any intent to violate, or knowledge of, the provision. Mr. Sample’s suspension was lifted, and his employment was reinstated on July 9, 2020.

Conclusion

When Congressman Hagedorn became concerned about potential excessive franking charges incurred by his office on June 18, 2020, he took swift action and took corrective action. Among the steps he took were to commission an internal review by outside counsel; cancel any future franked mail contracts; make personnel changes (both temporary and permanent); and reestablished an office policy to prevent any contracts to be executed without his prior approval. He consulted with the House Administration Committee and ultimately self-reported this matter to the Ethics Committee. He will work with the Ethics Committee as it reviews his office's past vendor relationships with Abernathy West and Invocq. Congressman Hagedorn fully agrees that he is ultimately responsible for actions of those in his employ, even when those actions are taken without his knowledge. Congressman Hagedorn acted in good faith and did not personally direct, profit or intend for his office to bypass any established office procedures or potentially or technically violate any rule of the House.