

Congress of the United States
House of Representatives
Washington, DC 20515-0533

July 10th, 2017

Doug McElvy
Acting General Counsel
Alabama State Bar
415 Dexter Avenue
Montgomery, AL 36104

Dear Mr. McElvy:

I write regarding the conduct of Attorney General Jefferson Sessions III, who was admitted to the Alabama State Bar on September 24, 1973.¹ As a Member of Congress serving on the Judiciary Committee, I believe respect for the rule of law and proper oversight of our judicial system are vital to a healthy democracy. Therefore, I would like to call your attention to several actions taken by Attorney General Sessions that appear to have violated Alabama Rules of Professional Conduct 1.11 (“Successive Government and Private Employment”), 3.3 (“Candor Towards the Tribunal”), and 8.4 (“Misconduct”).² I respectfully request this letter be included for the record in any potential existing or future investigation into Attorney General Sessions.³

Rule 1.11 – Successive Government and Private Employment: The Alabama Rules of Professional Conduct establish clear rules for attorneys who pursue government employment. Rule 1.11 states that a lawyer shall not “participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment.”⁴ The definition of “matter” includes “any other matter covered by the conflict of interest rules of the appropriate government agency” – in this case, the Department of Justice’s conflict of interest rules.⁵ The Attorney General’s significant role in the Trump campaign is analogous to an attorney working in private practice – or “nongovernmental employment” – prior to taking a government position. As a prominent Trump surrogate and senior advisor, as well as subsequent cabinet nominee, he personally and substantially participated in the campaign.

The Comment accompanying the rule further explains that lawyers representing a government agency are “subject to Rule 1.11 and to statutes and government regulations regarding conflict of interest.” Under 28 U.S.C. § 528, the Attorney General “shall promulgate rules and regulations

¹ Alabama State Bar, “Find A Member,” Jefferson B. Sessions, III.

² “Alabama Rules of Professional Conduct,” *Supreme Court and State Law Library*, Alabama State Bar.

³ Because I believe this is a matter of great public interest, I do not intend this letter to be confidential or to invoke Rule 30.

⁴ “Rule 1.11: Successive Government and Private Employment,” *Alabama Rules of Professional Conduct*.

⁵ *Ibid*.

which require the disqualification of any officer or employee of the Department of Justice . . . from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof.”⁶

Having established that the Attorney General is subject to both DOJ and ASB conflict of interest rules, it is incumbent upon the Disciplinary Commission to consider Mr. Sessions’ failure to abide by the terms of his recusal from all matters related to the 2016 election in the context of his role in firing former FBI Director James Comey.

On March 2, 2017, the Department of Justice Office of Public Affairs released a statement on the Attorney General’s recusal from “any existing or future investigations of any matters related in any way to the campaigns for President of the United States.”⁷ It is deeply disturbing that Mr. Comey’s firing – in which Mr. Sessions played a role by crafting a cover letter for Deputy Attorney General Rosenstein’s memo urging Mr. Comey’s firing – appears to have been based, in part, on Mr. Comey’s handling of the ongoing FBI investigation into Russian meddling in the 2016 elections.

Whereas Mr. Sessions originally claimed the firing of Mr. Comey related to his handling of the Hillary Clinton email investigation,⁸ President Trump confirmed during an NBC interview with Lester Holt that he fired Mr. Comey with the FBI’s investigation into Russia’s involvement in the 2016 election (in which Mr. Sessions played a crucial role) in mind.⁹ Ultimately, whether the decision to fire Mr. Comey was due to his handling of the Hillary Clinton email investigation or the Russia counterintelligence investigation, it is clear that Attorney General Sessions should not have been involved pursuant to federal conflict of interest laws – which are covered by Rule 1.11 of the ASB Rules – given his involvement in the campaign.

Rule 3.3 – Candor toward a tribunal: It was widely reported following his Senate confirmation hearing that Attorney General Sessions misrepresented his relationship with Russian Ambassador Sergey Kislyak when asked under oath whether he had “communicated with the Russian government” by Senator Al Franken.¹⁰ Attorney General Sessions responded that he “did not have communications with the Russians, and I’m unable to comment on it.”¹¹ As the *Washington Post* later reported, the Attorney General had in fact met with Russian Ambassador Sergey Kislyak twice and possibly a third time (which Mr. Sessions denies) at the Mayflower Hotel in Washington, D.C in April 2016, at which point Mr. Sessions was already serving as an aide to the Trump campaign.¹²

⁶ “28 U.S. Code § 528 - Disqualification of officers and employees of the Department of Justice,” *Legal Information Institute*, Cornell Law School.

⁷ “Attorney General Sessions Statement on Recusal,” *Department of Justice Office of Public Affairs*, March 2, 2017.

⁸ Leon Neyfakh, “Sessions Sticks to His Fiction,” *Slate*. June 13, 2017.

⁹ James Griffiths, “Trump says he considered ‘this Russia thing’ before firing FBI Director Comey,” *CNN* May 12, 2017.

¹⁰ Phillip Bump, “What Jeff Sessions said about Russia, and when,” *Washington Post*, March 2, 2017.

¹¹ NPR Politics, “Senator Al Franken Responds to Attorney General Jeff Sessions Testimony,” *NPR*. June 13, 2017.

¹² Adam Entous, Ellen Nakashima, and Greg Miller, “Sessions met with Russian envoy twice last year, encounters he later did not disclose,” *Washington Post*, March 1, 2017.

The Attorney General's false statement under oath can, under Rule 3.3, constitute a "false statement of a material fact."¹³ The rule also acknowledges "there are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."¹⁴ Russian collusion with the Trump campaign and his personal Russian contacts were expected topics of discussion during the Attorney General's confirmation hearing. For the Attorney General to only admit months later, after he was confirmed, that he did in fact have contacts with Russian officials should, for all intents and purposes, constitute a misrepresentation of material facts.

Rule 8.4 – Misconduct: Mr. Sessions' failure to uphold the terms of his recusal may also constitute a violation of Rule 8.4 of the Rules of Professional Conduct. Rule 8.4 prevents lawyers from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation." Despite promising to recuse himself from all matters related to the 2016 presidential election, Mr. Sessions later involved himself in the firing of Mr. Comey, which not only violates his recusal but may also rise to the level of 8.4 Section D - prohibited behavior, which states that a lawyer shall not "engage in conduct that is *prejudicial to the administration of justice*." Obstructing the Russia investigation by playing a role in the firing of its chief investigator appears to be such "prejudicial" activity.¹⁵

I greatly appreciate your attention to these critical matters and look forward to hearing from you. You can contact my office at (202) 225-3976, or email my staff at Michael.Chernin@mail.house.gov should you have any questions.

Sincerely,



Ted W. Lieu
Member of Congress

¹³ "Rule 3.3: Conduct: Candor Toward the Tribunal," *Alabama Rules of Professional Conduct*.

¹⁴ *Ibid*.

¹⁵ Please note that Alabama Rule of Disciplinary Procedure 22 allows for mandatory suspension or disbarment in situations involving "interference with the administration of justice, false swearing, and misrepresentation."