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By Telecopier
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Mr. Chris Swecker
Chair, Integrity Committee
President's Council on Integrity & Efficiency
935 Pennsylvania Ave., N.W.
Room 3117
Washington, D.C. 20535-001

RE: IC # 465

Dear Mr. Swecker:

I am enclosing a copy of the Amendment to Complaint of Prohibited Personnel Practices Against Special Counsel Scott Bloch to be added to the above-referenced charge.

Sincerely,

Debra S. Katz

Enc.

cc: James Renne, Deputy Special Counsel
Senator Daniel Akaka
Senator Susan Collins
Senator Charles Grassley
Senator Carl Levin
Senator Joseph Lieberman
Senator George Voinovich
OMB Deputy Director Clay Johnson
Acting Director of the Office of Personnel Management Dan Blair

**AMENDMENT TO COMPLAINT OF PROHIBITED PERSONNEL
PRACTICES AGAINST SPECIAL COUNSEL SCOTT BLOCH**

On March 3, 2005, the Government Accountability Project, the Project on Government Oversight, Public Employees for Environmental Responsibility, the Human Rights Campaign, and a group of anonymous career employees of the U.S. Office of Special Counsel filed complaints alleging the commission of a series of prohibited personnel practices as well as violations of civil service laws, and other acts of malfeasance by U.S. Special Counsel Scott J. Bloch. The complainants are now filing this amendment to their Complaint to include additional allegations of prohibited personnel practices, in violation of 5 U.S.C. §§ 2302(b)(8) and (b)(9), and partisan handling of complaints alleging violations of the Hatch Act.

NEW DEVELOPMENTS

1. Additional Acts of Retaliation and Confirmation of Retaliatory Animus Since March 2, 2005

As described in the original complaint, at p. 20, on March 1, 2005, Mr. Bloch called William Bransford, who was then acting as counsel for several OSC employees whom Mr. Bloch had decided to involuntarily reassign to a newly created Detroit field office. During the conversation, Mr. Bloch threatened to take further unspecified action against these staff members and to hasten their departure after their attorney declined OSC's settlement overture.

The next day, on March 2, 2005, Mr. Bloch was alerted to the imminent filing of complainants' March 3 Complaint by a member of the press. That evening, employees who had received notices of removal, including those who were represented by Mr. Bransford, were instructed by email to immediately turn in their work files. The employees learned of this order when they arrived at work the next day (March 3) and complied with it.

A detailed 22 page complaint was delivered to Mr. Bloch on the morning of March 3, 2005. Later that day, Mr. Bloch's spokesperson, Cathy Deeds, issued a statement to the press on his behalf announcing that OSC was transmitting the

Complaint to the President's Council on Integrity and Efficiency.

In the statement, Ms. Deeds disparaged the complainants. She termed their Complaint "a clever press angle," and stated that the allegations were "false" and "baseless", claiming that "most, if not all of the allegations are old and have been previously addressed." This assertion is patently untrue. Concerns had been publicly expressed by Public Employees for Environmental Responsibility, and other groups, about a few of the many actions by Mr. Bloch that are the subject of the Complaint. But many of the allegations in the Complaint have never been previously made at all, and certainly not with the supporting detail provided in the complaint. Moreover, none of the allegations have been "previously addressed" in any manner. Mr. Bloch has either ignored them or issued conclusory and misleading denials, similar to those Ms. Deeds made on his behalf in the March 3rd press statement.

On that same day that the Complaint was filed, another OSC official (who declined to be identified) disparaged the complainants in remarks to the Washington Times that were published in the paper's March 4th edition. This unnamed official termed the complainants a few "disgruntled employees who know or should have known" that their complaint had no merit. He further remarked that "some people are too union-oriented to accept" Mr. Bloch's "strong" leadership. That statement of animus corroborates the original allegations in the Complaint regarding Mr. Bloch's decision to target employees who had formerly worked at the federal sector union which broke the story of Mr. Bloch's decision to remove references to sexual orientation discrimination from OSC's website and other publications. Complaint at 13, 19.

On March 8, 2005 the employees who had turned in their files the preceding Thursday, March 3rd, were instructed to pick up a few of their cases and resume working on them. They were not told how long they would have to perform this work, or when their removals would become effective.

The next day, Wednesday, March 9, 2005 an article appeared in the Washington Post, announcing that the Senate Committee on Governmental Affairs was going to conduct

oversight hearings on the Office of Special Counsel. In addition, that same morning, the Government Accountability Project, the Project on Government Oversight, and Public Employees for Environmental Responsibility issued a press release concerning the mass closings of whistleblower cases under Mr. Bloch's tenure. The release revealed what had transpired at a meeting that Mr. Bloch had held with employees a month earlier. At that meeting, Mr. Bloch had announced that in light of the fact that so many employees had refused their reassignments and were being removed, he intended to step up his efforts to "close" as many pending whistleblower cases as possible before they left. He also stated that he intended to hire interns to "close" cases over the summer.

The minutes of the meeting were posted on PEER's website and widely distributed to the press. As those minutes were only available to OSC employees, Mr. Bloch concluded that there had been an unauthorized disclosure to the press, in violation of his gag order.

That same day, in the afternoon of Wednesday, March 9, 2005, one day after directing employees who had received notices of removal to retrieve some of their cases and resume working on them, Mr. Bloch ordered the very same employees to clear out their offices and turn in their credentials by Friday, March 11. He informed them that they were being put on administrative leave for the week of March 14th, and that their employment would be terminated, effective March 18, 2005.

In the end, ten of the twelve employees who were subjected to the involuntary reassignments, including all seven of the employees reassigned to Detroit, refused the reassignments. Mr. Bloch is currently scrambling to find a way to open the Detroit office in light of the fact that all of the employees he selected for relocation have either found new jobs or been removed for refusing to take the reassignments. Two attorneys who have been working in the intake unit, and have no experience investigating or prosecuting cases, have agreed to relocate to the Detroit office, possibly with relocation bonuses or other monetary incentives.

Complainants have learned that two of the investigators who refused geographic reassignments were offered the opportunity to stay on at OSC headquarters in the Complaints Examining Unit. These two employees are the only ones among the individuals given notices of removal who did not either hire counsel or assert that their reassignments were illegal. One of the two employees accepted the offer to stay on; the other did not.

None of the employees who hired counsel or asserted the reassignments were illegal were offered the opportunity to remain at headquarters. At least one of these individuals, Senior Executive Cary Sklar, asked to be permitted to stay on at headquarters, in another capacity if necessary, but was told that he would not be permitted to do so. Another of the reassigned investigators, Sharon Lee, was more qualified to stay on to work in the Complaints Examining Unit than those who were asked to do so; she had worked in that Unit before, and received outstanding performance appraisals. Ms. Lee, however, was one of the employees who was represented by counsel and was terminated.

Complainants have also learned that another employee who accepted the reassignment to Oakland (senior executive William Reukauf) has now been told that he will not be required to move to Oakland for at least a year. Not surprisingly, Mr. Reukauf, like the other employees who were offered a reprieve, did not hire an attorney or assert that his reassignment was illegal.

Mr. Reukauf's reprieve casts still further doubt upon management justifications that Mr. Bloch originally ordered for his reorganization. He had originally claimed that his "reorganization" was intended to "power down" the agency, and that he wanted the field offices to be headed by senior executives in recognition of their importance. Now that he has driven out the employees he targeted for retaliation (including Mr. Sklar), that pretext has evaporated. Mr. Bloch has decided to assign Mr. Reukauf to oversee the field offices in Oakland, Dallas and Detroit from OSC headquarters in Washington, D.C.

Further, Mr. Reukauf's reprieve also completely undermines another justification previously asserted for the

forced reassignments. Thus, Mr. Bloch has assigned Mr. Reukauf to take over OSC's mediation program.

As described in the original complaint, the mediation program had long been directed by Linda Myers, a highly experienced mediator. Ms. Myers was involuntarily reassigned to Detroit, along with Mr. Sklar, who was her supervisor. Mr. Bloch had reassigned Ms. Myers to Detroit on the grounds that he wanted her to continue to work for Mr. Sklar. When Mr. Sklar refused the reassignment to Detroit, Mr. Bloch changed his rationale. He stated that he still wanted Ms. Myers to go to Detroit because that would somehow further his goal of conducting more mediations in person.

Despite these original claims, now that Mr. Sklar and Ms. Myers have been driven out of OSC, the mediation program is remaining in Washington, D.C. under Mr. Reukauf. Tellingly, Mr. Reukauf does not have any mediation experience and will have to receive training in order to take over the program. Mr. Reukauf, however, did not protest his reassignment; he accepted it. Mr. Sklar and Ms. Myers had hired Mr. Bransford as counsel to represent them to challenge their involuntary reassignments.

Further, Mr. Sklar and Ms. Myers are also former members of the staff of the National Treasury Employees Union. As described in the original complaint, there is ample basis to infer that Mr. Bloch targeted them for the reassignments because of their perceived whistleblowing and their former union affiliation. His recent decision to keep the mediation program in Washington, D.C. under Mr. Reukauf, who has no mediation experience, provides still more proof of his retaliatory intent.

Critically, while Mr. Reukauf is being given a one year reprieve, he will not be permitted to resume his duties as the senior executive in charge of the Hatch Act Unit. The Hatch Act Unit will report to Mr. Bloch's deputy, James Renne, as originally contemplated.

2. Partisan Handling of High Profile Hatch Act Cases

The decision to continue to have the Chief of the Hatch Act Unit report Mr. Renne, a political deputy, rather than a

career senior executive, appears to be part of pattern of politicization of Hatch Act enforcement. OSC has pursued trivial matters without regard to the political affiliation of the alleged violators (for example, prosecuting low level federal employees for sending out political emails to colleagues prior to the last election). However, its treatment of more significant and high profile allegations is not even-handed.

During the recent Presidential campaign, OSC received at least two such complaints. One of the complaints concerned a visit by Senator John Kerry to the Kennedy Space Center, which was alleged to constitute a violation of the Hatch Act's prohibition against the use of the workplace to engage in political activity. The other was a complaint filed by Representative Conyers against then-National Security Advisor Condoleezza Rice for using government funds to travel around the country in the weeks before the election making speeches, which were alleged to be political.

These two complaints (both of which were reported in the media) were treated very differently. Special Counsel Bloch and Deputy Special Counsel Renne, referred the complaint to the career staff and ordered an on-site investigation of the Kerry complaint within days after the Kerry visit. On the other hand, when the Rice complaint came on October 21, 2004 Mr. Renne assigned it to himself (rather than Mr. Reukauf or any of his subordinates in the Hatch Act Unit). He then sat on the complaint, taking no action, until after the election, when he finally referred it to the Hatch Act Unit for investigation. Under the reorganization, as noted, Mr. Renne will be the executive in charge of the Hatch Act in all cases, and Mr. Reukauf, who had overseen the Act's impartial enforcement for over for 20 years, is being reassigned to head up the mediation unit that Mr. Sklar had successfully headed since its inception over five years ago.

The favorable treatment afforded to the Rice complaint raises very troubling questions regardless of whether the allegations against Secretary Rice are ultimately substantiated. The deliberate decision to sit on the allegations until after the election while expediting the

investigation of the Kerry matter, flies in the face of the Hatch Act itself, which was designed precisely to prevent partisan politics from undermining the impartial conduct of official government business.

3. Religious Discrimination

For the past two years, Mr. Bloch's political appointees have closed OSC Headquarters several hours early on Good Friday and have given OSC employees paid leave for this Christian holiday. They have not provided such a benefit for OSC employees on Jewish, Muslim, or other non-Christian religious holidays. In fact, in 2004, Mr. Bloch scheduled a mandatory off-site retreat for the agency's senior managers during the first few days of the Passover holiday.

ADDITIONAL VIOLATIONS OF LAW

Based on the foregoing, complainants add the following allegations:

1. Mr. Bloch hastened the termination date of the employees who refused the geographic reassignments in retaliation for perceived whistleblowing, First Amendment activity, and/or the assertion of their legal rights to hire counsel and challenge the illegal reassignments. The decision to terminate the employees violates both 5 U.S.C. §§ 2302(b)(8) and (b)(9).


2. Mr. Bloch declined to permit employees to remain on at OSC headquarters in positions they were qualified to hold, in retaliation for perceived whistleblowing, First Amendment activity, and/or the assertion of their legal rights to hire counsel and challenge the illegal reassignments. Mr. Bloch's failure to offer these employees alternative positions at headquarters violates both 5 U.S.C. §§ 2302(b)(8) and (b)(9).

3. Mr. Bloch has abused his authority by affording disparate treatment to the Hatch Act complaints described above, based on partisan political considerations.

In addition, complainants urge that the most recent developments provide further support for their charge that

the reasons proffered for the "reorganization" and involuntary reassignments were pretextual.

Respectfully submitted



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DATED: March 31, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amendment to Complaint of Prohibited Personnel Practices Against Special Counsel Scott Bloch was served on James Renne, Deputy Special Counsel, by mailing a copy by first-class mail, postage prepaid, this 31st day of March 2005, to:

James Renne, Deputy Special Counsel
Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036



Debra S. Katz