

**Congress of the United States**  
**Washington, DC 20515**

May 12, 2017

The Honorable Rod Rosenstein  
Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

Dear Mr. Deputy Attorney General:

We are writing to request your assistance in addressing the crisis of confidence created by Attorney General Jeff Sessions when he participated directly in the decision to fire FBI Director James Comey despite the fact that he previously recused himself from any actions involving the investigations of the Trump and Clinton presidential campaigns.

If the facts now being reported are accurate, it appears that the Attorney General's actions in recommending that President Trump fire Director Comey may have contradicted his sworn testimony before the Senate Judiciary Committee at his confirmation hearing, breached the public recusal he made before the American people, and violated the law enacted by Congress to prevent conflicts of interest at the Department of Justice.

Federal law sets forth as a penalty for recusal violations removal from office, and the Attorney General's violation in this case appears to be particularly grave. Since you are the Acting Attorney General in this particular matter, we call on you to explain the measures that now may be required to mete out appropriate discipline in this case.

**The Attorney General's Recusal**

On January 10, 2017, the Attorney General testified during his Senate confirmation hearing that he would recuse himself from all matters relating to any investigations involving Secretary Clinton. He stated:

I believe the proper thing for me to do would be to recuse myself from any questions involving those kind of investigations that involve Secretary Clinton and that were raised during the campaign or could be otherwise connected to it.<sup>1</sup>

On March 2, 2017, after press accounts reported that the Attorney General testified falsely at that hearing by concealing two meetings he had with the Russian Ambassador, the Attorney General publicly recused himself from all matters relating to the campaigns of both President Trump and Secretary Clinton. He stated:

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<sup>1</sup> Senate Committee on the Judiciary, Testimony of Senator Jeff Sessions, Attorney General Nomination (Jan. 10, 2017).

I have decided to recuse myself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.<sup>2</sup>

During a press conference that same day, the Attorney General reiterated that he consulted with Department ethics officials about his recusal:

We evaluated the rules of ethics and recusal. I have considered the issues at stake. ... I asked for their candid and honest opinion about what I should do about investigations, certain investigations. And my staff recommended recusal. They said that since I had involvement with the campaign, I should not be involved in any campaign investigation. I have studied the rules and considered their comments and evaluation. I believe those recommendations are right and just.<sup>3</sup>

### **Law Governing Recusal Violations**

Despite the Attorney General's recusal, the documents released this week by the White House demonstrate that the Attorney General participated directly in the decision-making process that led to the President firing Director Comey, purportedly for his actions relating to the FBI's investigation of Secretary Clinton.

On May 9, 2017, the Attorney General sent a letter to the President recommending that he remove Director Comey "for the reasons expressed by the Deputy Attorney General in the attached memorandum."<sup>4</sup> In your Memorandum for the Attorney General, you stated that you discussed Director Comey's actions relating to the Clinton investigation directly with the Attorney General. You wrote: "As you and I have discussed, however, I cannot defend the Director's handling of the conclusion of the investigation of Secretary Clinton's emails."<sup>5</sup>

Section 528 of title 28 of the United States Code is entitled, "Disqualification of Officers and Employees of the Department of Justice." In passing this provision, Congress required the Department of Justice to establish regulations to "require the disqualification of any officer or employee of the Department of Justice ... from participation in a particular investigation or

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<sup>2</sup> *Attorney General Sessions Statement on Recusal*, Department of Justice Office of Public Affairs (Mar. 2, 2017) (online at [www.justice.gov/opa/pr/attorney-general-sessions-statement-recusal](http://www.justice.gov/opa/pr/attorney-general-sessions-statement-recusal)) (plural "campaigns" in original).

<sup>3</sup> *Transcript of Jeff Sessions's Recusal News Conference, Annotated*, Washington Post (Mar. 2, 2017) (online at [www.washingtonpost.com/news/the-fix/wp/2017/03/02/transcript-of-jeff-sessionss-recusal-press-conference-annotated/?utm\\_term=.d43fedb5d624](http://www.washingtonpost.com/news/the-fix/wp/2017/03/02/transcript-of-jeff-sessionss-recusal-press-conference-annotated/?utm_term=.d43fedb5d624)).

<sup>4</sup> Letter from Attorney General Jeff Sessions to President Donald J. Trump (May 9, 2017) (online at [www.nytimes.com/interactive/2017/05/09/us/politics/document-White-House-Fires-James-Comey.html?\\_r=1](http://www.nytimes.com/interactive/2017/05/09/us/politics/document-White-House-Fires-James-Comey.html?_r=1)).

<sup>5</sup> Memorandum for the Attorney General from the Deputy Attorney General (May 9, 2017) (online at [www.nytimes.com/interactive/2017/05/09/us/politics/document-White-House-Fires-James-Comey.html?\\_r=1](http://www.nytimes.com/interactive/2017/05/09/us/politics/document-White-House-Fires-James-Comey.html?_r=1)).

prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof.”<sup>6</sup>

According to this law, the penalty for any Justice Department official who violates such a recusal could be termination. The statute states: “Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.”<sup>7</sup>

In addition to the Attorney General participating in the firing of Director Comey, reports also now suggest that the Attorney General requested a preview of Director Comey’s testimony before the Senate Intelligence Committee in May.<sup>8</sup> In addition, reports indicate that the Attorney General is currently participating in the evaluation of candidates to serve as Interim FBI Director—who obviously would be responsible for overseeing the pending Russia investigation—which also could constitute a recusal violation.<sup>9</sup>

### **Request for Report on Proposed Disciplinary Action, Documents and Information**

Since the Attorney General previously recused himself from these matters—and since he may not sit in judgment on his own failure to comply with the law—we request that you, as the Acting Attorney General in this matter, report to us on the steps that must now be followed to address this apparent abuse.

In addition, we request that you provide answers to the following questions and produce the documents requested below by May 22, 2017:

- (1) Did the Attorney General consult with Department ethics officials regarding his involvement in the recommendation to fire Director Comey? If so, please provide all documents related to that consultation, including any requests for advice and any advice provided.
- (2) Please provide a full description of the role the Attorney General played in the recommendation and decision to fire Director Comey. Please also provide all documents relating to the Attorney General’s actions in this process, including documents relating to whether the Attorney General or anyone else asked you to review Director Comey’s actions.
- (3) Please provide a full description of the role the Attorney General played or is

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<sup>6</sup> 28 U.S.C. § 528 (online at [www.law.cornell.edu/uscode/text/28/528](http://www.law.cornell.edu/uscode/text/28/528)).

<sup>7</sup> *Id.*

<sup>8</sup> *Comey Infuriated Trump with Refusal to Preview Senate Testimony*, Reuters (May 11, 2017) (online at [www.reuters.com/article/us-usa-trump-comey-decision-idUSKBN1862WP](http://www.reuters.com/article/us-usa-trump-comey-decision-idUSKBN1862WP)).

<sup>9</sup> *Despite Recusal Pledge, Sessions Interviewing Candidates for Interim Director*, NPR (May 10, 2017) (online at [www.npr.org/2017/05/10/527780171/despite-recusal-pledge-sessions-interviewing-candidates-for-interim-fbi-director](http://www.npr.org/2017/05/10/527780171/despite-recusal-pledge-sessions-interviewing-candidates-for-interim-fbi-director)).

playing in proposing or evaluating candidates for Interim FBI Director. Please also provide all documents relating to the Attorney General's actions in this process.

- (4) To what extent did the Attorney General discuss with you or anyone else any aspect of Director Comey's actions with respect to the investigation of Secretary Clinton? Please provide all documents referring or relating to these discussions.
- (5) Did the Attorney General ever discuss with you or anyone else any aspect of Director Comey's actions with respect to the investigation of President Trump's campaign? If so, please explain. Please also provide all documents referring or relating to these discussions.
- (6) Did the Attorney General ever discuss with you or anyone else concerns that Director Comey publicly revealed during testimony before the Senate the existence of the FBI's investigation of President Trump's campaign and its ties to Russia? If so, please explain. Please also provide all documents referring or relating to these concerns.
- (7) Did the Attorney General ever discuss with you or anyone else concerns that Director Comey might make additional public statements regarding the FBI's investigation of President Trump's campaign and its ties to Russia? If so, please explain. Please also provide all documents referring or relating to these concerns.
- (8) Did Director Comey ever request any additional resources, personnel, or other increased assistance for the FBI's investigation of President Trump's campaign and its ties to Russia? If so, please provide all documents relating to these requests, as well as all email or other communications relating to these requests, concerns with these requests, or the handling or disposition of these requests.

### Conclusion

Over the past 48 hours, numerous press accounts have reported that the real reason President Trump fired Director Comey was not because of his handling of the Clinton investigation, but rather because the President was growing increasingly enraged by the accelerating criminal investigation into his own campaign officials and their ties to Russia.<sup>10</sup>

These revelations raise even more grave concerns about the role the Attorney General played in this process despite his previous refusal.

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<sup>10</sup> See, e.g., *Inside Trump's Anger and Impatience—And His Sudden Decision to Fire Comey*, Washington Post (May 10, 2017) (online at [www.washingtonpost.com/politics/how-trumps-anger-and-impatience-prompted-him-to-fire-the-fbi-director/2017/05/10/d9642334-359c-11e7-b373-418f6849a004\\_story.html?utm\\_term=.4ccb6146c052](http://www.washingtonpost.com/politics/how-trumps-anger-and-impatience-prompted-him-to-fire-the-fbi-director/2017/05/10/d9642334-359c-11e7-b373-418f6849a004_story.html?utm_term=.4ccb6146c052)).



We recognize that the Attorney General's actions have thrust you into a very delicate position with respect to enforcing the law of the land against your superior. In this case, however, the Attorney General previously recused himself from these matters, leaving you with the solemn obligation to fulfill your responsibilities to the Department of Justice and the nation.

Thank you for your service and for your cooperation with this request.

Sincerely,



Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform



John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary

cc. The Honorable Jason Chaffetz, Chairman  
Committee on Oversight and Government Reform

The Honorable Bob Goodlatte, Chairman  
Committee on the Judiciary