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Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

REPORT

Review No. 16-1190

The Board of the Office of Congressional Ethics (the “Board”), by a vote of no less than four members, on September 23, 2016, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives.

SUBJECT: Cynthia Martin

NATURE OF THE ALLEGED VIOLATION: From May 2013 to September 2014, Cynthia Martin may have misappropriated \$16,500 that was mistakenly transferred into her Congressional Federal Credit Union bank account. Subsequent to notification by both bank representatives and law enforcement, Ms. Martin initially refused to return the funds to their rightful owner. On March 30, 2016, Ms. Martin pleaded guilty to receiving stolen property, a misdemeanor under Washington, DC law. If Ms. Martin wrongfully obtained the property of another, then she may have violated Washington DC law, House rules, and standards of conduct.

From April to August 2016, Cynthia Martin received compensation from the House of Representatives at a time when she may no longer have been working for the House. If Ms. Martin accepted compensation that was not commensurate with the work she was performing, then she may have violated House rules and standards of conduct.

RECOMMENDATION: The Board recommends that the Committee on Ethics further review the allegation that Cynthia Martin violated Washington, DC law, House rules, and standards of conduct, as there is substantial reason to believe that she wrongfully obtained and refused to return the property of another.

The Board recommends that the Committee on Ethics further review the allegation that Cynthia Martin accepted compensation that was not commensurate with the work she performed, as there is substantial reason to believe that she continued to receive compensation at a time when she was no longer providing services to the House, in violation of House rules and standards of conduct.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

ABSTENTIONS: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO
THE COMMITTEE ON ETHICS: Omar S. Ashmawy, Staff Director & Chief Counsel

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FINDINGS OF FACT AND CITATIONS TO LAW

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FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 16-1190

On September 23, 2016, the Board of the Office of Congressional Ethics (hereafter “the Board”) adopted the following findings of fact and accompanying citations to laws, regulations, rules, and standards of conduct (*in italics*).

The Board notes that these findings do not constitute a determination of whether or not a violation actually occurred.

I. INTRODUCTION

A. Summary of Allegations

1. From May 2013 to September 2014, Cynthia Martin may have misappropriated \$16,500 that was mistakenly transferred into her Congressional Federal Credit Union bank account. Subsequent to notification by both bank representatives and law enforcement, Ms. Martin initially refused to return the funds to their rightful owner. On March 30, 2016, Ms. Martin pleaded guilty to receiving stolen property, a misdemeanor under Washington, DC law. If Ms. Martin wrongfully obtained the property of another, then she may have violated Washington DC law, House rules, and standards of conduct.
2. From April to August 2016, Cynthia Martin received compensation from the House of Representatives at a time when she may no longer have been working for the House. If Ms. Martin accepted compensation that was not commensurate with the work she was performing, then she may have violated House rules and standards of conduct.
3. The Board recommends that the Committee on Ethics further review the allegation that Cynthia Martin violated Washington, DC law, House rules, and standards of conduct, as there is substantial reason to believe that she wrongfully obtained and refused to return the property of another.
4. The Board recommends that the Committee on Ethics further review the allegation that Cynthia Martin accepted compensation that was not commensurate with the work she performed, as there is substantial reason to believe that she continued to receive compensation at a time when she was no longer providing services to the House, in violation of House rules and standards of conduct.

B. Jurisdictional Statement

5. The allegations that were the subject of this review concern Cynthia Martin, an employee of the United States House of Representatives. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics directs that, “[n]o

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review shall be undertaken . . . by the board of any alleged violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, review by the Board is in accordance with the Resolution.

C. Procedural History

6. The OCE received a written request for a preliminary review in this matter signed by at least two members of the Board on June 24, 2016. The preliminary review commenced on June 25, 2016.² The preliminary review was scheduled to end on July 24, 2016.
7. On July 11, 2016, the OCE notified Ms. Martin of the initiation of the preliminary review, provided her with a statement of the nature of the review, notified her of her right to be represented by counsel in this matter, and notified her that invoking her right to counsel would not be held negatively against her.³
8. At least three members of the Board voted to initiate a second-phase review in this matter on July 24, 2016. The second-phase review commenced on July 25, 2016.⁴ The second-phase review was scheduled to end on September 7, 2016.
9. On July 26, 2016, the OCE notified Ms. Martin of the initiation of the second-phase review, notified her of her right to be represented by counsel in this matter, and notified her that invoking that right would not be held negatively against her.⁵
10. The Board voted to extend the second-phase review by an additional period of fourteen days on August 26, 2016. The additional period ended on September 21, 2016.
11. The Board voted to refer the matter to the Committee on Ethics and adopted these findings on September 23, 2016.
12. The report and its findings in this matter were transmitted to the Committee on Ethics on October 13, 2016.

D. Summary of Investigative Activity

13. The OCE requested documentary and, in some cases, testimonial information from the following sources:

(1) Cynthia Martin;

¹ H. Res 895, 110th Cong. §1(e) (2008) (as amended).

² A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is received by the OCE on a date certain. According to H. Res. 895 of the 110th Congress (hereafter “the Resolution”), the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board’s request.

³ Letter from OCE Staff Director and Chief Counsel to Cynthia Martin, July 11, 2016.

⁴ According to the Resolution, the Board must vote (as opposed to make a written authorization) on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second-phase, the second-phase commences the day after the preliminary review ends.

⁵ Letter from OCE Staff Director and Chief Counsel to Cynthia Martin, July 26, 2016.

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- (2) Representative John Conyers; and
- (3) Congressional Federal Credit Union.

14. Ms. Martin did not cooperate with the OCE's review, declining to provide requested documents or schedule an interview with the OCE.

II. CYNTHIA MARTIN WRONGFULLY OBTAINED AND REFUSED TO RETURN THE PROPERTY OF ANOTHER IN VIOLATION OF DC LAW

A. Applicable Laws, Rules, and Standards of Conduct

15. District of Columbia Statutes

According to D.C. CODE § 22-3211(b) (Theft): "A person commits the offense of theft if that person wrongfully obtains or uses the property of another with intent: (1) To deprive the other of a right to the property or a benefit of the property; or (2) To appropriate the property to his or her own use or to the use of a third person."

According to D.C. CODE § 22-3232(a) (Receiving Stolen Property): "A person commits the offense of receiving stolen property if that person buys, receives, possesses, or obtains control of stolen property, knowing or having reason to believe that the property was stolen."

16. House Rules

Pursuant to House Rule 23, clause 1, Members and staff "shall behave at all times in a manner that shall reflect creditably on the House."

Under House Rule 23, clause 2, Members and staff "shall adhere to the spirit and the letter of the Rules of the House"

B. Cynthia Martin Wrongfully Obtained and Refused to Return the Property of Another

17. On or about March 9, 2016, Cynthia Martin, then serving as the Chief of Staff to a Member of the United States House of Representatives, was charged in the Superior Court of the District of Columbia with misdemeanor theft.⁶

18. The Criminal Information filed in the case described the offense as follows:

⁶ *United States v. Cynthia A. Martin*, Criminal No. 2016-CMD-3491 (D.C. Sup. Ct. filed Mar. 9, 2016) (Exhibit 1 at 16-1190_0002); Criminal Information, Criminal No. 2016-CMD-3491 (D.C. Sup. Ct. filed Mar. 9, 2016) (while the Information is dated March 7, 2016, it appears to have been filed on March 9, 2016) (Exhibit 2 at 16-1190_0005) (hereafter "Criminal Information").

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Between on or about September 17, 2014, and on or about October 4, 2014, within the District of Columbia, Cynthia A. Martin bought, received, and obtained control of property of value, belonging to K.K. consisting of U.S. currency, funds, or monies, which had been stolen, knowing and having reason to believe it was stolen, with the intent to defraud and to deprive K.K. of a right to and benefit of the property.⁷

19. The Affidavit in Support of an Arrest Warrant for Ms. Martin includes a description of the actions constituting the offense.⁸ According to the Affidavit, Ms. Martin had opened a joint savings account with her minor son at the Congressional Federal Credit Union (“CFCU”) on April 9, 2007.⁹
20. On May 4, 2013, the Complainant in the case against Ms. Martin, also a CFCU customer, authorized the direct deposit of funds paid by his employer, the National Federation of Independent Business (“NFIB”), into a CFCU account.¹⁰ In signing up for direct deposit, however, the Complainant listed an incorrect account number on the authorization form; rather than listing his own account number, he erroneously listed the account number for Ms. Martin’s joint savings account.¹¹
21. From May 14, 2013 through September 29, 2014, \$500 of the Complainant’s funds were deposited into Ms. Martin’s savings account every two weeks.¹² Each deposit was labeled “NFIB Office Pay.”¹³
22. On October 7, 2014, the Complainant contacted CFCU to advise that his direct deposits had been going to the wrong account.¹⁴ At that time, \$16,500 of the Complainant’s funds had been erroneously deposited into Ms. Martin’s account.¹⁵
23. Per CFCU policy, the credit union was only able to reimburse the Complainant for \$3,500 of the erroneous deposits.¹⁶ CFCU removed this \$3,500 from Ms. Martin’s account.¹⁷
24. The Affidavit notes that over the period of the erroneous deposits, Ms. Martin herself deposited \$2,100 into her joint savings account, but that in September 2014, she transferred \$15,200 out of that account to another CFCU account.¹⁸

⁷ Criminal Information (Exhibit 2 at 16-1190_0005).

⁸ Affidavit in Support of an Arrest Warrant, *U.S. v. Martin*, Criminal No. 2016-CMD-3491 (D.C. Sup. Ct. filed Mar. 9, 2016) (Exhibit 3 at 16-1190_0007-0009).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* While the Affidavit states that the Complainant’s funds were deposited into Ms. Martin’s account from May 14, 2013 through September 29, 2015, it appears that the direct deposits ended in or around September 2014.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

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25. On January 30, 2015, a CFCU employee contacted Ms. Martin about the erroneous deposits and the removal of the \$3,500 from Ms. Martin's account.¹⁹ The CFCU employee said that Ms. Martin asked if the CFCU "had taken all we were going to take" from her account.²⁰ According to the CFCU employee, as described in the Affidavit, Ms. Martin had no intention of returning the remaining \$13,000 of the Complainant's funds.²¹
26. On January 4, 2016, the police officer who swore out the Affidavit for an Arrest Warrant contacted Ms. Martin by telephone, asking if Ms. Martin was willing to pay back the remaining \$13,000.²² Ms. Martin replied, "No."²³ When the officer explained to Ms. Martin that he had received information that she was aware that the money was not hers, Ms. Martin replied, "Cynthia Martin didn't do anything wrong. If there was a bank error, you need to contact the bank."²⁴ The call was then terminated.²⁵
27. The next morning, at approximately 8:06 AM, Ms. Martin called back the officer to express her desire to pay back the funds.²⁶
- * * *
28. On March 9, 2016, Ms. Martin was charged with one misdemeanor count of receiving stolen property, and on March 30, 2016, she pleaded guilty in District of Columbia Superior Court to that count as part of a deferred sentencing agreement.²⁷
29. Pursuant to the terms of the agreement, Ms. Martin was required to pay restitution to the Complainant in the amount of \$13,000 and perform 48 hours of community service.²⁸
30. According to the court docket, Ms. Martin completed her required community service on April 25, 2016, and made the restitution payment on May 2, 2016.²⁹
31. A deferred sentencing review hearing is scheduled for September 28, 2016.³⁰

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* While the copy of the Affidavit obtained by the OCE does not include the name or title of the affiant, the contents of the Affidavit indicate that he or she is a police officer.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Plea Agreement and Waiver of Trial, *U.S. v. Martin*, Criminal No. 2016-CMD-3491 (D.C. Sup. Ct. filed Mar. 30, 2016) (Exhibit 4 at 16-1190_0011); Community Service Deferred Sentencing Agreement, *U.S. v. Martin*, Criminal No. 2016-CMD-3491 (D.C. Sup. Ct. filed Mar. 30, 2016) (Exhibit 5 at 16-1190_0013) (hereafter "Deferred Sentencing Agreement").

²⁸ Deferred Sentencing Agreement (Exhibit 5 at 16-1190_0014).

²⁹ *U.S. v. Martin*, Criminal No. 2016-CMD-3491 (D.C. Sup. Ct. docketed Apr. 25, 2016, May 2, 2016) (Exhibit 1 at 16-1190_0002).

³⁰ *Id.*

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III. CYNTHIA MARTIN MAY HAVE ACCEPTED COMPENSATION THAT WAS NOT COMMENSURATE WITH WORK SHE PERFORMED

A. Applicable Laws, Rules, and Standards of Conduct

32. House Rules

According to House Rule 23, Clause 8, “[a] Member . . . of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation such employee receives.”³¹

33. House Ethics Manual

According to the House Ethics Manual, “[c]ompensation may be received only for duties performed within the preceding month.”³²

“The underlying standard for the receipt of compensation by an employee of the House is that the employee has regularly performed official duties commensurate with the compensation received. The Code of Ethics for Government Service instructs every employee to ‘[g]ive a full day’s labor for a full day’s pay; giving to the performance of his duties his earnest effort and best thought.’ Employees are paid United States Treasury funds to perform public duties. Appropriated funds are to be used solely for the purposes for which appropriated. Funds appropriated for congressional staff to perform official duties should be used only for assisting a Member in his or her legislative and representational duties, working on committee business, or performing other congressional functions. Employees may not be compensated from public funds to perform nonofficial, personal, or campaign activities on behalf of the Member, the employee, or anyone else.”³³

B. Cynthia Martin May Have Accepted Compensation at a Time When She Was Not Performing Official Duties

34. On April 4, 2016, five days after Ms. Martin pleaded guilty to receiving stolen property, Representative John Conyers, her employing Member, placed her on Leave Without Pay (“LWOP”) status, for approximately a three-month period, effective from April 5 to June 30, 2016.³⁴

35. On April 20, 2016, Representative Conyers filed a superseding Payroll Authorization Form, shortening Ms. Martin’s LWOP period to two weeks, effective from April 5 to

³¹ House Rule 23, Clause 8(a).

³² House Ethics Manual (2008) at 278.

³³ *Id.* at 279 (citations omitted).

³⁴ U.S. House of Representatives Payroll Authorization Form, filed April 4, 2016 (Exhibit 6 at 16-1190_0017).

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April 19, 2016.³⁵ Accordingly, as of April 20, 2016, Ms. Martin resumed receiving her annual compensation of \$160,000, or \$13,333.33 per month.³⁶

36. When OCE staff attempted to reach Ms. Martin at Representative Conyers' congressional office to inform her of the initiation of this review, staff was informed that Ms. Martin no longer worked in the office. When OCE staff attempted to deliver to Ms. Martin notice of her right to appear before the Board, staff was again told that Ms. Martin no longer worked in the office.

37. Given this information, the Board finds that there is substantial reason to believe that Ms. Martin may have accepted compensation at a time when she was not providing services commensurate with that compensation.

IV. CONCLUSION

38. Based on the foregoing information, the Board recommends that the Committee on Ethics further review the allegation that Cynthia Martin violated Washington, DC law, House rules, and standards of conduct, as there is substantial reason to believe that she wrongfully obtained and refused to return the property of another.

39. The Board recommends that the Committee on Ethics further review the allegation that Cynthia Martin accepted compensation that was not commensurate with the work she performed, as there is substantial reason to believe that she continued to receive compensation at a time when she was no longer providing services to the House, in violation of House rules and standards of conduct.

V. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND RECOMMENDATION FOR THE ISSUANCE OF A SUBPOENA

40. Cynthia Martin refused to cooperate with the OCE's review.

41. The Board recommends the issuance of a subpoena to Cynthia Martin.

³⁵ U.S. House of Representatives Payroll Authorization Form, filed April 20, 2016 (Exhibit 7 at 16-1190_0019).

³⁶ *Id.* On August 11, 2016, Representative Conyers submitted a new Payroll Authorization Form, again placing Ms. Martin on LWOP status effective August 25, 2016 to October 25, 2016. See U.S. House of Representatives Payroll Authorization Form, filed August 11, 2016 (Exhibit 8 at 16-1190_0021).