

OFFICE OF THE INSPECTOR GENERAL
U.S. Nuclear Regulatory Commission

Memorandum of Interview

OIG Case No: 07-63

On September 5, 2007, John SZABO, Senior Attorney, Office of General Counsel (OGC), U.S. Nuclear Regulatory Commission, was interviewed by Special Agent (SA) (b)(7)c regarding SZABO's interaction with former Commissioner Jeffrey MERRIFIELD, related to MERRIFIELD's search for post-government employment. SZABO provided essentially the following information:

SZABO stated that on June 1, 2006, he was asked to come to MERRIFIELD's office and participate in a conference call with Steve ENGELMYER. ENGELMYER was an attorney who was a friend of MERRIFIELD. MERRIFIELD told SZABO that he was considering leaving government service at the end of his term and that he had worked out an arrangement whereby ENGELMYER would serve as an intermediary between MERRIFIELD and potential future employees. SZABO understood the arrangement to mean that ENGELMYER had been given a set of criteria for MERRIFIELD's desired positions. ENGELMYER would communicate with prospective employers and only inform MERRIFIELD about opportunities which matched his stated interests.

SZABO explained the various restrictions on government employees in looking for employment, particularly those spelled out in 18 USC 208. Essentially, he told MERRIFIELD and ENGELMYER that MERRIFIELD could not discuss possible employment with any firm if MERRIFIELD was working on a matter at the NRC which could affect that firm. This would include work on generic or rulemaking issues which were not specifically focused on the firm. SZABO summarized the two options available to MERRIFIELD as 1) telling any company wishing to discuss employment which could be affected by his NRC activities "no," and terminating these discussions, or 2) continuing such employment discussions, but recusing himself from participating in any NRC actions or activities which might be related.

SZABO indicated that ENGELMYER was a private attorney and that he did not believe he had much experience with government conflict of interest rules. Nonetheless, ENGELMYER seemed to understand the requirements imposed on government employees as SZABO explained them. MERRIFIELD also seemed to understand these requirements.

SZABO noted that by the virtue of their positions, commissioners work on very broad policy issues which would affect numerous companies. He believed MERRIFIELD appreciated this aspect of his position, and his desire to avoid a conflict of interest was his reason for making this arrangement with ENGELMYER which would allow him to carry on his work as a Commissioner without violating conflict of interest requirements and regulations, but still obtain post-government employment. SZABO documented this meeting in a memorandum (*Attachment 1*).

SZABO stated that on October 25, 2006, MERRIFIELD asked SZABO and George MULLEY, OIG, to come to his office. Also present was Spiros DROGGITIS, an advisor on MERRIFIELD's staff. MERRIFIELD told them during this meeting that he had informed the White House that he was not going to seek a third term as Commissioner

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and that he wanted the OIG to know about his arrangements to seek post-government employment. MERRIFIELD's description of his plans and his arrangement with ENGELMYER matched what SZABO and MERRIFIELD had discussed during the meeting on June 1, 2006. SZABO commented that MERRIFIELD indicated that he would not discuss employment with anyone prior to the completion of his term in June 2007, a step which went beyond the legal requirements. SZABO believed that MERRIFIELD was concerned that a company which was seemingly unrelated to the NRC might have a subsidiary with nuclear industry ties which he might be unaware of. Employment negotiations with such a firm could put him in a situation of an apparent conflict of interest, something MERRIFIELD wished to avoid. SZABO documented this meeting in a memorandum (*Attachment 2*). MERRIFIELD also sent SZABO a copy of a memorandum which documented a meeting with his staff later the same day informing them of how he planned to handle his job search. (*Attachment 3*)

SZABO stated that he did not meet with MERRIFIELD at any time between the June and October meetings, and that he did not know any details of any actions related to the job search that MERRIFIELD may have undertaken.

In March 2007, MERRIFIELD contacted SZABO and asked for a "fill in the blank" type memo which he could use to document any recusals. SZABO provided the draft memo, but did not inquire into the status of MERRIFIELD's job search. (*Attachment 4*) SZABO believed at that time that MERRIFIELD was not having much activity or success in the search, but that he wanted to protect himself if and when the pace picked up. SZABO indicated that by March 2007, the coming end of MERRIFIELD's term would be looming larger.

On April 18, 2007, MERRIFIELD contacted SZABO and asked for more details regarding the rules for disqualifying himself for NRC activities. SZABO provided an e-mail response to MERRIFIELD. (*Attachment 5*) SZABO acknowledged he did not specifically discuss the Combined Operating License (COL) task force which MERRIFIELD was heading. MERRIFIELD also inquired whether documents related to recusals would have to be released if requested under the Freedom of Information Act (FOIA). SZABO consulted with (b)(7)c Attorney, OGC, who frequently deals with questions related to public release of NRC documents. (b)(7)c provided comments related to the FOIA release, which SZABO provided to MERRIFIELD. (*Attachment 6*)

SZABO stated that as of April 18, 2007, he knew nothing about the progress MERRIFIELD had made on his job search. SZABO did not question MERRIFIELD or anyone else about the progress of the search. SZABO's expectation was that if a concern arose, MERRIFIELD would then contact him. However, absent any concerns he did not expect any contact or further information from MERRIFIELD about the job search.

SZABO stated that on May 17, 2007, he was telephonically contacted by (b)(7)c (b)(7)c on MERRIFIELD's staff. (b)(7)c mentioned that MERRIFIELD was in discussion for employment with the Shaw Group, and that the firm owned a portion of Westinghouse. (b)(7)c was inquiring because SECY 07-0076, involving cooperation with China on the APT1000 new reactor design, was before the Commission. SZABO explained that because of Westinghouse had an interest in and involvement with the

AP1000 design. SZABO recommended to (b)(7)c that MERRIFIELD not participate in actions related to this SECY (b)(7)c. (b)(7)c told SZABO that the staff could handle the matter without MERRIFIELD's involvement. SZABO acknowledged he did not know the details of how the staff would accomplish this without MERRIFIELD's involvement, but believed they possessed the technical expertise required to accomplish the task. SZABO also assumed that MERRIFIELD had delegated authority to the staff to accomplish such tasks without his involvement.

On May 23, 2007, (b)(7)c telephonically contacted SZABO regarding a fitness for duty rule before the Commission. According to (b)(7)c the rule dealt with the firm Progress Energy. (b)(7)c told SZABO that MERRIFIELD had been discussing Progress Energy, but that these discussions had terminated. Based on this termination, SZABO indicated that he had no objections to MERRIFIELD's involvement with this rule. SZABO documented the May 17 and 23, 2007 conversations in one memorandum. (Attachment 7)

SZABO indicated that he had no other contact with MERRIFIELD or his staff regarding the job search. SZABO never received copies of any letters of recusal or any indications of other concerns. SZABO never attempted to contact MERRIFIELD to learn of his progress in the job search. SZABO stated there was no requirement for MERRIFIELD to notify the larger NRC staff about any recusals so long as he kept his immediate staff informed and in a position to effectively act as a filter for him. SZABO indicated that he did not recall speaking with MERRIFIELD regarding the preparation of his resume. SZABO indicated that he never reviewed MERRIFIELD's resume or any associated cover letters.

SZABO stated that MERRIFIELD's situation was different than previous commissioners in that he was actively soliciting employment during his final days with the NRC.

SZABO acknowledged that he did not know about the COL task force or MERRIFIELD's lead role in this task force until he learned of recent inquiries from a reporter with Bloomberg news. SZABO learned of the inquiries from Elizabeth HAYDEN, Office of Public Affairs, NRC. SZABO provided copies of the e-mail communications regarding this topic. (Attachment 8 & 9)

SZABO provided an additional e-mail from (b)(7)c to Trip ROTHSCHILD, OGC, which SZABO had received as a "cc" addressee and which he had maintained in his records about Merrifield. SZABO had no further information about this e-mail. (Attachment 10)

Attachments:

- 1) Ethics Counseling Memorandum; Subj: STEVEN ENGELMYER; dated June 1, 2006
- 2) Ethics Counseling Memorandum; Subj: SEEKING EMPLOYEMENT; dated October 25, 2006
- 3) Memorandum; Subj: POST-NRC EMPLOYEMENT INQUIRIES; dated October 25, 2006
- 4) Draft Memorandum; Subj: [ABC, INC.]; dated March 22, 2007
- 5) E-mail; Subj: Disqualification Questions; dated April 18, 2007
- 6) E-mail; Subj: Re: Merrifield; dated April 18, 2007

7) Ethics Counseling Memorandum; Subj: JEFFREY MERRIFIELD (COM); dated May 23, 2007

8) E-mail; Subj: Reporter inquiry @ Merrifield job-search model; dated August 23, 2007

9) E-mail; Subj: Re: WEDNESDAY; dated August 23, 2007

10) E-mail; Subj: Fwd: Letter Requesting Action by the Department of Justice; June 28, 2007

Interviewed by (Special Agent
Special Agent

(b)(7)c

MOI Prepared on September 7, 2007

MOI Reviewed by/on:

(b)(7)c

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