

**REPORT OF COMMITTEE OF LEGISLATORS  
ON COMPLAINT AGAINST A LOBBYIST**

TO: Executive Committee of the Colorado General Assembly

FROM: Senators Morse and Cadman and Representative A. Kerr, the Committee of Legislators appointed or designated pursuant to Joint Rule 36

DATE: March 4, 2009

Pursuant to Joint Rule 36 (d), the Committee of Legislators concerning the complaint filed by Representative Cindy Acree against Erik Groves submits the following report:

**I. ACTIVITIES**

The Committee received and reviewed a Response on behalf of Erik Groves contained in a statement dated January 14, 2009, from Richard Kaufman, attorney for Mr. Groves. The Committee requested and reviewed documents provided by:

Representative Cindy Acree  
Erik Groves  
Brent Jones

The Committee requested documents from Representative Laura Bradford and Tory Brown. Representative Bradford submitted no documents to the Committee and Mr. Brown responded that he had no documents to submit to the Committee.

The Committee interviewed Representative Acree, Mr. Jones, Representative Bradford, and Mr. Groves.

**II. ELEMENTS OF VIOLATION**

Representative Acree's complaint alleged that Mr. Groves attempted to talk with her both by phone and in person regarding the upcoming House Republican Caucus election scheduled on Friday, December 19, 2008, due to the announcement of Representative Mike May, the

House Minority Leader, that he intended to resign from the House of Representatives. The Committee treated this as a complaint under Joint Rule 36 (b) (4), which provides as follows:

### **36. Lobbying Practices**

- (b) **Prohibited practices.** No person engaging in lobbying shall:
  - (4) Become an active participant in the internal organization or leadership races of the General Assembly;

Accordingly, in order to have violated Joint Rule 36 (b) (4): 1) A person engaged in lobbying must; 2) become an active participant 3); in the internal organization or leadership races of the General Assembly.

### **III. STATEMENT OF UNDISPUTED FACTS**

The Committee of Legislators believes that the following facts surrounding the complaint are undisputed:

1. Erik Groves is an attorney with the firm of Zakhem Atherton LLC and is, and was in December of 2008, a registered lobbyist.
2. One of the clients that Mr. Groves lobbies on behalf of is the Colorado Chiropractic Association.
3. The Colorado Chiropractic Association ("Association") supported Representative Cindy Acree during her campaign in the fall of 2008 to be elected to the House of Representatives representing House District 40.
4. During the fall of 2008, Representative Acree met with individuals representing the Association regarding the Association's support for her election.
5. As part of its support for Representative Acree's election, the Association encouraged individual members of the Association to make financial contributions to her campaign and the Association's political action committee made financial contributions to her campaign.

6. The Colorado Chiropractic Association attempted to schedule a lunch for Representative Acree on October 23, 2008, to raise contributions for her campaign, but the lunch was never held.
7. In an e-mail dated October 28, 2008, from Mr. Groves to Terrance Snyder, Mr. Groves stated that in conversations he had with Representative Acree, she indicated to Mr. Groves that she had spent all the money she was going to spend and she was raising money to do constituent outreach work after the election.
8. In an e-mail dated October 29, 2008, from Mr. Groves to Representative Acree, Mr. Groves referred to mailing a check to Representative Acree since they had been unable to meet in person as previously planned.
9. Representative Acree had no other contact from Mr. Groves after October 29, 2008, until December 15, 2008.
10. No campaign contribution check from the Colorado Chiropractic Association was delivered to or received by Representative Acree immediately prior to or after the November 2008 general election.
11. On December 12, 2008, Representative Mike May, Minority Leader of the House of Representatives, publicly announced that he was planning to resign his seat in the House of Representatives so that he could focus on his private business interests.
12. A meeting of the House Republican Caucus was scheduled to be held on December 19, 2008, for an election to fill the vacancy in the position of House Minority Leader due to Representative May's announced resignation.
13. Representative David Balmer and Representative Frank McNulty were candidates to fill the vacancy in the position of House Minority Leader.
14. After Representative May's announcement and throughout the weekend of December 13 and 14, 2008, Representative Acree received numerous phone calls regarding the leadership race from various members of the House Republican Caucus.
15. Mr. Groves was on a camping trip in the Colorado mountains beginning Friday, December 12, 2008, and ending Sunday, December 14, 2008.

16. Mr. Groves learned of Representative May's announcement at the beginning of the camping trip and, due to his remote location and poor cell phone reception, Mr. Groves did not have any further communications with anyone during the camping trip about Representative May's announcement or the resulting leadership race.
17. On Monday, December 15, 2008, upon arriving at his law office, Mr. Groves found voice mail messages from Dr. Nelson Vetanze and Dr. Steve Schuster, who are both actively involved with the Colorado Chiropractic Association.
18. On Monday, December 15, 2008, Mr. Groves sent an e-mail to Joyce Martello, executive director of the Colorado Chiropractic Association, asking if he could get a political action committee check payable to "The Committee to Elect Cindy Acree" for \$300. The e-mail also indicated that Mr. Groves would be picking up the check in the next day or so.
19. On Monday, December 15, 2008, Mr. Groves called Dr. Vetanze. Dr. Vetanze wanted to discuss with Mr. Groves how Dr. Vetanze could support Representative Balmer in the House Republican leadership race. Thinking that Dr. Vetanze lived in House District 40 and Representative Acree was his representative, Mr. Groves suggested that Dr. Vetanze call Representative Acree and tell her that he supported Representative Balmer.
20. On Monday, December 15, 2008, Mr. Groves called Dr. Schuster. Mr. Groves and Dr. Schuster discussed the need to get campaign contribution checks out to various Republican candidates, including Representative Acree, that had previously been promised but not delivered by the Colorado Chiropractic Association prior to the November election.
21. During the telephone conversation, Dr. Schuster indicated that he also wanted to discuss another issue with Representative Acree, so Mr. Groves and Dr. Schuster agreed that Dr. Schuster would deliver the Association's campaign contribution check to Representative Acree. Mr. Groves stated that if Dr. Schuster was successful in reaching Representative Acree, he was to tell her that Mr. Groves also needed to speak with her.
22. The campaign contribution check from the Colorado Chiropractic Association that was to be delivered to Representative Acree was written around December 15, 2008.

23. Mr. Groves testified that he had "chicken scratched" a vote count for the leadership election based on who he thought people were aligned with. He believed that if Representative Balmer had one more vote, he would win. From this tally, Mr. Groves believed there were four votes "up for grabs". Mr. Groves indicated one of those "unknowns" was Representative Acree and he believed, after his conversation with Mr. Jones, that she might be uncommitted.
24. After his telephone conversation with Dr. Schuster, Mr. Groves obtained phone numbers for Representative Acree from her campaign web site.
25. While looking at Representative Acree's website, Mr. Groves noticed the name of Representative Acree's chief of staff, Brent Jones. Mr. Groves remembered a Brent Jones who had belonged to the same church as Mr. Groves and, after looking at photographs posted on the website, ascertained that it was the same person Mr. Groves previously knew from church. Mr. Groves obtained a phone number and e-mail address for Mr. Jones from the website.
26. During the morning of Monday, December 15, 2008, Representative Acree had a telephone conversation with Representative Balmer regarding the House Republican leadership race and Representative Balmer's candidacy for House Minority Leader.
27. On the afternoon of Monday, December 15, 2008, Mr. Groves attempted to contact Representative Acree by telephone.
28. Being unable to reach Representative Acree by telephone, Mr. Groves left a voice mail message in which he identified himself, stated that he represented the Colorado Chiropractic Association and that he had campaign contributions for her. He also stated that he wanted to talk to Representative Acree about the leadership race, and provided his office and cell phone numbers at which he could be reached.
29. On Monday, December 15, 2008, Mr. Groves sent an e-mail to Mr. Jones asking if they could catch up on things.
30. On Monday, December 15, 2008, in response to the e-mail sent by Mr. Groves, Mr. Jones attempted to reach Mr. Groves by telephone. When unable to reach Mr. Groves, Mr. Jones left a voice mail message asking Mr. Groves to call him.
31. Later on Monday, December 15, 2008, Mr. Groves and Mr. Jones spoke by telephone. They discussed their families and Representative Acree's recent campaign. Mr. Groves stated that he was interested in contacting Representative Acree and that he

had some campaign contributions for her. Mr. Groves asked Mr. Jones when was the best time to contact Representative Acree.

32. During their phone conversation, Mr. Groves asked about the House Republican leadership race. Mr. Jones replied that he did not know anything about it as Representative Acree had not discussed it with him. Mr. Jones told Mr. Groves to speak to Representative Acree.
33. During their phone conversation, Mr. Groves and Mr. Jones agreed to have breakfast together on December 23, 2008.
34. During late afternoon of Monday, December 15, 2008, Representative Acree received voice mail messages from two individuals, Dr. Vetanze and Dr. Schuster.
35. One of these voice mail messages referred to a potential committee chairmanship for Representative Acree and that the individual supported Representative Balmer in the leadership race and the individual hoped Representative Acree would support Representative Balmer.
36. The other voice mail message mentioned that the individual had a campaign contribution check for Representative Acree and that the individual supported Representative Balmer in the leadership race.
37. After listening to the voice mail messages left by Mr. Groves, Dr. Vetanze, and Dr. Schuster on December 15, 2008, Representative Acree wrote down the information from the voice mails on a note pad and deleted the voice mail messages.
38. Representative Acree contacted Representative Laura Bradford by telephone during the evening of Monday, December 15, 2008, to see if Representative Bradford had been contacted by Mr. Groves or any other lobbyist about the House Republican leadership race. Representative Acree also wanted to know if Representative Bradford thought it was appropriate for lobbyists to be contacting members about the leadership race. Representative Bradford told Representative Acree that she had not been contacted by any lobbyist in regard to the leadership race. Representative Bradford also offered to make telephone calls to see if such conduct was appropriate since both of them were freshman legislators who didn't know all the rules and protocol.

39. Representative Bradford contacted Melissa Baumgart, Chief of Staff for Representative May, by telephone during the evening of Monday, December 15, 2008. After Representative Bradford told Ms. Baumgart her question, Ms. Baumgart advised Representative Bradford to call Marilyn Eddins, the Chief Clerk of the House of Representatives.
40. During the evening of Monday, December 15, 2008, Representative Bradford contacted Marilyn Eddins by telephone. Ms. Eddins informed Representative Bradford about Rule 36 of the Joint Rules of the Senate and House of Representatives and stated it was highly inappropriate for lobbyists to contact members concerning legislative leadership races. Ms. Eddins advised Representative Bradford to contact Representative May to discuss the situation.
41. Representative Bradford attempted to but did not reach Representative May on the evening of Monday, December 15, 2008.
42. During the evening of Monday, December 15, 2008, while attending a party, Representative Acree discussed the three voice mail messages she received earlier in the day and whether she should return the phone calls with Tory Brown, Representative Acree's campaign manager, and Mr. Jones.
43. On the morning of Tuesday, December 16, 2008, Representative Bradford had a conversation with Senator Josh Penry regarding lobbyists' involvement in legislative leadership races as Representative Bradford and Senator Penry were traveling with Representative Steve King to tour a coal mine. Senator Penry suggested that Representative Bradford stay out of the situation and for her to contact Representative May.
44. At approximately 9:30 a.m. that morning while en route to the coal mine, Representative Bradford received a telephone call from Representative May. In describing the situation to Representative May, Representative Bradford mentioned for the first time that Representative Acree was the legislator who had been contacted by a lobbyist regarding the House Republican leadership race.
45. During the morning of Tuesday, December 16, 2008, while en route to her office at the state capitol building, Representative Acree was contacted by telephone by Representative May. Representative May asked if she had been approached by someone regarding the House Republican leadership race. Representative Acree replied yes and Representative May asked that Representative Acree come to his

office upon her arrival at the state capitol building so that Representatives May and Acree and the Speaker of the House of Representatives could discuss the situation.

46. While Representative Acree met with Representative May on Tuesday, December 16, 2008, in Representative May's office after her arrival at the capitol, Representative Acree typed up a statement that became the complaint filed against Mr. Groves and gave it to Representative May.
47. After her meeting with Representative May that morning, Representative Acree went to her office at the state capitol building as she was in the process of moving into her office. While Representative Acree was in her office that morning, Mr. Groves came to her office.
48. While in Representative Acree's office, Mr. Groves helped Representative Acree move some furniture and engaged in casual conversation. Mr. Groves then stated that he had campaign checks for Representative Acree and that he wanted to discuss the House Republican leadership race with her.
49. Representative Acree told Mr. Groves that she could not discuss campaign contributions while at the state capitol. Mr. Groves then asked to meet with Representative Acree away from the state capitol to discuss the campaign contributions sometime before Friday. Representative Acree also told Mr. Groves that she could not talk to him about the upcoming leadership race. Representative Acree asked for Mr. Groves's business card. Mr. Groves then left Representative Acree's office.
50. Mr. Groves testified that he had procrastinated in delivering the check and that he knew he had until January 7th to deliver it.
51. After Mr. Groves left her office, Representative Acree went to Representative May's office to report the conversation she just had with Mr. Groves and to give Representative May the business card she received from Mr. Groves during their conversation.
52. On Tuesday, December 16, 2008, Representative Acree spoke with Representative Bradford by telephone to discuss the conversation Representative Acree had had with Mr. Groves in her office earlier that day.
53. Mr. Groves was not aware of Rule 36 of the Joint Rules of the Senate and House of Representatives prior to December 16, 2008.



54. On December 16, 2008, at 5:44 p.m., Mr. Groves sent an email message, the subject of which read "Emergency Conference Call Tonight at 6:30 P.M." to seven recipients identified in the email as: "Punk Man"; "Sideburns"; "The Conscience"; "The Maverick"; "The Mayor"; "The Scientist"; and "The Wise One". Mr. Groves testified that the message was about the matter at hand and that the names included on the "To" line were nicknames that he had input into his email address book, but were actually members of the executive board of the Colorado Chiropractic Association.
55. During the early morning of Wednesday, December 17, 2008, Representative Balmer sent an e-mail to Mr. Groves forwarding an e-mail from Speaker Andrew Romanoff to Representative Balmer informing Representative Balmer that a complaint had been filed against him pursuant to House Rule No. 49.
56. In the early afternoon of Thursday, December 18, 2008, Mr. Jones sent an e-mail to Mr. Groves cancelling their December 23, 2008, breakfast. Mr. Jones stated that he had spoken with Representative Acree about the events that had occurred during the week involving Representative Acree and Mr. Groves and that both Representative Acree and Mr. Jones were uncomfortable with Mr. Jones keeping his breakfast appointment with Mr. Groves.
57. A campaign contribution check from the Colorado Chiropractic Association was neither delivered to nor received by Representative Acree during the week of December 15 through December 19, 2008, or anytime thereafter.

#### **IV. DISPUTED FACTS**

The testimony concerning the following facts surrounding the Complaint are in dispute.

1. Whether in the voice mail message left by Mr. Groves for Representative Acree on Monday, December 15, 2008, Mr. Groves indicated that he or the Colorado Chiropractic Association supported Representative Balmer for House Minority Leader in the House Republican leadership election:
  - a. Representative Acree testified that Mr. Groves stated in his voice mail message that he supported Representative Balmer in the leadership race.
  - b. Mr. Groves testified that he did not indicate in his voice mail message that he supported any candidate by name in the leadership race.

2. Whether during the conversation between Representative Acree and Mr. Groves that occurred in Representative Acree's office at the state capitol building on Tuesday, December 16, 2008:
  - a. Mr. Groves indicated that he or the Colorado Chiropractic Association supported Representative Balmer for House Minority Leader in the House Republican leadership election.
    - i. Representative Acree testified that Mr. Groves stated that the Colorado Chiropractic Association supported Representative Balmer.
    - ii. Mr. Groves testified that he never named any particular individual that he or the Colorado Chiropractic Association supported in the leadership election.
  - b. After Representative Acree told Mr. Groves that she could not discuss the leadership race with him, Mr. Groves stated that he was with a law firm that represented the Colorado Chiropractic Association and since the Association had contributed to Representative Acree's campaign, Mr. Groves was entitled to speak with Representative Acree about the leadership race.
    - i. Representative Acree testified that Mr. Groves made this statement to her.
    - ii. Mr. Groves testified that he does not recall making this statement to Representative Acree.
3. Whether during the telephone conversation between Mr. Jones and Mr. Groves that occurred on Monday, December 15, 2008, Mr. Groves indicated that he or the Colorado Chiropractic Association supported Representative Balmer for House Minority Leader in the House Republican leadership election:
  - a. Mr. Jones testified that Mr. Groves indicated that the Colorado Chiropractic Association supported Representative Balmer.
  - b. Mr. Groves testified that he did not advocate for any specific candidate when discussing the leadership election with Mr. Jones.

4. The amount of the campaign contribution check from the Colorado Chiropractic Association to Representative Acree that had not delivered before the November 2008 general election and that Mr. Groves testified the Association was attempting to deliver to Representative Acree during the week of December 15 through December 18, 2008:
  - a. An e-mail dated Monday, October 6, 2008, from Mr. Groves indicated that the amount of the check was \$200.
  - b. An e-mail dated Monday, December 15, 2008, from Mr. Groves indicated that the amount of the check was \$300. Mr. Groves also testified that the amount of the check was to be \$300.

## **V. FINDINGS AND RECOMMENDATIONS**

1. Based on the foregoing information, this Committee makes the following findings of fact:
  - a. That, on December 15, 2008, Mr. Groves left a voice mail message for Representative Acree in which he stated that he had some fund-raising checks for her.
  - b. That, in the same voice mail message, Mr. Groves also stated that he wanted to talk to Representative Acree about the leadership race and that the Colorado Chiropractic Association supported Representative Balmer in that election.
  - c. That, on December 16, 2008, while in Representative Acree's capitol office, Mr. Groves stated that he had campaign checks for her. He also stated in the course of that conversation with Representative-elect Acree that he wanted to discuss the House Republican leadership race with her and that the Colorado Chiropractic Association supported Representative Balmer for House Minority Leader.
  - d. That, during the December 16, 2008, conversation with Representative Acree in her capitol office, Representative Acree told Mr. Groves that she could not discuss the leadership race with him, to which Mr. Groves responded that he was associated with the law firm that represented the Colorado Chiropractic Association, that the Association had contributed to her campaign, and that

Mr. Groves was entitled to speak with Representative Acree about the leadership race.

2. Based on the foregoing information and findings of fact, the Committee further finds:
  - a. That Mr. Erik Groves was a professional lobbyist at the time of the events in December of 2008.
  - b. That Mr. Groves violated Rule 36 (b) (4) of the Joint Rules of the Senate and House of Representatives by becoming an active participant in a leadership race of the General Assembly by:
    - Contacting Representative Acree by telephone and in person, indicating that he had campaign checks for her;
    - Stating that, because he was an attorney with the firm that represented the Colorado Chiropractic Association which had made contributions to her campaign, he was entitled to speak with her about the leadership election that was to take place that same week; and
    - Indicating to her that the Colorado Chiropractic Association supported Representative Balmer for House Minority Leader in that election.
  - c. That Mr. Groves was unaware of Joint Rule 36 at the time of his actions and, for that reason, did not intentionally violate Joint Rule 36 (b) (4).
  - d. That his lack of knowledge of Joint Rule 36 notwithstanding, Mr. Groves had a responsibility to know the legislative rules regarding lobbying practices and his lack of knowledge and intent, while suggesting that any penalty be mitigated, does not now serve as a defense for his actions.

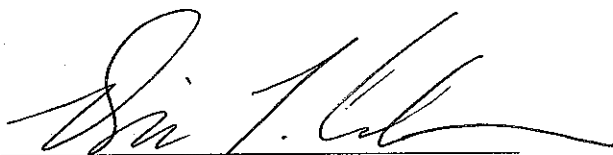
3. Accordingly, the Committee makes the following recommendations to the Executive Committee:<sup>1</sup>

That the Executive Committee formally admonish Mr. Groves in a private meeting and by issuance of a letter of admonition regarding his conduct that was in violation of Joint Rule 36 (b) (4), and directing that he refrain from such conduct in the future.

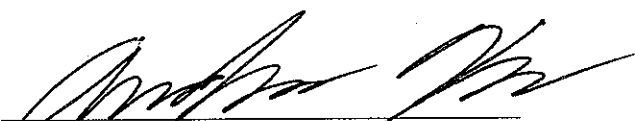
Respectfully submitted:



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Senator John Morse, Chairman



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Senator Bill Cadman



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Representative Andy Kerr

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<sup>1</sup> The recommendations made herein by the Joint Ethics Committee to the Executive Committee are advisory only and are not binding upon the Executive Committee.