



Federal Election Commission
Office of the Inspector General

INVESTIGATIVE SUMMARY I22INV00033

DATE: AUGUST 7, 2023

Allegations of Ethics Violations by an FEC Commissioner

The Federal Election Commission (FEC) Office of the Inspector General (OIG) initiated this investigation after a media report concerning FEC Commissioner James “Trey” Trainor III’s appearance at an event in Texas where he was allegedly billed as a member of the “Trump Elections Team.”

Specifically, a June 30, 2022 article reported Commissioner Trainor’s appearance at a November 29, 2021, event (herein referred to as the “Denton County event” or “the event”) organized by the Denton County Republican Party that billed him as a member of the “Trump Elections Team.”¹ The article cited campaign finance experts, including a former FEC Commissioner, who expressed concerns about Commissioner Trainor’s appearance at the event. They further questioned whether Commissioner Trainor should have recused himself from adjudicating matters involving former President Donald Trump in light of his appearance at the event (as a purported member of the “Trump Elections Team”) and his prior work for the Trump 2016 campaign.²

In light of the foregoing, the OIG inquired into the four areas below:

- Review of the relevant ethical standards concerning Commissioner conduct
- Review of the ethics briefs provided to Commissioners, including Commissioner Trainor’s advisement by FEC ethics officials
- Commissioner Trainor’s participation in matters involving the Trump 2016 campaign and related entities
- Commissioner Trainor’s participation in the Denton County event

The OIG identified the following standards of conduct as relevant to the facts of this case:

1. 5 CFR § 2635.502(a) provides that federal employees (including Commissioners) are subject to the general standard concerning apparent or actual bias. It provides that employees should not participate in official matters that involve, among others, former employers or clients.

¹ *A Trump-appointed Official Who Gets an Important Vote on Whether Trump Broke Election Laws Spoke at a Texas GOP Event Where He was Billed as a Part of the “Trump Elections Team,”* Insider, 30 June 2022, <https://www.businessinsider.com/trump-election-integrity-trey-trainor-federal-election-commission-fec-2022-6>

² As used herein, “Trump 2016 campaign” refers to Make America Great Again PAC (f/k/a Donald J. Trump for President, Inc.).

However, this prohibition only applies to those persons “...for whom the employee has, *within the last year*, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee[.]” (Emphasis added).

2. Executive Order 13770, dated January 28, 2017, required presidential appointees to agree to a similar prohibition against participating in a matter “involving specific parties that is directly and substantially related to [a] former employer or former clients, including regulations and contracts.” However, that order similarly limited its application to employers or clients for whom the appointee worked *in the two years prior* to his or her appointment and extends the prohibition to two years from the date of appointment.³

3. 5 CFR § 2635.807, *Teaching, speaking and writing*, provides that government employees “shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee’s official duties.” In addition, the Federal Election Campaign Act (FECA) prohibits Commissioners from “engaging in any other business, vocation, or employment[.]” 52 USC § 30106(a)(3).

4. 5 CFR § 2635.101(b)(14) provides that employees shall avoid actions creating the appearance of an ethical violation. This provision emphasizes that employees “shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”

This investigation found the following:

1. Commissioner Trainor did not participate in this investigation. After initially referring the OIG to his legal counsel, neither Commissioner Trainor nor his counsel responded to numerous attempts over the course of several months by the OIG to schedule an interview. His lack of participation impeded the OIG’s efforts to gather relevant evidence and resulted in uncertainty concerning the conclusions in this investigation. It was also inconsistent with Commission guidance regarding cooperation with the OIG, specifically, a March 25, 2022 email sent to FEC staff by a prior Commission Chair directing agency personnel to cooperate with OIG engagements, including investigations.⁴ Although that direction may not be binding upon other commissioners, Commissioner Trainor’s non-participation in this investigation nevertheless reflects inconsistency with the standard expected of other agency personnel.

2. The FEC Office of General Counsel provides Commissioners with detailed ethics briefings concerning standards of conduct, including the foregoing standards. Commissioner Trainor, like other Commissioners, received this briefing and executed an ethics agreement to

³ Executive Order 13770 was later rescinded on January 20, 2021 by then-President Trump.

⁴ On March 25, 2022, then-Chair Allen Dickerson sent an email to all FEC staff stating, “Under the terms of The Inspector General Act of 1978 (the IG Act), as amended, the agency and its employees have a duty to cooperate with OIG. Among other provisions, the IG Act authorizes the Inspector General to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the agency relating to its programs and operations.”

detail the steps he would take to avoid conflicts of interest as a Commissioner. Commissioner Trainor notified the Designated Agency Ethics Official (DAEO) via a letter on March 3, 2020, that he was required to sign the ethics pledge provided in Executive Order 13770. He signed the pledge on May 20, 2020.

3. Commissioner Trainor followed up with a written notification via memorandum on July 6, 2020, to the DAEO outlining his recusal obligations. The memorandum included a list of entities in which Commissioner Trainor, unless authorized to participate, was disqualified from participation. This disqualification included any particular matter in which an entity was or represented a party. The OIG was unable to conclude with certainty whether Commissioner Trainor complied with the relevant ethical standards concerning participation in matters involving the Trump 2016 campaign and related entities due to his lack of participation in this investigation.

4. Agency ethics officials previously advised Commissioner Trainor that during his tenure as a Commissioner, he should recuse himself from any matter that was at that time open before the Commission involving the Trump 2016 campaign, if he had previously represented the Trump campaign before the Commission in those matters. Commissioner Trainor stated on his ethics agreement that to his knowledge, there were no pending particular matters involving specific parties in which he represented a client to or before the Commission.

5. The OIG reviewed Commissioner Trainor's participation in FEC matters involving relevant entities and identified no violations, as his participation was outside the one and two-year periods provided in, respectively, 5 CFR § 2635.502 and Executive Order 13770. The review identified 39 matters before the Commission in which the Trump 2016 campaign was a respondent. Commissioner Trainor participated in 37 of the 39 matters involving the Trump 2016 campaign and recused in two. The OIG identified two additional matters involving a Trump-related entity where Commissioner Trainor also recused. However, without Commissioner Trainor's participation, the OIG could not confirm his reasons for recusal, nor could we identify all relevant entities and instances in which he additionally may have been required to recuse to determine whether he complied with the relevant standards.

6. The OIG was unable to obtain all relevant facts and circumstances surrounding Commissioner Trainor's role in the Denton County event due to his non-participation in this investigation. Based on public reporting and other available evidence (including testimony of other participants), we identified no violations of relevant ethical standards, including 52 USC § 30106(a)(3), 5 CFR § 2635.807, 5 CFR § 2635.502(a), and Executive Order 13770. It is understandable that outside observers might question his participation in an event hosted by a political party. However, Commissioners are appointed, in part, on the basis of partisan affiliation (*see* 52 USC § 30106) and frequently speak in public.⁵

7. Moreover, to an outside observer, Commissioner Trainor's appearance at an event hosted by a political party and identified as a member of the "Trump Elections Team" might create an appearance of an ethical violation under 5 CFR Chapter 2635. However, per 5 CFR

⁵ To the extent conduct may violate the Hatch Act, the OIG refers allegations of improper partisan political activity to the Office of Special Counsel, which has authority over such matters. *See* 5 USC § 7321, *et seq.*

§ 2635.101(b)(14), “[w]hether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person ***with knowledge of the relevant facts***” (emphasis added). In this instance, knowledge of the relevant facts (*i.e.*, that the misidentification was an error, that Commissioner Trainor was not responsible for the error, and that Commissioner Trainor did not speak on behalf of the Trump campaign at the event) undermines any appearance of impropriety.

Accordingly, the OIG closed this matter with no recommendations for the Commission or FEC management.

