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February 6, 1998

SENT VIA FAX: 225-7392. HARD COPY VIA MAIL

The Honorable James V. Hansen  
Chairman  
Committee on Standards of Official Conduct  
HT-2, U.S. Capitol Building  
Washington, D.C. 20515

The Honorable Howard E. Berman  
Ranking Democratic Member  
Committee on Standards of Official Conduct  
HT-2, U.S. Capitol Building  
Washington, D.C. 20515

Re: Representative Earl F. Hilliard

Dear Mr. Chairman and Ranking Member:

On December 3 and 10, 1997, *The Hill*, a weekly newspaper with primarily a Capitol Hill circulation, published two articles regarding Rep. Hilliard. The clear intent of the items was to raise questions regarding certain activities of Mr. Hilliard, either during the period of time prior to his being sworn in as a Member of the House of Representatives, or later as a Congressman. The implied objective of the articles was to precipitate an official examination of the matters raised.

*The Hill* was successful in meeting its goals. Less than 3 weeks after the publication of the second article, the Chairman and Ranking Democratic Member sent a letter dated December 29, 1997, to the Congressman seeking his reaction to the myriad of allegations. It is an obvious and unfortunate fact that the Committee's December 29 request provided absolutely no guidance with respect to areas of

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potential Committee interest.<sup>1</sup> This alone establishes that, in hindsight, there was no possible way that any effort to comment upon the articles would have been deemed adequate since he was totally left in the dark as to what matters or allegations were of concern even as to issues already considered and approved by the Committee.

As is discussed more fully below, the issue of responding to unstated, and unknown, questions was exacerbated by the fact that, for all intents and purposes, the articles devoted as much space to making allegations over matters or events which predated Mr. Hilliard's position as a Member, or which had absolutely nothing to do with his official duties and responsibilities, as they did to his official conduct since 1993.

In this light, on January 8, 1998, an effort was undertaken on behalf of Mr. Hilliard to obtain informal guidance from the Committee staff on such obvious issues as: matters of substantive concern, time-frame of interest, and connection with official duties. As the record clearly indicates, the Committee's response to our inquiry was presentation of a multi-paged questionnaire on January 13 with a requested response date of February 6. Staff informed counsel for the Congressman that they would not engage in any discussion regarding the above three issues -- only that they were to provide the fact-gathering questions. Staff said that all matters of procedure and substance were to be directed to the Committee. This was done by letter of January 21, 1998 and, to date, no guidance or any response has been provided by the Committee.

Review of the matters and questions addressed in the Committee's January 13 letter establishes that the Committee has undertaken what would appear to be a number of unprecedented steps. First, the Committee has accepted as a sufficient

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<sup>1</sup> For example, it would be erroneous and simplistic to assume that mere assertions or innuendos about Mr. Hilliard's campaign office being located in a building owned by a company under his control was, per se, evidence of improper conduct or that it constituted a matter necessitating the Congressman's response. Soon after being sworn in as a Member, the Congressman sought the Committee's advice on this matter. In its Advisory Opinion to the Congressman of June 9, 1993, the Committee explicitly stated the arrangement would not be, per se, improper. Thus, the questions in the Committee's January 13, 1998, letter about this specific concern could never have been anticipated, the issue having already been considered and approved by the Committee.

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basis for investigation (9 pages and 80 questions is hardly informal fact-gathering) unverified insinuations and allegations contained in 2 newspaper articles. In this regard, what would be explicitly rejected if submitted by a non-Member as the basis of a complaint -- newspaper articles -- is apparently more than sufficient to precipitate a self-initiated undertaking. Consequently, one is left to conclude that the Committee's investigative efforts will, indeed, be triggered by unverified news reports so long as such articles are not attached to a complaint.<sup>2</sup>

Second, the breadth of matters addressed in the January 13 questionnaire establish what we believe to be a new precedent of the Committee seeking information pre-dating an individual's tenure as a Member of the House. In point of fact, there are numerous requests for information in which the time-frame of stated interest is as of "January 1, 1991". The fact that this matter is of serious concern should come as no surprise to the Committee since it was raised during a telephone conversation with Committee attorney David Laufman on January 8, 1998, was again raised during a meeting with Committee staff attorneys on January 13, 1998, raised in my letter to the Committee of January 21, 1998, reiterated in correspondence dated January 30, 1998, and most recently, alluded to in my letter of February 3, 1998.

As of today -- February 6, 1998 -- absolutely no Committee response, formal or informal, has been provided. Consequently, Congressman Hilliard suffers from the same lack of information and guidance today as existed on December 29, 1997, when the Committee first sought his reaction to the articles. In the face of such silence, including even the absence of any response to a simple request for an extension of the time in which to provide information, or an opportunity to meet with at least the Chairman and Ranking Democratic Member to discuss these matters, it has become necessary to place our views in the record. (Even in this regard, we believe it is unprecedented for a Member, whose reputation and conduct has been called into question on the basis of unverified news reports, not to be provided with the guidance and courtesies which have been extended to numerous Members in the past.)

In our view, there are two fatal flaws inherent in any and all of the requests for information pre-dating January 3, 1993 -- the date on which Mr. Hilliard became a

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<sup>2</sup> See, Ethics Reform Task Force Report, at p. 23, indicating news reports as a basis for self-initiated "investigations." The context and history make clear this is to be a Committee decision and action, not a matter simply left to the Chairman and Ranking Democratic Member.

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Member of the House of Representatives. First, our research establishes that the Committee's explicit policy and practice, as supported in published precedents, has been not to either investigate or to take action with respect to matters pre-dating an individual's status as a Member. Examples of such precedents are readily apparent in both H.Rept. No. 94-1792 (In Re Representative Andrew J. Hinshaw) and H.Rept. No. 104-886, Summary of Activities One Hundred Fourth Congress, page 19, *Representative Mel Reynolds*. In both cases, the Committee did not undertake action with regard to matters of so-called "pre-Member conduct". We also point out that there is no evidence that the Committee undertook official investigative action concerning former Member Walter Tucker. Mr. Tucker was convicted for engaging in illegal activity pre-dating his tenure. Notwithstanding, there is no record of which we are aware indicating Mr. Tucker was subjected to the same degree of inquiry as has been visited upon Mr. Hilliard. (This office represented Congressman Tucker during what would have been the relevant period of Committee investigation.)

Separate and apart from the generic matter of "pre-Member" jurisdiction, the request for information going back to January 1, 1991, is also flawed because it directly violates Committee Rules 16(i) and 19(d). January 1, 1991, was a date which fell within the last days of the 101st Congress. Inasmuch as the Committee's request to Mr. Hilliard was propounded during the 105th Congress, any requests for information dating back to January 1, 1991, exceed the scope of investigative authority under the cited Rules, the so-called 3-Congress statute of limitation unless there has been a majority vote of the Committee.<sup>3</sup>

It would, therefore, appear, given the ascribed informal nature of factfinding being undertaken regarding Mr. Hilliard, that the scope and duration of matters addressed in the January 13 letter contradict established policy, precedent and procedural rules of the Committee -- unless, of course, new precedents have been established investing the Chairman and Ranking Democratic Member with the authority to informally seek information which the Committee formally could not or

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<sup>3</sup> Moreover, we believe that even application of the 3-Congress rule waiver assumes that the individual was, indeed, a Member at all times during the period which is to be the subject of review (Hilliard was not) and there is evidence (not innuendo) such conduct continued into the later time. Even on this specific issue clarification is needed.

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has not under its precedents and rules. Again, there has been no response to our questions in this matter.<sup>4</sup>

Third, and directly related to the issue of investigating pre-Member conduct, is the matter of efforts to investigate conduct that has no relationship to the performance of official duties or responsibilities -- the expressly stated scope of jurisdiction granted to the Committee under House Rule X. In this specific regard, aspects of *The Hill* articles make allegations about matters clearly having no nexus to Mr. Hilliard's congressional responsibilities.<sup>5</sup> Again, no Committee response to our requests for guidance or discussion. Accordingly, we must again respectfully object to all such portions of your January 13 letter which seek information about such matters. This objection is supported by policy and precedent of the Committee. Our review of the public reports of the Committee do not establish any instance in which the Committee utilized either formal or informal investigative efforts to gather information on what has been referred to as unofficial or personal conduct. Consequently, it would appear that yet another new policy and precedent is being

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<sup>4</sup> The same concern applies to those requests for confidential tax information without any affirmative action by a majority of the Committee to investigate. We believe this, too, is unprecedented; i.e., the Chairman and Ranking Member seeking statutorily protected tax materials. Indeed, we understand such materials only to have been provided (and on very few occasions) in Committee-approved investigations, not informal processes such as here involved.

Our confusion even includes whether the current undertaking is proper under Committee Rule 19, as stated in the December 29, 1997 letter to Mr. Hilliard. As you know, Rule 19 speaks to a self-initiated "inquiry", a term defined under Committee Rule 2(c) as a matter handled by an investigative subcommittee, which this is not. Perhaps the reference should have been to Committee Rule 17, although subsection (d) of the Rule indicates fact gathering is to occur in the context "of a complaint or of information offered as a complaint." We, again, are unaware that this is the case or covers newspaper articles. Indeed, during floor consideration of the Ethics Reform Task Force Report, Mr. Cardin stated: "You cannot use speculation or what might be in a newspaper article," regarding adequate bases for complaints triggering Committee review. Cong. Rec. September 18, 1997, H 7549.

<sup>5</sup> See, for example, those questions regarding the relationships between certain organizations and their sources of funding; or insurance company policies for individuals.

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established concerning Mr. Hilliard. If this be the case, we again seek the opportunity to discuss this matter with the Committee in order to ascertain whether our reading of the letter is wrong or that such questions were inadvertent.<sup>6</sup>

We have anticipated the possibility that certain of our views or the results of our analysis are not shared by the Committee or its staff. To this end, and because your January 13 letter raised serious policy and precedent matters for resolution, Mr. Hilliard requested an analysis by the Congressional Research Service ("CRS") on two issues: Are there any Committee precedents establishing that the panel has investigated pre-Member conduct; and are there any precedents establishing that the Committee has investigated and exercised jurisdiction over matters not directly related to the performance of official duties or responsibilities. We understand the CRS to answer both questions in the negative. Hence, if there is something that we or CRS have missed, we need to know.<sup>7</sup>

In view of the foregoing, and while efforts are underway to respond to as much of the January 13 letter as we believe is currently appropriate, we renew our request to meet with you to resolve these serious matters. In so doing, we also must point out that we still await being provided with copies of all correspondence between the Committee and Mr. Hilliard as requested, in writing, on February 3. We wish to again emphasize that such materials are considered critical to responding to certain areas of Committee interest. Thus, any comprehensive submission prompted by your January 13 questionnaire must await receipt of Committee correspondence with the Congressman. (In a telephone conversation with the Committee's Chief Counsel on

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<sup>6</sup> We also assume your question about money having been given to Mr. Hilliard's son is an inadvertent misreading of the December 3, 1997, article. The relevant passage referred to the Congressman's nephew, not his son. While this matter was brought to the Committee staff's attention during the January 13, 1998, meeting, we have not been informed that the error has been corrected or even agreed to as being an inaccurate paraphrase of *The Hill* article.

<sup>7</sup> It is important that, as to overall policy and standards, Chairman Hansen stated during floor debate of the Ethics Task Force Report that,

"As Chairman of the Committee, I intend to operate by the standards I knew then as a member of the Committee when I was its ranking member and my good friend [Mr. Stokes] was a chairman of the Committee. Cong. Rec. September 18, 1997, H 7547.

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February 4, regarding our document request and desire for a meeting, he indicated a Committee response might be provided by February 6, the same date as the deadline for answering your January 13 letter.) In the meantime, we wish to assure you that steps are being taken to obtain necessary documents and materials appropriately responsive to your requests.

Another issue raised by the January 13 letter warrants discussion. In some cases, *The Hill* articles actually allege wrongdoing, for example, inadequate financial disclosure. However in numerous instances the articles make no charge at all. Rather, they leave to innuendo and implication some notion of improper conduct. Often the "allegation" is simply that Congressman Hilliard knew someone or that someone whom the congressman knew obtained some form of financial benefit. If simply knowing someone is the new standard for precipitating even informal fact-gathering by the Committee, then all Members should be placed on notice of the potential to being subjected to the process that has been implemented *vis-a-vis* Mr. Hilliard. Even the articles fall short of suggesting Mr. Hilliard derived benefit from such transactions.<sup>6</sup> Yet, the Committee has sought to ask questions about even these matters in which there is no charge or allegation. This, too, is a matter of concern which we believe is necessary to be addressed prior to submitting information.

Even as to matters not implicating the issues discussed above, not all materials have yet been assembled. (The details of documents needed were only known on January 13). To this end, we again renew a request for extension in the context of obtaining clarification of scope and jurisdiction, as discussed above. Even if the spectrum of Committee questions were reduced consistent with our analysis of controlling policy and precedents, we believe it will take at least an additional several weeks to obtain relevant documents.

Congressman Hilliard will fully cooperate with the Committee, however, such cooperation is predicated upon his having a reasonable understanding of the procedures and policies that will be applied to even an informal review of his actions. Currently, this is not the case despite our best and repeated efforts to obtain such information.

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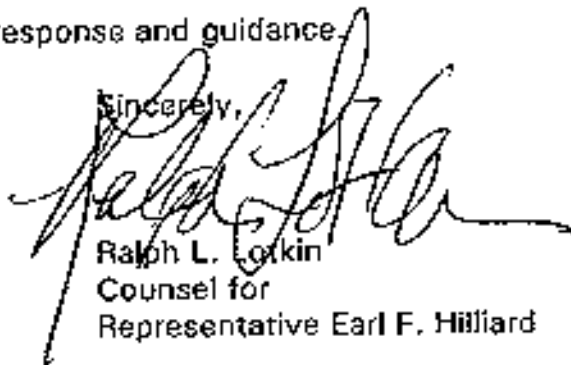
<sup>6</sup> See, for example, the December 10, 1997 article reference to a congressional office lease with RS & Associates. Even *The Hill* did not assert Representative Hilliard benefitted from the lease, yet the January 13, 1998, letter asks several questions about this issue.

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Representative Hilliard expects to be treated no better nor any worse than other Members whose actions have been the subject of negative unverified news reports and Committee analysis. For this reason, the Congressman is available to meet with you at your earliest convenience to address all concerns and to facilitate a prompt and expeditious resolution of all matters properly before the Committee.

We look forward to your response and guidance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph L. Lotkin", written over the typed name and title.

Ralph L. Lotkin  
Counsel for  
Representative Earl F. Hilliard

cc: Members of the Committee  
on Standards of Official Conduct