

FILED

MAY 11 2007

**TRACY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE ON THE JUDICIARY)
)
)

United States House of Representatives
Washington, D.C. 20515,

Applicant.

Case: 1:07-mc-00198
Assigned To : Hogan, Thomas F.
Assign. Date : 5/11/2007
Description: Application

**APPLICATION OF THE COMMITTEE ON THE JUDICIARY
OF THE U.S. HOUSE OF REPRESENTATIVES
FOR AN ORDER IMMUNIZING THE TESTIMONY OF,
AND OTHER INFORMATION PROVIDED BY, MONICA GOODLING**

Pursuant to 18 U.S.C. §§ 6002 and 6005, the Committee on the Judiciary of the U.S. House of Representatives ("the Committee") respectfully applies for an order immunizing from use in prosecutions the testimony of, and other information provided by, Monica Goodling at proceedings before or ancillary to the Committee (including its subcommittees).

1. Rule X of the Rules of the House of Representatives (110th Cong.) establishes the Committee and vests it with broad oversight responsibility over various subjects, including the "judiciary and judicial proceedings, civil and criminal," "[c]riminal law enforcement," and "[f]ederal courts and judges, and local courts in the Territories and possessions," as well as general oversight over "the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs within its jurisdiction." Rule X(1)(k); Rule X(2)(b)(1)(B). Pursuant to House Rule XI, the Committee has established five subcommittees to assist in carrying out the functions of the Committee subject to its authority and direction. Committee Rule V. House Rule XI authorizes the Committee and its subcommittees to conduct investigations, hold hearings and require the attendance of witnesses and the production of documents in connection with matters within the Committee's jurisdiction.

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2. Pursuant to its oversight and investigatory authority, the Committee is in the process of conducting proceedings to receive testimony and other information regarding the circumstances surrounding recent terminations of certain United States Attorneys, representations to Congress regarding those circumstances, and related matters.

3. The Committee expects to call Monica Goodling to testify and provide other information at proceedings before or ancillary to the Committee (including its subcommittees), and anticipates that, if called, Monica Goodling would invoke her constitutional privilege against self-incrimination.¹

4. On April 25, 2007, by a vote of 32-6 in favor (being at least two-thirds of the Committee's 40 members), the Committee adopted a resolution directing the House Office of General Counsel to apply for an order immunizing from use in prosecutions the testimony of, and other information provided by, Monica Goodling at proceedings before or ancillary to the Committee (including its subcommittees). A copy of the Committee's resolution is attached as Exhibit A.

5. By letter hand-delivered April 27, 2007, the Chairman of the Committee notified the Attorney General pursuant to 18 U.S.C. § 6005(b)(3) of the Committee's intention to request an immunity order for Monica Goodling. A copy of the April 27, 2007 letter is attached as Exhibit B.

6. By letter hand-delivered May 7, 2007, the Department of Justice Inspector General and Office of Professional Responsibility notified the Committee – on behalf of the Department of

¹ Ms. Goodling has advised the Committee, in a sworn declaration attached to a letter from her counsel dated March 30, 2007, that if called, she would invoke her constitutional privilege against self-incrimination.

Justice – that the Department of Justice does not object to the proposed immunity order, and that the Department of Justice waives its authority to file a deferral application under 18 U.S.C. § 6005(c). A copy of the May 7, 2007 letter is attached as Exhibit C.

Accordingly, the Committee respectfully requests that the Court issue the attached order immunizing from use in prosecutions the testimony of, and other information provided by, Monica Goodling at proceedings before or ancillary to the Committee (including its subcommittees).

Respectfully submitted,


GERALDINE R. GENNET
(DC Bar 213439)

General Counsel

KERRY W. KIRCHER

(DC Bar 386816)

Deputy General Counsel



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202/225-9700

Counsel for the Committee on

the Judiciary,

U.S. House of Representatives

May 11, 2007

² Attorneys in the Office of General Counsel for the U.S. House of Representatives are “entitled, for the purpose of performing the counsel’s functions, to enter an appearance in any proceeding before any court of the United States . . . without compliance with any requirement for admission to practice before such court” 2 U.S.C. § 130f(a).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE ON THE JUDICIARY)
)
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United States House of Representatives)
Washington, D.C. 20515,)
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Applicant.)
_____)

Misc. No. _____

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THE APPLICATION OF THE COMMITTEE ON THE JUDICIARY
OF THE U.S. HOUSE OF REPRESENTATIVES
FOR AN ORDER IMMUNIZING THE TESTIMONY OF,
AND OTHER INFORMATION PROVIDED BY, MONICA GOODLING**

The Committee on the Judiciary of the U.S. House of Representatives ("the Committee")

has applied to this Court for an immunity order, pursuant to 18 U.S.C. §§ 6002 and 6005.

Section 6005 provides, in pertinent part, that:

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to . . . any committee, or any subcommittee of either House [of Congress] . . . a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the . . . committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title.

(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that --

....

(2) in the case of a proceeding before or ancillary to a committee or a subcommittee of either House of Congress . . . the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

This statute provides the mechanism by which a witness before a congressional committee or subcommittee receives “use immunity” for providing testimony or other information. The immunized witness remains subject to prosecution for the transactions about which he or she testifies if the government sustains the burden of proving at trial that it did not use the immunized testimony or its fruits in the prosecution. *Kastigar v. United States*, 406 U.S. 441, 459-62 (1972). Because the Court’s inquiry on an application for an immunity order is narrow and its tests are mechanical, the application may be decided *ex parte* without a hearing. *Ryan v. Commissioner of Internal Revenue*, 568 F.2d 531, 540 (7th Cir. 1977), *cert. denied*, 439 U.S. 820 (1978).³

Section 6005 sets out the two requirements for an immunity order, both of which have been satisfied here. First, “the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee.” 18 U.S.C. § 6005(b)(2). The Committee’s April 25, 2007 resolution satisfies this requirement. Exhibit A to the Application.

Second, “ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.” 18 U.S.C. § 6005(b)(3). On April 27, 2007, the Chairman of the Committee notified the Attorney General of the Committee’s intention to request an immunity order for Monica Goodling.

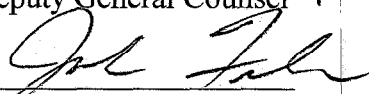
³ The Committee may apply for an immunity order prior to a witness’s invocation of her fifth amendment privilege at a Committee proceeding. *In re Application of United States Senate Permanent Subcommittee on Investigations (Cammisano)*, 655 F.2d 1232, 1236-38 (D.C. Cir.), *cert. denied*, 454 U.S. 1084 (1981).

Exhibit B to the Application.⁴

Accordingly, it is appropriate for the Court to issue an order immunizing from use in prosecutions the testimony of, and other information provided by, Monica Goodling at proceedings before or ancillary to the Committee (including its Subcommittees).

Respectfully submitted,

GERALDINE R. GENNET
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KERRY W. KIRCHER
(DC Bar 386816)
Deputy General Counsel


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Counsel for the Committee on
the Judiciary,
U.S. House of Representatives

May 11, 2007

⁴ The Attorney General may apply to the court for deferral of the issuance of an immunity order for a period of no more than 20 days from the date of a committee's request for an order. 18 U.S.C. § 6005(c). Here, the Department of Justice has informed the Committee that it does not intend to seek deferral of issuance of the order. Exhibit C to the Application.

NOTICE OF DELIVERY

On May 11, 2007, I caused to be delivered one courtesy copy each of the foregoing documents: (1) Application of the Committee on the Judiciary of the U.S. House of Representatives Motion for an Order Immunizing the Testimony of, and Other Information Provided by, Monica Goodling; (2) Memorandum of Points and Authorities in Support of the Application of the Committee on the Judiciary of the U.S. House of Representatives Motion for an Order Immunizing the Testimony of, and Other Information Provided by, Monica Goodling; and (3) Proposed Order by hand-delivery on the U.S. Department of Justice



John Filamor