

March 2, 2018

David J. Apol
Acting Director
Office of Government Ethics
Suite 500
1201 New York Ave., N.W.
Washington, D.C. 20005

Re: Disclosure of Essential Consultants LLC on President Donald J. Trump's Public
Financial Disclosure Report

Dear Acting Director Apol,

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Office of Government Ethics ("OGE") exercise its oversight responsibilities to determine whether President Donald J. Trump held a beneficial interest in a limited liability company ("LLC") that was used by his personal lawyer to make a surreptitious payment to a third party in the weeks before the 2016 presidential election. If he did, the LLC should have been reported as an "interest in property" on the public financial disclosure report ("OGE 278") President Trump filed with OGE in June 2017.¹

President Trump's personal lawyer Michael D. Cohen recently issued a statement in which he acknowledged his personal involvement in a \$130,000 payment to adult film actress Stephanie Clifford, whose stage name is Stormy Daniels.² The payment reportedly was made using a bank account linked to Delaware limited liability company Essential Consultants LLC, which was created by Mr. Cohen in October 2016.³

Mr. Cohen characterized the payment as a "private transaction" in which he used his "own personal funds to facilitate" the payment to Ms. Clifford.⁴ Mr. Cohen indicated that

¹ See Donald J. Trump, Public Financial Disclosure Report, June 14, 2017 ("Trump OGE 278e"), available at <https://oge.app.box.com/s/kz4qvbdbsbcrzq16msuo4zmth6rerh1c>.

² Maggie Haberman, Michael D. Cohen, Trump's Longtime Lawyer Says He Paid Stormy Daniels Out of his Own Pocket, *New York Times*, Feb. 13, 2018, available at <https://www.nytimes.com/2018/02/13/us/politics/stormy-daniels-michael-cohen-trump.html>.

³ Joe Palazzolo and Michael Rothfeld, Trump Lawyer Used Private Company, Pseudonyms to Pay Porn Star 'Stormy Daniels', *Wall Street Journal*, Jan. 18, 2018, available at <https://www.wsj.com/articles/trump-lawyer-used-private-company-pseudonyms-to-pay-porn-star-stormy-daniels-1516315731>.

⁴ Haberman, *New York Times*, Feb. 13, 2018; Tarini Parti, Full statement from Trump lawyer Michael Cohen on his payment to Stormy Daniels, *BuzzFeed*, Feb. 13, 2018, available at <https://twitter.com/tparti/status/963624434140614656>.

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“neither the Trump organization nor the Trump campaign” was a “party to the transaction” and “neither reimbursed me for the payment, either directly or indirectly.”⁵ Notably, he did not rule out the use of President Trump’s funds to reimburse him or President Trump’s involvement in the matter, and concluded his statement by saying, “I will always protect Mr. Trump.”⁶

Mr. Cohen issued his statement in response to a complaint filed by Common Cause with the Federal Election Commission (“FEC”) alleging that the \$130,000 payment made in the weeks before the 2016 presidential election constituted an “in-kind contribution” that exceeded campaign contribution limits and was not properly reported.⁷ The FEC complaint alleges that there is reason to believe that the Trump presidential campaign accepted the \$130,000 payment to Ms. Clifford as an in-kind contribution from the Trump Organization or “John Doe” as part of an agreement “by which Ms. Clifford would be precluded from publicly discussing alleged sexual encounters between her and Mr. Trump” that purportedly occurred in 2006.⁸

If, as Mr. Cohen contends, the payment does not constitute an “in-kind contribution,” the payment raises questions about whether President Trump has met his financial disclosure reporting obligations. As a public filer, President Trump is required by the Ethics in Government Act of 1978 to report the value of “any interest in property held during the preceding calendar year in a trade or business or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year.”⁹ Failure to knowingly and willfully report information required to be reported may subject the filer to civil penalties not to exceed \$50,000 and possible criminal liability.¹⁰

Despite Mr. Cohen’s attempt to claim that only he was involved with Essential Consultants LLC and the payment to Ms. Clifford, the true facts about the transaction and the LLC’s ownership remain unknown. Some public information, however, indicates President Trump may have been involved. Mr. Cohen’s statement that he was “protect[ing] Mr. Trump” suggests that he was acting on behalf of President Trump when he made the payment to Ms. Clifford.¹¹ Mr. Cohen also did not actually say he used his personal funds to “make” the payment, but only to “facilitate” it, implying that a third party was involved. Mr. Cohen’s use of Essential Consultants LLC’s bank account to make the payment, which allowed greater secrecy, further raises the possibility that someone else may have held a beneficial interest in the LLC and put up the funds for the payment. By using a Delaware-based LLC to make the

⁵ *Id.*

⁶ *Id.*

⁷ *Common Cause and Paul S. Ryan v. Donald J. Trump for President, Inc., The Trump Organization, and John Doe*, Complaint, MUR ____ (Jan. 22, 2018), available at <http://www.commoncause.org/policy-and-litigation/litigation/fec-complaint-trump-january-22-2018-no-cover.pdf>.

⁸ *Id.*, ¶ 12.

⁹ 5 U.S.C. app. § 102(a)(3).

¹⁰ 5 U.S.C. app. § 104(a).

¹¹ Parti, *BuzzFeed*, Feb. 13, 2018.

payment, which would shield the identity of its beneficial owners, Mr. Cohen may have acted to facilitate a distribution from the LLC that was attributable to someone else as a beneficial owner. While we don't know who else may have been a beneficial owner and contributed funds, President Trump, as the person who benefitted from the transaction, seems like a logical possibility. In addition, had Mr. Cohen in fact used \$130,000 of his own monies to pay Ms. Clifford in connection with this "private transaction," it would raise the same concerns about possible campaign finance violations that are the subject of the FEC complaint, and his denial of those violations raises the possibility that a different approach, which more directly involved the President, had been used.

President Trump is expected to be held to the highest standards of ethical conduct. Based on newly-reported information about the \$130,000 payment, it is incumbent upon OGE to determine whether President Trump included all reportable information on his OGE 278 report when he filed it in June 2017. It will be important to determine whether President Trump held a beneficial interest in Essential Consultants as of December 31, 2016, and if so whether the company held assets or made payments that should have been disclosed.

If under these circumstances President Trump held a beneficial interest in Essential Consultants LLC at the end of 2016, it should have been disclosed on his OGE 278 report based on the value of its assets, yet it was not.¹² The nondisclosure agreement alone is worth at least \$130,000, and possibly much more based on recent media interest. Very little is known about the other business activities of Essential Consultants LLC except that Mr. Cohen has used it for purposes of a consulting arrangement he entered into with "4C Health Solutions, a Midlothian, Va.-based company that focuses on detecting fraudulent health-care billings" and for which he serves on the board of directors.¹³

The Director of OGE is charged with monitoring and investigating compliance with public financial disclosure reporting obligations.¹⁴ Since Essential Consultants LLC was the vehicle used by President Trump's personal lawyer to make the \$130,000 payment in the weeks before the election, and use of Mr. Cohen's own funds may be a violation of campaign finance law, it is incumbent upon OGE to make the necessary inquiries to determine whether President Trump held a beneficial interest in Essential Consultants LLC that would have required him to disclose it as an asset on his OGE 278 report. If so, President

¹² Trump OGE 278e.

¹³ Joe Palazzolo and Michael Rothfeld, Trump Lawyer Used Private Company, Pseudonyms to Pay Porn Star 'Stormy Daniels', *Wall Street Journal*, Jan. 18, 2018, available at <https://www.wsj.com/articles/trump-lawyer-used-private-company-pseudonyms-to-pay-porn-star-stormy-daniels-1516315731>.

¹⁴ 5 U.S.C. app. § 402(b)(3).

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Trump should amend the report to reflect this omission and OGE should consider whether a referral to the Department of Justice would be appropriate.¹⁵

Sincerely,



Noah Bookbinder
Executive Director



Ambassador (Ret.) Norman L. Eisen
Chair



Richard Painter
Vice Chair

cc: The Honorable Jeff Sessions
Attorney General

¹⁵ See 5 U.S.C. app. § 104(a).