

# CORD

## Activities and Summary Report on the House Committee on Standards of Official Conduct: 108th Congress

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## Union Calendar No. 491

108TH CONGRESS }  
*2d Session*

HOUSE OF REPRESENTATIVES

{ REPORT  
108-806

### SUMMARY OF ACTIVITIES ONE HUNDRED EIGHTH CONGRESS

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#### A REPORT

OF THE

#### COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT HOUSE OF REPRESENTATIVES



JANUARY 3, 2005.—Committed to the Committee of the Whole House on  
the State of the Union and ordered to be printed

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**LETTER OF SUBMITTAL**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,  
*Washington, DC, January 3, 2005.*

Hon. JEFF TRANDAHL,  
*Clerk, House of Representatives,*  
*Washington, DC.*

DEAR MR. TRANDAHL: Pursuant to clause 1(d) of Rule XI of the Rules of the House of Representatives, we hereby submit to the House a Report on the Activities of the Committee on Standards of Official Conduct for the 108th Congress.

Sincerely,

JOEL HEFLEY,  
*Chairman.*  
ALAN B. MOLLOHAN,  
*Ranking Minority Member.*



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## SUMMARY OF ACTIVITIES

### ONE HUNDRED EIGHTH CONGRESS

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Mr. HEFLEY and Mr. MOLLOHAN, from the Committee on Standards of Official Conduct, submitted the following

## R E P O R T

### I. INTRODUCTION

House Rule XI, Clause 1(d), requires each committee to submit to the House, not later than January 2 of each odd-numbered year, a report on the activities of that committee under that rule and House Rule X during the Congress ending on January 3 of that year.

The jurisdiction of the Committee on Standards of Official Conduct (“Committee”) is defined in Clauses 1(p) and 11(g)(4) of House Rule X, Clause 3 of House Rule XI, and Clause 5(f) of House Rule XXV. The text of those provisions is as follows:

#### *Rule X, Clause 1(p)*

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4 . . .

\* \* \*

(p) Committee on Standards of Official Conduct.

### THE CODE OF OFFICIAL CONDUCT

#### *Rule X, Clause 11(g)(4)*

(4) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of

the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

***Rule XI, Clause 3***

***Committee on Standards of Official Conduct***

3. (a) The Committee on Standards of Official Conduct has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A letter of reproof or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, Delegate, Resident Commissioner, officer, or employee in the performance of his duties or the discharge of his responsibilities. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of his duties or the discharge of his responsibilities that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned, the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIII.

(b)(1)(A) Unless approved by an affirmative vote of a majority of its members, the Committee on Standards of Official Conduct may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B)(i) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chairman and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chairman and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or either of them has placed on the agenda of the committee the issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member, Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner; or

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that he believes the information is submitted in good faith and warrants the review and consideration of the committee.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Standards of Official Conduct, the chairman and ranking minority member shall establish jointly an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chairman or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or standard of conduct that was not in effect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines

that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

(5) A member of the committee may disqualify himself from participating in an investigation of the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chairman shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1978 [on financial disclosure and the limitations on outside earned income and outside employment], in sections 7342 [the Foreign Gifts and Decorations Act], 7351 [on gifts to superiors], and 7353 [on gifts] of title 5, United States Code, and in clause 11(g)(4) of rule X.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Standards of Official Conduct or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Standards of Official Conduct shall be held in open session unless the committee or subcommittee, in open session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Standards of Official Conduct, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the

committee, the following oath (or affirmation) shall be executed:

“I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Standards of Official Conduct, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules.”

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated by the Committee on Standards of Official Conduct and appropriate action shall be taken.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Standards of Official Conduct, the committee may take such action as it, by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Standards of Official Conduct.

#### *Committee agendas*

(f) The committee shall adopt rules providing that the chairman shall establish the agenda for meetings of the committee, but shall not preclude the ranking minority member from placing any item on the agenda.

#### *Committee staff*

(g)(1) The committee shall adopt rules providing that—

(A) the staff be assembled and retained as a professional, nonpartisan staff;

(B) each member of the staff shall be professional and demonstrably qualified for the position for which he is hired;

(C) the staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner;

(D) no member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election;

(E) no member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the committee without specific prior approval from the chairman and ranking minority member; and

(F) no member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the committee, any information, document, or other material that is confidential, derived from executive session, or classified and that is obtained during the course of employment with the committee.

(2) Only subdivisions (C), (E), and (F) of subparagraph (1) shall apply to shared staff.

(3)(A) All staff members shall be appointed by an affirmative vote of a majority of the members of the committee. Such vote shall occur at the first meeting of the membership of the committee during each Congress and as necessary during the Congress.

(B) Subject to the approval of the Committee on House Administration, the committee may retain counsel not employed by the House of Representatives whenever the committee determines, by an affirmative vote of a majority of the members of the committee, that the retention of outside counsel is necessary and appropriate.

(C) If the committee determines that it is necessary to retain staff members for the purpose of a particular investigation or other proceeding, then such staff shall be retained only for the duration of that particular investigation or proceeding.

(D) Outside counsel may be dismissed before the end of a contract between the committee and such counsel only by an affirmative vote of a majority of the members of the committee.

(4) In addition to any other staff provided for by law, rule, or other authority, with respect to the committee, the chairman and ranking minority member each may appoint one individual as a shared staff member from his or her personal staff to perform service for the committee. Such shared staff may assist the chairman or ranking minority member on any subcommittee on which he serves.

*Meetings and hearings*

(h)(1) The committee shall adopt rules providing that—

(A) all meetings or hearings of the committee or any subcommittee thereof, other than any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee, shall occur in executive session unless the committee or subcommittee by an affirmative vote of a majority of its members opens the meeting or hearing to the public; and

(B) any hearing held by an adjudicatory subcommittee or any sanction hearing held by the committee shall be open to the public unless the committee or subcommittee by an affirmative vote of a majority of its members closes the hearing to the public.

*Public disclosure*

(i) The committee shall adopt rules providing that, unless otherwise determined by a vote of the committee, only the chairman or ranking minority member, after consultation with each other, may make public statements regarding matters before the committee or any subcommittee thereof.

*Requirements to constitute a complaint*

(j) The committee shall adopt rules regarding complaints to provide that whenever information offered as a complaint is submitted to the committee, the chairman and

ranking minority member shall have 14 calendar days or five legislative days, whichever is sooner, to determine whether the information meets the requirements of the rules of the committee for what constitutes a complaint.

*Duties of chairman and ranking minority member regarding properly filed complaints*

(k)(1) The committee shall adopt rules providing that whenever the chairman and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, they shall have 45 calendar days or five legislative days, whichever is later, after that determination (unless the committee by an affirmative vote of a majority of its members votes otherwise) to—

(A) recommend to the committee that it dispose of the complaint, or any portion thereof, in any manner that does not require action by the House, which may include dismissal of the complaint or resolution of the complaint by a letter to the Member, officer, or employee of the House against whom the complaint is made;

(B) establish an investigative subcommittee; or

(C) request that the committee extend the applicable 45-calendar day or five-legislative day period by one additional 45-calendar day period when they determine more time is necessary in order to make a recommendation under subdivision (A).

(2) The committee shall adopt rules providing that if the chairman and ranking minority member jointly determine that information submitted to the committee meets the requirements of the rules of the committee for what constitutes a complaint, and the complaint is not disposed of within the applicable time periods under subparagraph (1), then they shall establish an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if, at any time during those periods, either the chairman or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

*Duties of chairman and ranking minority member regarding information not constituting a complaint*

(1) The committee shall adopt rules providing that whenever the chairman and ranking minority member jointly determine that information submitted to the committee does not meet the requirements of the rules of the committee for what constitutes a complaint, they may—

(1) return the information to the complainant with a statement that it fails to meet the requirements of the rules of the committee for what constitutes a complaint; or

(2) recommend to the committee that it authorize the establishment of an investigative subcommittee.

*Investigative and adjudicatory subcommittees*

(m) The committee shall adopt rules providing that—

(1)(A) an investigative subcommittee shall be composed of four Members (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee;

(B) an adjudicatory subcommittee shall be composed of the members of the committee who did not serve on the pertinent investigative subcommittee (with equal representation from the majority and minority parties) whenever such a subcommittee is established pursuant to the rules of the committee; and

(C) notwithstanding any other provision of this clause, the chairman and ranking minority member of the committee may consult with an investigative subcommittee either on their own initiative or on the initiative of the subcommittee, shall have access to information before a subcommittee with which they so consult, and shall not thereby be precluded from serving as full, voting members of any adjudicatory subcommittee;

(2) at the time of appointment, the chairman shall designate one member of a subcommittee to serve as chairman and the ranking minority member shall designate one member of the subcommittee to serve as the ranking minority member; and

(3) the chairman and ranking minority member of the committee may serve as members of an investigative subcommittee, but may not serve as non-voting, ex officio members.

*Standard of proof for adoption of statement of alleged violation*

(n) The committee shall adopt rules to provide that an investigative subcommittee may adopt a statement of alleged violation only if it determines by an affirmative vote of a majority of the members of the subcommittee that there is substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member, officer, or employee of the House of Representatives, has occurred.

*Subcommittee powers*

(o)(1) The committee shall adopt rules providing that an investigative subcommittee or an adjudicatory subcommittee may authorize and issue subpoenas only when authorized by an affirmative vote of a majority of the members of the subcommittee.

(2) The committee shall adopt rules providing that an investigative subcommittee may, upon an affirmative vote of a majority of its members, expand the scope of its inves-

tigation approved by an affirmative vote of a majority of the members of the committee.

(3) The committee shall adopt rules to provide that—

(A) an investigative subcommittee may, upon an affirmative vote of a majority of its members, amend its statement of alleged violation anytime before the statement of alleged violation is transmitted to the committee; and

(B) if an investigative subcommittee amends its statement of alleged violation, the respondent shall be notified in writing and shall have 30 calendar days from the date of that notification to file an answer to the amended statement of alleged violation.

*Due process rights of respondents*

(p) The committee shall adopt rules to provide that—

(1) not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a statement of alleged violation, the subcommittee shall provide the respondent with a copy of the statement of alleged violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness; but if such evidence is withheld, the subcommittee shall inform the respondent that evidence is being withheld and of the count to which such evidence relates;

(2) neither the respondent nor his counsel shall, directly or indirectly, contact the subcommittee or any member thereof during the period of time set forth in paragraph (1) except for the sole purpose of settlement discussions where counsel for the respondent and the subcommittee are present;

(3) if, at any time after the issuance of a statement of alleged violation, the committee or any subcommittee thereof determines that it intends to use evidence not provided to a respondent under paragraph (1) to prove the charges contained in the statement of alleged violation (or any amendment thereof), such evidence shall be made immediately available to the respondent, and it may be used in any further proceeding under the rules of the committee;

(4) evidence provided pursuant to paragraph (1) or (3) shall be made available to the respondent and his or her counsel only after each agrees, in writing, that no document, information, or other materials obtained pursuant to that paragraph shall be made public until—

(A) such time as a statement of alleged violation is made public by the committee if the respondent has waived the adjudicatory hearing; or

(B) the commencement of an adjudicatory hearing if the respondent has not waived an adjudicatory hearing; but the failure of respondent and his counsel to so agree in

writing, and their consequent failure to receive the evidence, shall not preclude the issuance of a statement of alleged violation at the end of the period referred to in paragraph (1);

(5) a respondent shall receive written notice whenever—

(A) the chairman and ranking minority member determine that information the committee has received constitutes a complaint;

(B) a complaint or allegation is transmitted to an investigative subcommittee;

(C) an investigative subcommittee votes to authorize its first subpoena or to take testimony under oath, whichever occurs first; or

(D) an investigative subcommittee votes to expand the scope of its investigation;

(6) whenever an investigative subcommittee adopts a statement of alleged violation and a respondent enters into an agreement with that subcommittee to settle a complaint on which that statement is based, that agreement, unless the respondent requests otherwise, shall be in writing and signed by the respondent and respondent's counsel, the chairman and ranking minority member of the subcommittee, and the outside counsel, if any;

(7) statements or information derived solely from a respondent or his counsel during any settlement discussions between the committee or a subcommittee thereof and the respondent shall not be included in any report of the subcommittee or the committee or otherwise publicly disclosed without the consent of the respondent; and

(8) whenever a motion to establish an investigative subcommittee does not prevail, the committee shall promptly send a letter to the respondent informing him of such vote.

*Committee reporting requirements*

(q) The committee shall adopt rules to provide that—

(1) whenever an investigative subcommittee does not adopt a statement of alleged violation and transmits a report to that effect to the committee, the committee may by an affirmative vote of a majority of its members transmit such report to the House of Representatives;

(2) whenever an investigative subcommittee adopts a statement of alleged violation, the respondent admits to the violations set forth in such statement, the respondent waives his or her right to an adjudicatory hearing, and the respondent's waiver is approved by the committee—

(A) the subcommittee shall prepare a report for transmittal to the committee, a final draft of which shall be provided to the respondent not less than 15 calendar days before the subcommittee votes on whether to adopt the report;

(B) the respondent may submit views in writing regarding the final draft to the subcommittee within seven calendar days of receipt of that draft;

(C) the subcommittee shall transmit a report to the committee regarding the statement of alleged violation to—

gether with any views submitted by the respondent pursuant to subdivision (B), and the committee shall make the report together with the respondent's views available to the public before the commencement of any sanction hearing; and

(D) the committee shall by an affirmative vote of a majority of its members issue a report and transmit such report to the House of Representatives, together with the respondent's views previously submitted pursuant to subdivision (B) and any additional views respondent may submit for attachment to the final report; and

(3) members of the committee shall have not less than 72 hours to review any report transmitted to the committee by an investigative subcommittee before both the commencement of a sanction hearing and the committee vote on whether to adopt the report.

***House Rule XXV, Clause 5(f)***

(f) All the provisions of this clause [the gift rule] shall be interpreted and enforced solely by the Committee on Standards of Official Conduct. The Committee on Standards of Official Conduct is authorized to issue guidance on any matter contained in this clause.

Paragraphs (f) through (q) of Clause 3 of House Rule XI were added in the 108th Congress, and they codify certain provisions that had been adopted pursuant to the Report of the Ethics Reform Task Force of 1997 and had in prior Congresses been set out in separate orders adopted by the House.

In addition, a number of provisions of statutory law confer authority on the Committee. Specifically, for purposes of the statutes on gifts to Federal employees (5 U.S.C. § 7353) and gifts to superiors (5 U.S.C. § 7351), both the Committee and the House of Representatives are the "supervising ethics office" of House Members, officers and employees. In addition, as discussed further in Part III below, for House Members and staff, the Committee is both the "supervising ethics office" with regard to financial disclosure and the "employing agency" for certain purposes under the Foreign Gifts and Decorations Act. Finally, the outside employment and earned income limitations are administered by the Committee with respect to House Members and staff (5 U.S.C. app. 4 § 503(1)(A)).

**II. ADVICE AND EDUCATION**

Pursuant to a provision of the Ethics Reform Act of 1989 (2 U.S.C. § 29d(i)), the Committee maintains an Office of Advice and Education, which is staffed as directed by the Committee's Chairman and Ranking Minority Member. Under the statute, the primary responsibilities of the Office include the following:

- Providing information and guidance to House Members, officers and employees on the laws, rules and other standards of conduct applicable to them in their official capacities, including the interpretations and advisory opinions issued by the Committee;
- Drafting responses to specific advisory opinion requests received from House Members and staff, and submitting them to

the Chairman and Ranking Minority Member for review and approval;

- Drafting advisory memoranda on the ethics rules for general distribution to House Members and staff, and submitting them to the Chairman and Ranking Member, or the full Committee, for review and approval; and
- Developing and carrying out periodic educational briefings for Members and staff.

The duties of the Office of Advice and Education are also addressed in Committee Rule 3, and in addition that rule sets out requirements and procedures for the issuance of Committee advisory opinions.

As an inducement to Members and staff to seek Committee advice whenever they have any uncertainty on the applicable laws, rules or standards, statutory law (2 U.S.C. § 29d(i)(4)) provides that no information provided to the Committee by a Member or staff person when seeking advice on prospective conduct may be used as a basis for initiating a Committee investigation, if the individual acts in accordance with the Committee's written advice. In the same vein, Committee Rule 3(j) provides that the Committee may take no adverse action in regard to any conduct that has been undertaken in reliance on a written opinion of the Committee if the conduct conforms to the specific facts addressed in the opinion.

A further inducement for Members and staff to seek Committee guidance is that under Committee Rule 3(i), the Committee will keep confidential any request for advice from a Member, officer or employee, as well as any response to such a request. In addition, it is the Committee's understanding that courts will consider the good faith reliance of a House Member, officer or employee on Committee advice as a defense to any Justice Department prosecution regarding the particular conduct.

The Committee believes that a broad, active program for advice and education is an extremely important means for attaining understanding of, and compliance with, the ethics rules. The specifics of the Committee's efforts in the areas of publications, briefings, and advisory opinion letters during the 108th Congress are set forth below. In addition, on practically a daily basis Committee staff attorneys provided informal advice in response to inquiries received from Members, staff persons and others in telephone calls and e-mails directed to the Committee office, and in meetings.

#### PUBLICATIONS

The Committee's major publications are the House Ethics Manual and two more recently issued booklets that update portions of the Manual. One of the booklets, Rules of the U.S. House of Representatives on Gifts and Travel (issued in April 2000), provides a detailed explanation of gift and travel rules applicable to House Members, officers and employees. The other booklet, Laws, Rules and Standards of Conduct on Campaign Activity (issued in December 2001), provides guidance for House Members, officers and employees when they engage in campaign or political activity. These two booklets supersede Chapters 2 and 8, respectively, of the 1992 House Ethics Manual.

The Committee updates and expands upon the materials in the Manual and the booklets, as well as highlights matters of par-

ticular concern, through the issuance of advisory memoranda and letters to all Members and staff. The letters and memoranda issued during the 108th Congress were as follows:

- Salary Levels at which the Outside Earned Income Limitation, the Outside Employment Limitations, the Financial Disclosure Requirement, and the Post-Employment Restrictions Apply for Calendar Year 2003 (January 16, 2003),
- Recent Gift Rule Amendments (April 11, 2003),
- Reminders on the Travel Rules (October 30, 2003),
- Letter on Medical Practice by House Members and Senior Staff (December 8, 2003),
- Laws, Rules and Standards Governing Campaign Activity (December 8, 2003),
- Dear Colleague from the Chairman and Ranking Minority Member regarding the activities and practices of the Committee on Standards of Official Conduct (March 11, 2004),
- Salary Levels at which the Outside Earned Income Limitation, the Outside Employment Limitations, the Financial Disclosure Requirement, and the Post-Employment Restrictions Apply for Calendar Year 2004 (March 17, 2004),
- National Political Conventions (May 13, 2004),
- Rules and Standards Relating to Member and Staff Activities at the National Political Conventions (June 17, 2004),
- Campaign Work by Congressional Staff Members (June 22, 2004),
- Post-Employment and Related Restrictions for Members and Officers (November 18, 2004),
- Post-Employment and Related Restrictions for Staff (November 18, 2004), and
- Member Swearing-in and Inauguration Day Receptions, and Attendance at Inaugural-Related Events (December 7, 2004).

The advisory memorandum of April 11, 2003, addressed two amendments to the gift rule (House Rule XXV, clause 5) that were made at the beginning of the 108th Congress: one on perishable food sent to House offices for staff, and the other on Member or staff travel to charity events. The purpose of the memorandum was to advise Members and staff of the many considerations that apply to the acceptance of a gift under either of these new provisions.

In addition to the advisory memoranda listed above, the Committee issued updated versions of its summary memorandum, Highlights of the House Ethics Rules, in January 2003 and March 2004. In 2004, the Committee also issued a historical summary chart of ethics proceedings in the House. Copies of all Committee publications are available from the Committee office, and their text is posted on the Committee's Web site.

#### BRIEFINGS

As part of its outreach and educational efforts during the 108th Congress, the Committee conducted numerous briefings for House Members and staff on the ethics rules. These included briefings to which all House Members and staff were invited, as well as briefings for individual Member, committee and other House offices. Committee staff also participated in briefings sponsored by the Congressional Research Service for district office staff members

and in briefings sponsored by outside organizations, and the Committee had an information booth at the House Services Fair held annually by the CAO.

In addition to briefings on financial disclosure (discussed further in the next section), Committee staff held nine briefings during 2003 and 2004 that were open to all House Members, officers and employees. Six of those briefings provided a general overview of the ethics rules, and the other three held in January, April and September 2004, were focused on the rules applicable to campaign activity. The Committee will continue this outreach activity in the 109th Congress.

The Committee also made a presentation to the Members-elect of the 109th Congress as part of the New Member Orientation. Copies of the Highlights of the House Ethics Rules memorandum and a memorandum noting points of particular interest to Members-elect were provided to each new Member as part of the orientation process, and each was offered an individual briefing for the Member and his or her staff.

Staff also received numerous requests for briefings from visiting international dignitaries. Visitors from countries in Eastern Europe and the Middle East were particularly interested in the House ethics rules and procedures.

#### ADVISORY OPINION LETTERS

The Committee's Office of Advice and Education, under the direction and supervision of the Committee's Chairman and Ranking Minority Member, prepared over 915 private advisory opinions during the 108th Congress. Opinions issued by the Committee in the 108th Congress addressed a wide range of subjects, including various provisions of the gift rule, travel funded by outside entities, Member or staff participation in fund-raising activities of charities and for other purposes, the outside earned income and employment limitations, campaign activity by staff, and the post-employment restrictions.

#### III. FINANCIAL DISCLOSURE, FOREIGN GIFTS AND DECORATIONS, AND TRAVEL DISCLOSURE

Title I of the Ethics in Government Act of 1978, as amended (5 U.S.C. app. 4 §§ 101–111), requires certain officials in all branches of the Federal Government, as well as candidates for Federal office, to file publicly available statements that set out financial information regarding themselves and their families. On May 15th of each year, the covered officials are required to file a statement that provides information for the preceding calendar year.

The Act designates the Committee as the "supervising ethics office" of House Members, officers and employees for purposes of financial disclosure and provides that the Committee is to administer the Act with regard to those officials. The Committee establishes policy, issues instructions, and designs the Financial Disclosure Statements to be filed by Members, officers, legislative branch employees, and candidates for the House. After Statements are filed with the Legislative Resource Center of the Clerk of the House, they are forwarded to the Committee to be reviewed for

compliance with the law. Accountants from the General Accounting Office assist the Committee in its review efforts.

Each year the Committee publishes a detailed instruction booklet that is sent to each person required to file with the Clerk of the House. Prior to the May 15th filing date, the Committee also provides briefings on the financial disclosure requirements that are open to all Members, officers and employees, as well as a briefing for Members only. In addition, Committee staff members are available to respond to questions on financial disclosure, and the Committee encourages Members and staff to submit statements in draft form to staff for review prior to filing with the Clerk, in order to reduce errors and the need for amendments.

In calendar years 2003 and 2004, the Legislative Resource Center referred a total of 5,134 financial disclosure statements to the Committee for review under the statute, including statements of candidates for the House. Where the Committee review indicates that a filed statement has a deficiency, such as a failure to include required information, the Committee requests an amendment from the filer. The Committee also follows up with any filer whose statement indicates non-compliance with applicable law, such as the outside employment and earned income limitations. Where the Committee finds that a Member or staff person has received income in violation of any of these limitations, the Committee determines the appropriate remedy for the violation, which may include a requirement that the individual repay the amount that was improperly received.

Pursuant to its responsibilities under 5 U.S.C. § 7342, the Committee also continued its activities in implementing the Foreign Gifts and Decorations Act, including the disclosure and reporting requirements of the Act, and responded to questions from Members and staff regarding the Act. The regulations that the Committee has issued under the Act are published in the Committee's Gifts & Travel booklet. Reports of gifts from foreign governments (including travel and travel expenses) that Members and staff file in accordance with this Act are available for public inspection at the Committee office upon reasonable notice. Pursuant to the Act, the contents of those reports are published in the Federal Register on an annual basis.

The Committee staff also reviews the Member Travel Disclosure Forms and the Employee Travel Disclosure Forms that are filed under the gift rule (House Rule XXV, cl. 5). While those forms are filed with and made publicly available by the Legislative Resource Center, that office forwards copies of the forms as filed to the Committee for review. Where the Committee finds that a Member or staff person has improperly accepted travel or expenses, the Committee determines the appropriate remedy, which may include a requirement that reimbursement be made with personal funds.

#### IV. COMMITTEE RULES

At its organizational meeting on March 19, 2003, the Committee adopted the Committee Rules for the 108th Congress. See Appendix I. These rules were substantially identical to the Committee Rules for the 107th Congress, except that several rules were reorganized and renumbered for the purpose of providing greater organizational clarity, and several minor clarifying and conforming

amendments were made in the rules regarding the Committee's complaint processing, investigative and adjudicative procedures. Among the changes made were that existing provisions on confidentiality were consolidated into one rule, Committee Rule 7, and Committee Rule 2, on definitions, was amended to add a definition of the term Member, and to revise the definitions of the terms Investigative Subcommittee and Adjudicatory Subcommittee.

In addition, the Committee amended the rule regarding the payment of travel fees to witnesses so that it would accord with House Rule XI, Clause 5. Committee Rule 26(n), as amended, provides, among other things, that subpoenaed witnesses "shall be provided the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, officers and employees of the House, and as the Chairman considers appropriate, actual expenses of travel to or from the place of examination."

#### V. INVESTIGATIONS

A resolution was adopted by the Committee on March 17, 2004 under which an investigative subcommittee was established to investigate allegations made by Representative Nick Smith related to voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. In addition, on June 15, 2004, a complaint was filed by Representative Chris Bell against Representative Tom DeLay.

As a general matter, unless otherwise disclosed publicly in accordance with Committee rules and practices, the Committee maintains the confidentiality of any information regarding its investigative proceedings, including, but not limited to, the fact or nature of any complaints and any other information or allegation respecting the conduct of a Member, officer or employee. On March 11, 2004, the Chairman and Ranking Minority Member of the Committee issued a "Dear Colleague" letter that discusses the activities and practices of the Committee, particularly with respect to investigation and resolution of alleged violations of laws, rules or standards of conduct. See Appendix II.

#### *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*

On March 17, 2004, the Committee adopted a resolution which established an Investigative Subcommittee to investigate alleged communications received by Representative Nick Smith linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 ("Medicare Prescription Drug Act" or "Medicare legislation"). This action was undertaken following certain public statements made by Representative Smith relating to the vote on the Medicare legislation, and following the conduct of informal fact-gathering on the matter by the Chairman and Ranking Minority Member of the Committee under Committee Rule 18(a).

The resolution adopted by the Committee provided as follows:

*Whereas Representative Nick Smith has made public statements that he received communications linking support for the congress-*

sional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug Improvement and Modernization Act of 2003; and

Whereas pursuant to Committee Rule 18(a) the Chairman and Ranking Minority jointly engaged in informal fact-finding to gather additional information concerning these allegations; and

Whereas the conduct of a Member, officer, or employee of the House, in connection with the aforementioned allegations, may violate the Code of Official Conduct or one or more law, rule, regulation, or other standard of conduct applicable to the conduct of a Member, officer, or employee of the House in the performance of his or her duties or the discharge of his or her responsibilities; and

Whereas the Committee has authority to investigate such conduct pursuant to House Rule XI, clauses 3(a)(2) and (3)(b)(2), and pursuant to Committee Rules 14(a)(3) and 18; and

Whereas the Committee has determined pursuant to Committee Rule 1(c) that the interests of justice require the adoption of special procedures in order for the Committee to carry out its investigative and enforcement responsibilities with respect to the aforementioned allegations;

It is hereby resolved by the Committee—

1. That an Investigative Subcommittee be established with jurisdiction to conduct a full and complete inquiry and investigation into alleged communications received by Representative Nick Smith linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug Improvement and Modernization Act of 2003;

2. That the scope of the inquiry may extend to any matters related to the jurisdiction of the Investigative Subcommittee as set forth in this resolution;

3. That the Investigative Subcommittee is authorized to advise the public at large that it is interested in receiving information and testimony from any person with first-hand information regarding communications received by Representative Nick Smith linking support for the congressional candidacy of his son with Representative Smith's vote on the Medicare Prescription Drug Improvement and Modernization Act of 2003;

4. That at the conclusion of its inquiry, the Investigative Subcommittee shall report to the Committee its findings, conclusions, and recommendations;

5. That the Members of the Investigative Subcommittee shall be designated pursuant to Committee Rule 19(a);

6. That Committee Rules 7 (Confidentiality), 8(a) (Subcommittees—General Policy and Structure), 9 (Quorums and Member Disqualification), and 10 (Vote Requirements) are fully applicable to this inquiry by the Investigative Subcommittee;

7. That the Investigative Subcommittee is authorized to obtain evidence and relevant information by the means and in the manner set forth in Committee Rules 19(b)–(c), except as those rules apply to respondents;

8. That witnesses before the Investigative Subcommittee shall be furnished with a copy of the special procedures for this inquiry (as set forth in this resolution), as well as accorded the rights set forth in Committee Rules 26(k)–(o);

9. That the Committee intends that all witnesses who provide testimony before the Investigative Subcommittee should be sequestered and should not communicate with any other witnesses regarding any aspect of their testimony unless the Investigative Subcommittee permits otherwise;

10. That at any point during its inquiry, or at the conclusion of its inquiry, the jurisdiction of the Investigative Subcommittee may be expanded in accordance with the requirements of Committee Rule 19(d) if the Investigative Subcommittee obtains information indicating that a Member, officer, or employee of the House may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his or her duties or the discharge of his or her responsibilities. If the scope of jurisdiction of the Investigative Subcommittee is expanded to investigate the conduct of an identified Member, officer, or employee of the House, the inquiry regarding the identified Member, officer, or employee shall proceed before the same Investigative Subcommittee and in accordance with all the Rules of the Committee regarding an inquiry involving a respondent;

11. That except as otherwise provided in this Resolution, the Rules of the Committee shall be applicable in this matter and will be interpreted by the Investigative Subcommittee and the Committee in a manner not inconsistent with this Resolution.

Representative Kenny C. Hulshof served as Chairman of the Investigative Subcommittee, and Representative Michael F. Doyle served as its Ranking Minority Member. The other two members of the Investigative Subcommittee were Representative John B. Shadegg and Representative William D. Delahunt.

The evidence obtained by the Investigative Subcommittee during its inquiry included, but was not limited to, the sworn testimony of seventeen Members of the House (including Representative Nick Smith, Representative Tom DeLay, and Speaker J. Dennis Hastert), and interviews and sworn testimony obtained from twelve other witnesses. During the inquiry, approximately 1400 pages of transcribed sworn testimony and witness statements resulted from proceedings before the Investigative Subcommittee or interviews with Investigative Subcommittee counsel. In addition, approximately two thousand pages of documents were supplied to the Investigative Subcommittee in response to subpoenas for documents and records.

The Investigative Subcommittee completed its investigation in September of 2004. Pursuant to its charge, at the conclusion of its inquiry, the Investigative Subcommittee prepared a Report to the full Committee with the Investigative Subcommittee's findings, conclusions, and recommendations.

The Report of the Investigative Subcommittee in this matter was unanimously adopted by that body on September 29, 2004. On that same date, the Investigative Subcommittee transmitted its Report to the Committee.

By unanimous vote on September 30, 2004, the Committee adopted the Report of the Investigative Subcommittee and included that Report as part of the Committee's Report to the House of Representatives in this matter (H. Rep. 108-722). By this act of adopting the Investigative Subcommittee's Report, the Committee ap-

proved and adopted the findings, conclusions, and recommendations of the Investigative Subcommittee, including the recommendation in the Investigative Subcommittee's Report that the publication of its Report would serve as a public admonishment by the Committee to Representative Nick Smith, Representative Candice Miller, and Representative Tom DeLay regarding their conduct as described in the Report to the House.

As explained in the Report, the conduct of Representative Smith could support a finding that he violated the House Code of Official Conduct. Among other findings regarding Representative Smith's conduct in this matter, the Investigative Subcommittee found that contrary to public statements made by Representative Smith, no group, organization, business interest, or corporation of any kind, or any individual affiliated with any such entities, offered \$100,000 or any other specific sum of money to support the congressional candidacy of Brad Smith in order to induce Representative Nick Smith to vote in favor of the Medicare Prescription Drug Act. Similarly, the Investigative Subcommittee found that Representative Nick Smith was not offered an endorsement or financial support for his son's candidacy from the National Republican Congressional Committee in exchange for voting in favor of the Medicare Prescription Drug Act. Statements made to that effect by Representative Smith appear to have been the result of speculation or exaggeration on the part of Representative Nick Smith. In addition, Representative Smith failed to cooperate fully with the Chairman and Ranking Minority Member of the Committee on Standards of Official Conduct in their efforts to develop information informally about his allegations. As explained in the Report, Representative Smith failed to exercise reasonable judgment and restraint, and was accountable for making public statements that risked impugning the reputation of the House.

The Investigative Subcommittee also found that Representative DeLay offered to endorse Representative Smith's son in exchange for Representative Smith's vote in favor of the Medicare legislation. In the view of the Investigative Subcommittee, this conduct also could support a finding that Representative DeLay violated House rules. The Investigative Subcommittee concluded that it is improper for a Member to offer or link support for the personal interests of another Member as part of a quid pro quo to achieve a legislative goal.

The Investigative Subcommittee reached a similar conclusion regarding the conduct of Representative Candice Miller, who made a statement to Representative Smith on the House floor during the vote on the Medicare legislation that referenced the congressional candidacy of Representative Smith's son. The Investigative Subcommittee concluded that Representative Smith fairly interpreted Representative Miller's statements to him during the vote as a threat of retaliation against him for voting in opposition to the bill.

The Report of the Investigative Subcommittee clarified the standards of conduct applicable to Members and others within the jurisdiction of the Committee. Specifically, Members, employees, and officials of the House were advised that the linking of official actions with personal considerations in the manner described in the Investigative Subcommittee's Report was impermissible and violates House rules.

The Report also contains procedural recommendations for future investigations undertaken by the Committee and for the conducting of House business. The procedural recommendations include a recommendation that House rules be amended so as to limit access to the House floor during House debate by Cabinet-level officials, except for such officials that are former Members. See House Rule IV, Clause 2(a)(12) (permitting “Heads of departments” to “the Hall of the House”).

*Representative Tom DeLay*

A complaint was filed by Representative Chris Bell against Representative Tom DeLay on June 15, 2004. On June 22, 2004, the Chairman and Ranking Minority Member of the Committee determined, under Committee Rule 16(a), that the complaint, which consisted of three counts, met the requirements of the Committee rules regarding complaints. After considering the allegations, information submitted by Representative DeLay, and information obtained as a result of fact-gathering by the Chairman and Ranking Minority Member of the Committee, on October 6, 2004, the Committee made determinations regarding disposition of the complaint against Representative DeLay.

Count I: Count I of the Complaint alleged that Representative DeLay violated criminal law and House rules by soliciting and receiving campaign contributions from Westar Energy, Inc. “in return for legislative assistance on the energy bill” in 2002, and that his actions constituted the dispensing of impermissible special favors. In particular, the complaint referenced a \$25,000 contribution that Westar made in May 2002 to Texans for a Republican Majority PAC (“TRMPAC”), an entity with which Representative DeLay was affiliated.

The information obtained by the Committee indicated that neither Representative DeLay nor anyone acting on his behalf improperly solicited contributions from Westar, and that Representative DeLay took no action with regard to Westar that would constitute an impermissible special favor. Information obtained by the Committee indicated, however, that Representative DeLay’s participation in and facilitation of an energy company fundraiser created the appearance that donors were being provided with improper special access to Representative DeLay regarding pending energy legislation.

In accordance with Committee Rule 16(b)(1), the Committee determined to dispose of Count I by means of a letter of admonition to Representative DeLay. See Appendix III.

Count II: Count II of the complaint alleged that Representative DeLay used TRMPAC to “funnel” corporate funds to Texas state campaigns in 2002 in violation of provisions of the Texas election code. The Committee determined to defer action on this count in accordance with Committee Rule 15(f) pending further action in Texas state court regarding indictments of several individuals in connection with TRMPAC, and pending the continuing investigation by the Travis County District Attorney of TRMPAC activities.

Count III: Count III alleged that the contacts of Representative DeLay’s staff with the Federal Aviation Administration and the Justice Department in May 2003 regarding absent Texas state legislators constituted an effort to use federal resources in a political

matter and were therefore improper under Committee guidance regarding contacts with federal agencies by Members and their staff. The Committee determined that this count should be dismissed insofar as it concerned contacts with the Justice Department, and that insofar as it concerned contacts with the Federal Aviation Administration, it should be disposed of by means of a letter of admonition to Representative DeLay. See Appendix III; Committee Rule 16(b)(1).

The letter of admonition to Representative DeLay was publicly released by the Committee on October 6, 2004, along with a memorandum from the Chairman and Ranking Minority Member of the Committee to the Committee setting out their recommendations to the Committee for disposition of the complaint.

In further action related to this matter, the Committee determined on November 18, 2004, that the complaint filed by Representative Bell against Representative DeLay contained innuendo, speculative assertions, or conclusory statements in violation of Committee Rule 15(a)(4). This matter was resolved by the Committee by a letter transmitted to Representative Bell dated November 18, 2004. The letter was publicly released by the Committee on that same date. See Appendix IV.

#### *Representative James McDermott*

A complaint was filed by Representative David L. Hobson against Representative James McDermott on November 16, 2004. On November 18, 2004, the Chairman and Ranking Minority Member of the Committee determined, under Committee Rule 16(a), that the complaint met the requirements of the Committee rules regarding complaints. Representative Hobson's complaint alleged that Representative McDermott violated certain laws, rules and standards of conduct in disclosing to the news media the contents of an intercepted telephone conversation in January 1997.

On December 22, 2004, the Chairman and Ranking Minority Member of the Committee determined, under Committee Rule 16(b)(2), to establish an Investigative Subcommittee and to forward portions of the complaint to that subcommittee. Representative Judy Biggert was designated to serve as Chairman of the Investigative Subcommittee, and Representative Lucille Roybal-Allard was designated to serve as its Ranking Minority Member. The other two members designated to serve on the Investigative Subcommittee were Representative Phil English and Representative Robert C. Scott.

## VI. OTHER COMMITTEE ACTIONS

In 2003, the Chairman and Ranking Minority Member of the Committee commenced fact-gathering under Committee Rule 18(a) regarding news media reports that Representative Karen McCarthy had used campaign funds to pay for a trip to New York City in February 2003 during which she attended the Grammy Awards ceremony. This action was initiated because such use of campaign funds may have violated Clause 6 of House Rule 23, which provides that a Member may not convert campaign funds to personal use and must use those funds for "bona fide campaign or political purposes."

Representative McCarthy failed to provide information requested by the Chairman and Ranking Minority Member of the Committee that would establish that her trip had “bona fide campaign or political purposes.” The Chairman and Ranking Minority Member concluded in the middle of 2004, and advised Representative McCarthy, that she was required to repay the expenses of that trip to her campaign account using personal funds.

On November 18, 2004, the Chairman and Ranking Minority Member of the Committee issued a public statement that described the conduct of Representative Karen McCarthy. The public statement noted that Representative McCarthy failed to make the required repayment. The statement also noted that disregard of Committee determinations by a Member would warrant the initiation of a formal disciplinary proceeding against the Member, but that such action would not be initiated regarding Representative McCarthy because (1) the Member will be departing the House at the end of this Congress and it would not be possible, as a practical matter, for a formal proceeding on this matter to be completed prior to the end of this Congress; and (2) the Federal Election Campaign Act includes a prohibition against conversion of campaign funds to personal use that is comparable to the provision of the House Rules, and thus it is possible that this matter will be remedied by action of the Federal Election Commission.

In addition to the publicly disclosed matters involving Representatives Nick Smith and Karen McCarthy, the Chairman and Ranking Minority Member of the Committee either commenced or continued from the 107th Congress fact-gathering under Committee Rule 18(a) regarding the conduct of nine other Members. Of these matters, five were resolved during the 108th Congress without the empanelment of an investigative subcommittee or other formal action by the Committee, and the remaining matters are still pending.

## **APPENDIX I**



# RULES

## Committee on Standards of Official Conduct



Adopted March 19, 2003  
108th Congress

U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515



# RULES

## Committee on Standards of Official Conduct



Adopted March 19, 2003  
108th Congress

U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

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**COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT**

UNITED STATES HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

JOEL HEFLEY, Colorado, *Chairman*  
DOC HASTINGS, Washington  
JUDY BIGGERT, Illinois  
KENNY C. HULSHOF, Missouri  
STEVEN C. LATOURETTE, Ohio  
ALAN B. MOLLOHAN, West Virginia,  
*Ranking Minority Member*  
STEPHANIE TUBBS JONES, Ohio  
GENE GREEN, Texas  
LUCILLE ROYBAL-ALLARD, California  
MICHAEL F. DOYLE, Pennsylvania

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JOHN E. VARGO, *Chief Counsel / Staff Director*

(II)

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## FOREWORD

The Committee on Standards of Official Conduct is unique in the House of Representatives. Consistent with the duty to carry out its advisory and enforcement responsibilities in an impartial manner, the Committee is the only standing committee of the House of Representatives the membership of which is divided evenly by party. These rules are intended to provide a fair procedural framework for the conduct of the Committee's activities and to help insure that the Committee serves well the people of the United States, the House of Representatives, and the Members, officers, and employees of the House of Representatives.

## PART I—GENERAL COMMITTEE RULES

*Rule 1. General Provisions*

(a) So far as applicable, these rules and the Rules of the House of Representatives shall be the rules of the Committee and any subcommittee. The Committee adopts these rules under the authority of clause 2(a)(1) of Rule XI of the Rules of the House of Representatives, 108th Congress.

(b) The rules of the Committee may be modified, amended, or repealed by a vote of a majority of the Committee.

(c) When the interests of justice so require, the Committee, by a majority vote of its members, may adopt any special procedures, not inconsistent with these rules, deemed necessary to resolve a particular matter before it. Copies of such special procedures shall be furnished to all parties in the matter.

(d) The Chairman and Ranking Minority Member shall have access to such information that they request as necessary to conduct Committee business.

*Rule 2. Definitions*

(a) "Committee" means the Committee on Standards of Official Conduct.

(b) "Complaint" means a written allegation of improper conduct against a Member, officer, or employee of the House of Representatives filed with the Committee with the intent to initiate an inquiry.

(c) "Inquiry" means an investigation by an investigative subcommittee into allegations against a Member, officer, or employee of the House of Representatives.

(d) "Investigative Subcommittee" means a subcommittee designated pursuant to Rule 19(a) to conduct an inquiry to determine if a Statement of Alleged Violation should be issued.

(e) "Statement of Alleged Violation" means a formal charging document filed by an investigative subcommittee with the Committee containing specific allegations against a Member, officer, or employee of the House of Representatives of a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities.

(f) "Adjudicatory Subcommittee" means a subcommittee designated pursuant to Rule 23(a), that holds an adjudicatory hearing

and determines whether the counts in a Statement of Alleged Violation are proved by clear and convincing evidence.

(g) “Sanction Hearing” means a Committee hearing to determine what sanction, if any, to adopt or to recommend to the House of Representatives.

(h) “Respondent” means a Member, officer, or employee of the House of Representatives who is the subject of a complaint filed with the Committee or who is the subject of an inquiry or a Statement of Alleged Violation.

(i) “Office of Advice and Education” refers to the Office established by section 803(i) of the Ethics Reform Act of 1989. The Office handles inquiries; prepares written opinions in response to specific requests; develops general guidance; and organizes seminars, workshops, and briefings for the benefit of the House of Representatives.

(j) “Member” means a Representative in, or a Delegate to, or the Resident Commissioner to, the U.S. House of Representatives.

### *Rule 3. Advisory Opinions and Waivers*

(a) The Office of Advice and Education shall handle inquiries; prepare written opinions providing specific advice; develop general guidance; and organize seminars, workshops, and briefings for the benefit of the House of Representatives.

(b) Any Member, officer, or employee of the House of Representatives, may request a written opinion with respect to the propriety of any current or proposed conduct of such Member, officer, or employee.

(c) The Office of Advice and Education may provide information and guidance regarding laws, rules, regulations, and other standards of conduct applicable to Members, officers, and employees in the performance of their duties or the discharge of their responsibilities.

(d) In general, the Committee shall provide a written opinion to an individual only in response to a written request, and the written opinion shall address the conduct only of the inquiring individual, or of persons for whom the inquiring individual is responsible as employing authority.

(e) A written request for an opinion shall be addressed to the Chairman of the Committee and shall include a complete and accurate statement of the relevant facts. A request shall be signed by the requester or the requester’s authorized representative or employing authority. A representative shall disclose to the Committee the identity of the principal on whose behalf advice is being sought.

(f) The Office of Advice and Education shall prepare for the Committee a response to each written request for an opinion from a Member, officer or employee. Each response shall discuss all applicable laws, rules, regulations, or other standards.

(g) Where a request is unclear or incomplete, the Office of Advice and Education may seek additional information from the requester.

(h) The Chairman and Ranking Minority Member are authorized to take action on behalf of the Committee on any proposed written opinion that they determine does not require consideration by the Committee. If the Chairman or Ranking Minority Member requests a written opinion, or seeks a waiver, extension, or approval pursu-

ant to Rules 3(l), 4(c), 4(e), or 4(h), the next ranking member of the requester's party is authorized to act in lieu of the requester.

(i) The Committee shall keep confidential any request for advice from a Member, officer, or employee, as well as any response thereto.

(j) The Committee may take no adverse action in regard to any conduct that has been undertaken in reliance on a written opinion if the conduct conforms to the specific facts addressed in the opinion.

(k) Information provided to the Committee by a Member, officer, or employee seeking advice regarding prospective conduct may not be used as the basis for initiating an investigation under clause 3(a)(2) or clause 3(b) of Rule XI of the Rules of the House of Representatives, if such Member, officer, or employee acts in good faith in accordance with the written advice of the Committee.

(l) A written request for a waiver of clause 5 of House Rule XXV (the House gift rule), or for any other waiver or approval, shall be treated in all respects like any other request for a written opinion.

(m) A written request for a waiver of clause 5 of House Rule XXV (the House gift rule) shall specify the nature of the waiver being sought and the specific circumstances justifying the waiver.

(n) An employee seeking a waiver of time limits applicable to travel paid for by a private source shall include with the request evidence that the employing authority is aware of the request. In any other instance where proposed employee conduct may reflect on the performance of official duties, the Committee may require that the requester submit evidence that the employing authority knows of the conduct.

#### *Rule 4. Financial Disclosure*

(a) In matters relating to Title I of the Ethics in Government Act of 1978, the Committee shall coordinate with the Clerk of the House of Representatives, Legislative Resource Center, to assure that appropriate individuals are notified of their obligation to file Financial Disclosure Statements and that such individuals are provided in a timely fashion with filing instructions and forms developed by the Committee.

(b) The Committee shall coordinate with the Legislative Resource Center to assure that information that the Ethics in Government Act requires to be placed on the public record is made public.

(c) The Chairman and Ranking Minority Member are authorized to grant on behalf of the Committee requests for reasonable extensions of time for the filing of Financial Disclosure Statements. Any such request must be received by the Committee no later than the date on which the statement in question is due. A request received after such date may be granted by the Committee only in extraordinary circumstances. Such extensions for one individual in a calendar year shall not exceed a total of 90 days. No extension shall be granted authorizing a nonincumbent candidate to file a statement later than 30 days prior to a primary or general election in which the candidate is participating.

(d) An individual who takes legally sufficient action to withdraw as a candidate before the date on which that individual's Financial Disclosure Statement is due under the Ethics in Government Act

shall not be required to file a Statement. An individual shall not be excused from filing a Financial Disclosure Statement when withdrawal as a candidate occurs after the date on which such Statement was due.

(e) Any individual who files a report required to be filed under title I of the Ethics in Government Act more than 30 days after the later of—

(1) the date such report is required to be filed, or

(2) if a filing extension is granted to such individual, the last day of the filing extension period, is required by such Act to pay a late filing fee of \$200. The Chairman and Ranking Minority Member are authorized to approve requests that the fee be waived based on extraordinary circumstances.

(f) Any late report that is submitted without a required filing fee shall be deemed procedurally deficient and not properly filed.

(g) The Chairman and Ranking Minority Member are authorized to approve requests for waivers of the aggregation and reporting of gifts as provided by section 102(a)(2)(C) of the Ethics in Government Act. If such a request is approved, both the incoming request and the Committee response shall be forwarded to the Legislative Resource Center for placement on the public record.

(h) The Chairman and Ranking Minority Member are authorized to approve blind trusts as qualifying under section 102(f)(3) of the Ethics in Government Act. The correspondence relating to formal approval of a blind trust, the trust document, the list of assets transferred to the trust, and any other documents required by law to be made public, shall be forwarded to the Legislative Resource Center for such purpose.

(i) The Committee shall designate staff counsel who shall review Financial Disclosure Statements and, based upon information contained therein, indicate in a form and manner prescribed by the Committee whether the Statement appears substantially accurate and complete and the filer appears to be in compliance with applicable laws and rules.

(j) Each Financial Disclosure Statement shall be reviewed within 60 days after the date of filing.

(k) If the reviewing counsel believes that additional information is required because (1) the Statement appears not substantially accurate or complete, or (2) the filer may not be in compliance with applicable laws or rules, then the reporting individual shall be notified in writing of the additional information believed to be required, or of the law or rule with which the reporting individual does not appear to be in compliance. Such notice shall also state the time within which a response is to be submitted. Any such notice shall remain confidential.

(l) Within the time specified, including any extension granted in accordance with clause (c), a reporting individual who concurs with the Committee's notification that the Statement is not complete, or that other action is required, shall submit the necessary information or take appropriate action. Any amendment may be in the form of a revised Financial Disclosure Statement or an explanatory letter addressed to the Clerk of the House of Representatives.

(m) Any amendment shall be placed on the public record in the same manner as other Statements. The individual designated by

the Committee to review the original Statement shall review any amendment thereto.

(n) Within the time specified, including any extension granted in accordance with clause (c), a reporting individual who does not agree with the Committee that the Statement is deficient or that other action is required, shall be provided an opportunity to respond orally or in writing. If the explanation is accepted, a copy of the response, if written, or a note summarizing an oral response, shall be retained in Committee files with the original report.

(o) The Committee shall be the final arbiter of whether any Statement requires clarification or amendment.

(p) If the Committee determines, by vote of a majority of its members, that there is reason to believe that an individual has willfully failed to file a Statement or has willfully falsified or willfully failed to file information required to be reported, then the Committee shall refer the name of the individual, together with the evidence supporting its finding, to the Attorney General pursuant to section 104(b) of the Ethics in Government Act. Such referral shall not preclude the Committee from initiating such other action as may be authorized by other provisions of law or the Rules of the House of Representatives.

#### *Rule 5. Meetings*

(a) The regular meeting day of the Committee shall be the second Wednesday of each month, except when the House of Representatives is not meeting on that day. When the Committee Chairman determines that there is sufficient reason, a meeting may be called on additional days. A regularly scheduled meeting need not be held when the Chairman determines there is no business to be considered.

(b) The Chairman shall establish the agenda for meetings of the Committee and the Ranking Minority Member may place additional items on the agenda.

(c) All meetings of the Committee or any subcommittee shall occur in executive session unless the Committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting or hearing to the public.

(d) Any hearing held by an adjudicatory subcommittee or any sanction hearing held by the Committee shall be open to the public unless the Committee or subcommittee, by an affirmative vote of a majority of its members, closes the hearing to the public.

(e) A subcommittee shall meet at the discretion of its Chairman.

(f) Insofar as practicable, notice for any Committee or subcommittee meeting shall be provided at least seven days in advance of the meeting. The Chairman of the Committee or subcommittee may waive such time period for good cause.

#### *Rule 6. Committee Staff*

(a) The staff is to be assembled and retained as a professional, nonpartisan staff.

(b) Each member of the staff shall be professional and demonstrably qualified for the position for which he is hired.

(c) The staff as a whole and each individual member of the staff shall perform all official duties in a nonpartisan manner.

(d) No member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(e) No member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the Committee without specific prior approval from the Chairman and Ranking Minority Member.

(f) All staff members shall be appointed by an affirmative vote of a majority of the members of the Committee. Such vote shall occur at the first meeting of the membership of the Committee during each Congress and as necessary during the Congress.

(g) Subject to the approval of the Committee on House Administration, the Committee may retain counsel not employed by the House of Representatives whenever the Committee determines, by an affirmative vote of a majority of the members of the Committee, that the retention of outside counsel is necessary and appropriate.

(h) If the Committee determines that it is necessary to retain staff members for the purpose of a particular investigation or other proceeding, then such staff shall be retained only for the duration of that particular investigation or proceeding.

(i) Outside counsel may be dismissed prior to the end of a contract between the Committee and such counsel only by a majority vote of the members of the Committee.

(j) In addition to any other staff provided for by law, rule, or other authority, with respect to the Committee, the Chairman and Ranking Minority Member each may appoint one individual as a shared staff member from his or her personal staff to perform service for the Committee. Such shared staff may assist the Chairman or Ranking Minority Member on any subcommittee on which he serves. Only paragraphs (c), (e) of this Rule, and Rule 7(b) shall apply to shared staff.

#### *Rule 7. Confidentiality*

(a) Before any Member or employee of the Committee, including members of an investigative subcommittee selected under clause 5(a)(4) of Rule X of the House of Representatives and shared staff designated pursuant to Committee Rule 6(j), may have access to information that is confidential under the rules of the Committee, the following oath (or affirmation) shall be executed in writing:

“I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Standards of Official Conduct, any information received in the course of my service with the Committee, except as authorized by the Committee or in accordance with its rules.”

Copies of the executed oath shall be provided to the Clerk of the House as part of the records of the House. Breaches of confidentiality shall be investigated by the Committee and appropriate action shall be taken.

(b) No member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the Committee, any information, document, or other material that is confidential, derived from executive session, or classi-

fied and that is obtained during the course of employment with the Committee.

(c) Committee members and staff shall not disclose any evidence relating to an investigation to any person or organization outside the Committee unless authorized by the Committee.

(d) Members and staff of the Committee shall not disclose to any person or organization outside the Committee, unless authorized by the Committee, any information regarding the Committee's or a subcommittee's investigative, adjudicatory or other proceedings, included but not limited to: (i) the fact or nature of any complaints; (ii) executive session proceedings; (iii) information pertaining to or copies of any Committee or subcommittee report, study or other document which purports to express the views, findings, conclusions or recommendations of the Committee or subcommittee in connection with any of its activities or proceedings; or (iv) any other information or allegation respecting the conduct of a Member, officer or employee of the House.

(e) Except as otherwise specifically authorized by the Committee, no Committee member or staff member shall disclose to any person outside the Committee, the name of any witness subpoenaed to testify or to produce evidence.

(f) The Committee shall not disclose to any person or organization outside the Committee any information concerning the conduct of a respondent until it has transmitted a Statement of Alleged Violation to such respondent and the respondent has been given full opportunity to respond pursuant to Rule 22. The Statement of Alleged Violation and any written response thereto shall be made public at the first meeting or hearing on the matter that is open to the public after such opportunity has been provided. Any other materials in the possession of the Committee regarding such statement may be made public as authorized by the Committee to the extent consistent with the Rules of the House of Representatives. If no public hearing or meeting is held on the matter, the Statement of Alleged Violation and any written response thereto shall be included in the Committee's final report on the matter to the House of Representatives.

(g) Unless otherwise determined by a vote of the Committee, only the Chairman or Ranking Minority Member of the Committee, after consultation with each other, may make public statements regarding matters before the Committee or any subcommittee.

(h) The Committee may establish procedures necessary to prevent the unauthorized disclosure of any testimony or other information received by the Committee or its staff.

#### *Rule 8. Subcommittees—General Policy and Structure*

(a) Notwithstanding any other provision of these Rules, the Chairman and Ranking Minority Member of the Committee may consult with an investigative subcommittee either on their own initiative or on the initiative of the subcommittee, shall have access to evidence and information before a subcommittee with whom they so consult, and shall not thereby be precluded from serving as full, voting members of any adjudicatory subcommittee. Except for the Chairman and Ranking Minority Member of the Committee pursuant to this paragraph, evidence in the possession of an investiga-

tive subcommittee shall not be disclosed to other Committee members except by a vote of the subcommittee.

(b) The Committee may establish other noninvestigative and nonadjudicatory subcommittees and may assign to them such functions as it may deem appropriate. The membership of each subcommittee shall provide equal representation for the majority and minority parties.

(c) The Chairman may refer any bill, resolution, or other matter before the Committee to an appropriate subcommittee for consideration. Any such bill, resolution, or other matter may be discharged from the subcommittee to which it was referred by a majority vote of the Committee.

(d) Any member of the Committee may sit with any noninvestigative or nonadjudicatory subcommittee, but only regular members of such subcommittee may vote on any matter before that subcommittee.

#### *Rule 9. Quorums and Member Disqualification*

(a) The quorum for an investigative subcommittee to take testimony and to receive evidence shall be two members, unless otherwise authorized by the House of Representatives.

(b) The quorum for an adjudicatory subcommittee to take testimony, receive evidence, or conduct business shall consist of a majority plus one of the members of the adjudicatory subcommittee.

(c) Except as stated in clauses (a) and (b) of this rule, a quorum for the purpose of conducting business consists of a majority of the members of the Committee or subcommittee.

(d) A member of the Committee shall be ineligible to participate in any Committee or subcommittee proceeding in which he is the respondent.

(e) A member of the Committee may disqualify himself from participating in any investigation of the conduct of a Member, officer, or employee of the House of Representatives upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision. If the Committee approves and accepts such affidavit of disqualification, or if a member is disqualified pursuant to Rule 17(e) or Rule 23(a), the Chairman shall so notify the Speaker and ask the Speaker to designate a Member of the House of Representatives from the same political party as the disqualified member of the Committee to act as a member of the Committee in any Committee proceeding relating to such investigation.

#### *Rule 10. Vote Requirements*

(a) The following actions shall be taken only upon an affirmative vote of a majority of the members of the Committee or subcommittee, as appropriate:

- (1) Issuing a subpoena.
- (2) Adopting a full Committee motion to create an investigative subcommittee.
- (3) Adoption or amendment of a Statement of Alleged Violation.
- (4) Finding that a count in a Statement of Alleged Violation has been proved by clear and convincing evidence.

- (5) Sending a letter of reproof.
- (6) Adoption of a recommendation to the House of Representatives that a sanction be imposed.
- (7) Adoption of a report relating to the conduct of a Member, officer, or employee.
- (8) Issuance of an advisory opinion of general applicability establishing new policy.
- (b) Except as stated in clause (a), action may be taken by the Committee or any subcommittee thereof by a simple majority, a quorum being present.
- (c) No motion made to take any of the actions enumerated in clause (a) of this Rule may be entertained by the Chair unless a quorum of the Committee is present when such motion is made.

*Rule 11. Committee Records*

- (a) All communications and all pleadings pursuant to these rules shall be filed with the Committee at the Committee's office or such other place as designated by the Committee.
- (b) All records of the Committee which have been delivered to the Archivist of the United States shall be made available to the public in accordance with Rule VII of the Rules of the House of Representatives.

*Rule 12. Broadcasts of Committee and Subcommittee Proceedings*

- (a) Television or radio coverage of a Committee or subcommittee hearing or meeting shall be without commercial sponsorship.
- (b) No witness shall be required against his or her will to be photographed or otherwise to have a graphic reproduction of his or her image made at any hearing or to give evidence or testimony while the broadcasting of that hearing, by radio or television, is being conducted. At the request of any witness, all media microphones shall be turned off, all television and camera lenses shall be covered, and the making of a graphic reproduction at the hearing shall not be permitted. This paragraph supplements clause 2(k)(5) of Rule XI of the Rules of the House of Representatives relating to the protection of the rights of witnesses.
- (c) Not more than four television cameras, operating from fixed positions, shall be permitted in a hearing or meeting room. The Committee may allocate the positions of permitted television cameras among the television media in consultation with the Executive Committee of the Radio and Television Correspondents' Galleries.
- (d) Television cameras shall be placed so as not to obstruct in any way the space between any witness giving evidence or testimony and any member of the Committee, or the visibility of that witness and that member to each other.
- (e) Television cameras shall not be placed in positions that unnecessarily obstruct the coverage of the hearing or meeting by the other media.

## PART II—INVESTIGATIVE AUTHORITY

*Rule 13. House Resolution*

Whenever the House of Representatives, by resolution, authorizes or directs the Committee to undertake an inquiry or investigation, the provisions of the resolution, in conjunction with these Rules, shall govern. To the extent the provisions of the resolution differ from these Rules, the resolution shall control.

*Rule 14. Committee Authority to Investigate—General Policy*

(a) Pursuant to clause 3(b) of Rule XI of the Rules of the House of Representatives, the Committee may exercise its investigative authority when:

(1) information offered as a complaint by a Member of the House of Representatives is transmitted directly to the Committee;

(2) information offered as a complaint by an individual not a Member of the House is transmitted to the Committee, provided that a Member of the House certifies in writing that he or she believes the information is submitted in good faith and warrants the review and consideration of the Committee;

(3) the Committee, on its own initiative, establishes an investigative subcommittee;

(4) a Member, officer, or employee is convicted in a Federal, State, or local courts of a felony; or

(5) the House of Representatives, by resolution, authorizes or directs the Committee to undertake an inquiry or investigation.

(b) The Committee also has investigatory authority over:

(1) certain unauthorized disclosures of intelligence-related information, pursuant to House Rule X, clauses 11(g)(4) and (g)(5); or

(2) reports received from the Office of the Inspector General pursuant to House Rule II, clause 6(c)(5).

*Rule 15. Complaints*

(a) A complaint submitted to the Committee shall be in writing, dated, and properly verified (a document will be considered properly verified where a notary executes it with the language, “Signed and sworn to (or affirmed) before me on (date) by (the name of the person)” setting forth in simple, concise, and direct statements—

(1) the name and legal address of the party filing the complaint (hereinafter referred to as the “complainant”);

(2) the name and position or title of the respondent;

(3) the nature of the alleged violation of the Code of Official Conduct or of other law, rule, regulation, or other standard of conduct applicable to the performance of duties or discharge of responsibilities; and

(4) the facts alleged to give rise to the violation. The complaint shall not contain innuendo, speculative assertions, or conclusory statements.

(b) Any documents in the possession of the complainant that relate to the allegations may be submitted with the complaint.

(c) Information offered as a complaint by a Member of the House of Representatives may be transmitted directly to the Committee.

(d) Information offered as a complaint by an individual not a Member of the House may be transmitted to the Committee, provided that a Member of the House certifies in writing that he or she believes the information is submitted in good faith and warrants the review and consideration of the Committee.

(e) A complaint must be accompanied by a certification, which may be unsworn, that the complainant has provided an exact copy of the filed complaint and all attachments to the respondent.

(f) The Committee may defer action on a complaint against a Member, officer, or employee of the House of Representatives when the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities, or when the Committee determines that it is appropriate for the conduct alleged in the complaint to be reviewed initially by law enforcement or regulatory authorities.

(g) A complaint may not be amended without leave of the Committee. Otherwise, any new allegations of improper conduct must be submitted in a new complaint that independently meets the procedural requirements of the Rules of the House of Representatives and the Committee's Rules.

(h) The Committee shall not accept, and shall return to the complainant, any complaint submitted within the 60 days prior to an election in which the subject of the complaint is a candidate.

(i) The Committee shall not consider a complaint, nor shall any investigation be undertaken by the Committee, of any alleged violation which occurred before the third previous Congress unless the Committee determines that the alleged violation is directly related to an alleged violation which occurred in a more recent Congress.

*Rule 16. Duties of Committee Chairman and Ranking Minority Member*

(a) Whenever information offered as a complaint is submitted to the Committee, the Chairman and Ranking Minority Member shall have 14 calendar days or 5 legislative days, whichever occurs first, to determine whether the information meets the requirements of the Committee's rules for what constitutes a complaint.

(b) Whenever the Chairman and Ranking Minority Member jointly determine that information submitted to the Committee meets the requirements of the Committee's rules for what constitutes a complaint, they shall have 45 calendar days or 5 legislative days, whichever is later, after the date that the Chairman and Ranking Minority Member determine that information filed meets the requirements of the Committee's rules for what constitutes a complaint, unless the Committee by an affirmative vote of a majority of its members votes otherwise, to—

(1) recommend to the Committee that it dispose of the complaint, or any portion thereof, in any manner that does not require action by the House, which may include dismissal of the complaint or resolution of the complaint by a letter to the Member, officer, or employee of the House against whom the complaint is made;

(2) establish an investigative subcommittee; or

(3) request that the Committee extend the applicable 45-calendar-day period when they determine more time is necessary in

order to make a recommendation under paragraph (1) or (2) of Rule 16(b).

(c) The Chairman and Ranking Minority Member may jointly gather additional information concerning alleged conduct which is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or the Chairman or Ranking Minority Member has placed on the agenda the issue of whether to establish an investigative subcommittee.

(d) If the Chairman and Ranking Minority Member jointly determine that information submitted to the Committee meets the requirements of the Committee rules for what constitutes a complaint, and the complaint is not disposed of within 45 calendar days or 5 legislative days, whichever is later, and no additional 45-day extension is made, then they shall establish an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. If at any time during the time period either the Chairman or Ranking Minority Member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the Committee.

(e) Whenever the Chairman and Ranking Minority Member jointly determine that information submitted to the Committee does not meet the requirements for what constitutes a complaint set forth in the Committee rules, they may (1) return the information to the complainant with a statement that it fails to meet the requirements for what constitutes a complaint set forth in the Committee's rules; or (2) recommend to the Committee that it authorize the establishment of an investigative subcommittee.

#### *Rule 17. Processing of Complaints*

(a) If a complaint is in compliance with House and Committee Rules, a copy of the complaint and the Committee Rules shall be forwarded to the respondent within five days with notice that the complaint conforms to the applicable rules.

(b) The respondent may, within 30 days of the Committee's notification, provide to the Committee any information relevant to a complaint filed with the Committee. The respondent may submit a written statement in response to the complaint. Such a statement shall be signed by the respondent. If the statement is prepared by counsel for the respondent, the respondent shall sign a representation that he/she has reviewed the response and agrees with the factual assertions contained therein.

(c) The Committee staff may request information from the respondent or obtain additional information pertinent to the case from other sources prior to the establishment of an investigative subcommittee only when so directed by the Chairman and Ranking Minority Member.

(d) The respondent shall be notified in writing regarding the Committee's decision either to dismiss the complaint or to create an investigative subcommittee.

(e) The respondent shall be notified of the membership of the investigative subcommittee and shall have ten days after such notice is transmitted to object to the participation of any subcommittee

member. Such objection shall be in writing and shall be on the grounds that the subcommittee member cannot render an impartial and unbiased decision. The subcommittee member against whom the objection is made shall be the sole judge of his or her disqualification.

*Rule 18. Committee-Initiated Inquiry*

(a) Notwithstanding the absence of a filed complaint, the Committee may consider any information in its possession indicating that a Member, officer, or employee may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his or her duties or the discharge of his or her responsibilities. The Chairman and Ranking Minority Member may jointly gather additional information concerning such an alleged violation by a Member, officer, or employee unless and until an investigative subcommittee has been established.

(b) If the Committee votes to establish an investigative subcommittee, the Committee shall proceed in accordance with Rule 19.

(c) Any written request by a Member, officer, or employee of the House of Representatives that the Committee conduct an inquiry into such person's own conduct shall be processed in accordance with subsection (a) of this Rule.

(d) An inquiry shall not be undertaken regarding any alleged violation that occurred before the third previous Congress unless a majority of the Committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(e) An inquiry shall be undertaken by an investigative subcommittee with regard to any felony conviction of a Member, officer, or employee of the House of Representatives in a Federal, State, or local court who has been sentenced. Notwithstanding this provision, the Committee has the discretion to initiate an inquiry upon an affirmative vote of a majority of the members of the Committee at any time prior to conviction or sentencing.

*Rule 19. Investigative Subcommittee*

(a) Upon the establishment of an investigative subcommittee, the Chairman and Ranking Minority Member of the Committee shall designate four members (with equal representation from the majority and minority parties) to serve as an investigative subcommittee to undertake an inquiry. Members of the Committee and Members of the House selected pursuant to clause 5(a)(4)(A) of Rule X of the House of Representatives, are eligible for appointment to an investigative subcommittee, as determined by the Chairman and Ranking Minority Member of the Committee. At the time of appointment, the Chairman shall designate one member of the subcommittee to serve as the chairman and the Ranking Minority Member shall designate one member of the subcommittee to serve as the ranking minority member of the investigative subcommittee. The Chairman and Ranking Minority Member of the Committee

may serve as members of an investigative subcommittee, but may not serve as non-voting, ex-officio members.

(b) In an inquiry undertaken by an investigative subcommittee—

(1) All proceedings, including the taking of testimony, shall be conducted in executive session and all testimony taken by deposition or things produced pursuant to subpoena or otherwise shall be deemed to have been taken or produced in executive session.

(2) The Chairman of the investigative subcommittee shall ask the respondent and all witnesses whether they intend to be represented by counsel. If so, the respondent or witnesses or their legal representatives shall provide written designation of counsel. A respondent or witness who is represented by counsel shall not be questioned in the absence of counsel unless an explicit waiver is obtained.

(3) The subcommittee shall provide the respondent an opportunity to present, orally or in writing, a statement, which must be under oath or affirmation, regarding the allegations and any other relevant questions arising out of the inquiry.

(4) The staff may interview witnesses, examine documents and other evidence, and request that submitted statements be under oath or affirmation and that documents be certified as to their authenticity and accuracy.

(5) The subcommittee, by a majority vote of its members, may require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of such books, records, correspondence, memoranda, papers, documents, and other items as it deems necessary to the conduct of the inquiry. Unless the Committee otherwise provides, the subpoena power shall rest in the Chairman and Ranking Minority Member of the Committee and a subpoena shall be issued upon the request of the investigative subcommittee.

(6) The subcommittee shall require that testimony be given under oath or affirmation. The form of the oath or affirmation shall be: "Do you solemnly swear (or affirm) that the testimony you will give before this subcommittee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth (so help you God)?" The oath or affirmation shall be administered by the Chairman or subcommittee member designated by the Chairman to administer oaths.

(c) During the inquiry, the procedure respecting the admissibility of evidence and rulings shall be as follows:

(1) Any relevant evidence shall be admissible unless the evidence is privileged under the precedents of the House of Representatives.

(2) The Chairman of the subcommittee or other presiding member at any investigative subcommittee proceeding shall rule upon any question of admissibility or pertinency of evidence, motion, procedure or any other matter, and may direct any witness to answer any question under penalty of contempt. A witness, witness' counsel, or a member of the subcommittee may appeal any rulings to the members present at that proceeding. The majority vote of the members present at such proceeding on such appeal shall govern the question of admissibility, and no appeal shall lie to the Committee.

(3) Whenever a person is determined by a majority vote to be in contempt of the subcommittee, the matter may be referred to the

Committee to determine whether to refer the matter to the House of Representatives for consideration.

(4) Committee counsel may, subject to subcommittee approval, enter into stipulations with the respondent and/or the respondent's counsel as to facts that are not in dispute.

(d) Upon an affirmative vote of a majority of the subcommittee members, and an affirmative vote of a majority of the full Committee, an investigative subcommittee may expand the scope of its investigation.

(e) Upon completion of the investigation, the staff shall draft for the investigative subcommittee a report that shall contain a comprehensive summary of the information received regarding the alleged violations.

(f) Upon completion of the inquiry, an investigative subcommittee, by a majority vote of its members, may adopt a Statement of Alleged Violation if it determines that there is substantial reason to believe that a violation of the Code of Official Conduct, or of a law, rule, regulation, or other standard of conduct applicable to the performance of official duties or the discharge of official responsibilities by a Member, officer, or employee of the House of Representatives has occurred. If more than one violation is alleged, such Statement shall be divided into separate counts. Each count shall relate to a separate violation, shall contain a plain and concise statement of the alleged facts of such violation, and shall include a reference to the provision of the Code of Official Conduct or law, rule, regulation or other applicable standard of conduct governing the performance of duties or discharge of responsibilities alleged to have been violated. A copy of such Statement shall be transmitted to the respondent and the respondent's counsel.

(g) If the investigative subcommittee does not adopt a Statement of Alleged Violation, it shall transmit to the Committee a report containing a summary of the information received in the inquiry, its conclusions and reasons therefor, and any appropriate recommendation.

#### *Rule 20. Amendments to Statements of Alleged Violation*

(a) An investigative subcommittee may, upon an affirmative vote of a majority of its members, amend its Statement of Alleged Violation anytime before the Statement of Alleged Violation is transmitted to the Committee; and

(b) If an investigative subcommittee amends its Statement of Alleged Violation, the respondent shall be notified in writing and shall have 30 calendar days from the date of that notification to file an answer to the amended Statement of Alleged Violation.

#### *Rule 21. Committee Reporting Requirements*

(a) Whenever an investigative subcommittee does not adopt a Statement of Alleged Violation and transmits a report to that effect to the Committee, the Committee may by an affirmative vote of a majority of its members transmit such report to the House of Representatives;

(b) Whenever an investigative subcommittee adopts a Statement of Alleged Violation but recommends that no further action be

taken, it shall transmit a report to the Committee regarding the Statement of Alleged Violation; and

(c) Whenever an investigative subcommittee adopts a Statement of Alleged Violation, the respondent admits to the violations set forth in such Statement, the respondent waives his or her right to an adjudicatory hearing, and the respondent's waiver is approved by the Committee—

(1) the subcommittee shall prepare a report for transmittal to the Committee, a final draft of which shall be provided to the respondent not less than 15 calendar days before the subcommittee votes on whether to adopt the report;

(2) the respondent may submit views in writing regarding the final draft to the subcommittee within 7 calendar days of receipt of that draft;

(3) the subcommittee shall transmit a report to the Committee regarding the Statement of Alleged Violation together with any views submitted by the respondent pursuant to subparagraph (2), and the Committee shall make the report, together with the respondent's views, available to the public before the commencement of any sanction hearing; and

(4) the Committee shall by an affirmative vote of a majority of its members issue a report and transmit such report to the House of Representatives, together with the respondent's views previously submitted pursuant to subparagraph (2) and any additional views respondent may submit for attachment to the final report; and

(d) Members of the Committee shall have not less than 72 hours to review any report transmitted to the Committee by an investigative subcommittee before both the commencement of a sanction hearing and the Committee vote on whether to adopt the report.

*Rule 22. Respondent's Answer*

(a)(1) Within 30 days from the date of transmittal of a Statement of Alleged Violation, the respondent shall file with the investigative subcommittee an answer, in writing and under oath, signed by respondent and respondent's counsel. Failure to file an answer within the time prescribed shall be considered by the Committee as a denial of each count.

(2) The answer shall contain an admission to or denial of each count set forth in the Statement of Alleged Violation and may include negative, affirmative, or alternative defenses and any supporting evidence or other relevant information.

(b) The respondent may file a Motion for a Bill of Particulars within 10 days of the date of transmittal of the Statement of Alleged Violation. If a Motion for a Bill of Particulars is filed, the respondent shall not be required to file an answer until 20 days after the subcommittee has replied to such motion.

(c)(1) The respondent may file a Motion to Dismiss within 10 days of the date of transmittal of the Statement of Alleged Violation or, if a Motion for a Bill of Particulars has been filed, within 10 days of the date of the subcommittee's reply to the Motion for a Bill of Particulars. If a Motion to Dismiss is filed, the respondent shall not be required to file an answer until 20 days after the subcommittee has replied to the Motion to Dismiss, unless the respondent previously filed a Motion for a Bill of Particulars, in

which case the respondent shall not be required to file an answer until 10 days after the subcommittee has replied to the Motion to Dismiss. The investigative subcommittee shall rule upon any motion to dismiss filed during the period between the establishment of the subcommittee and the subcommittee's transmittal of a report or Statement of Alleged Violation to the Committee or to the Chairman and Ranking Minority Member at the conclusion of an inquiry, and no appeal of the subcommittee's ruling shall lie to the Committee.

(2) A Motion to Dismiss may be made on the grounds that the Statement of Alleged Violation fails to state facts that constitute a violation of the Code of Official Conduct or other applicable law, rule, regulation, or standard of conduct, or on the grounds that the Committee lacks jurisdiction to consider the allegations contained in the Statement.

(d) Any motion filed with the subcommittee pursuant to this rule shall be accompanied by a Memorandum of Points and Authorities.

(e)(1) The Chairman of the investigative subcommittee, for good cause shown, may permit the respondent to file an answer or motion after the day prescribed above.

(2) If the ability of the respondent to present an adequate defense is not adversely affected and special circumstances so require, the Chairman of the investigative subcommittee may direct the respondent to file an answer or motion prior to the day prescribed above.

(f) If the day on which any answer, motion, reply, or other pleading must be filed falls on a Saturday, Sunday, or holiday, such filing shall be made on the first business day thereafter.

(g) As soon as practicable after an answer has been filed or the time for such filing has expired, the Statement of Alleged Violation and any answer, motion, reply, or other pleading connected therewith shall be transmitted by the Chairman of the investigative subcommittee to the Chairman and Ranking Minority Member of the Committee.

### *Rule 23. Adjudicatory Hearings*

(a) If a Statement of Alleged Violation is transmitted to the Chairman and Ranking Minority Member pursuant to Rule 22, and no waiver pursuant to Rule 26(b) has occurred, the Chairman shall designate the members of the Committee who did not serve on the investigative subcommittee to serve on an adjudicatory subcommittee. The Chairman and Ranking Minority Member of the Committee shall be the Chairman and Ranking Minority Member of the adjudicatory subcommittee unless they served on the investigative subcommittee. The respondent shall be notified of the designation of the adjudicatory subcommittee and shall have ten days after such notice is transmitted to object to the participation of any subcommittee member. Such objection shall be in writing and shall be on the grounds that the member cannot render an impartial and unbiased decision. The member against whom the objection is made shall be the sole judge of his or her disqualification.

(b) A majority of the adjudicatory subcommittee membership plus one must be present at all times for the conduct of any business pursuant to this rule.

(c) The adjudicatory subcommittee shall hold a hearing to determine whether any counts in the Statement of Alleged Violation have been proved by clear and convincing evidence and shall make findings of fact, except where such violations have been admitted by respondent.

(d) At an adjudicatory hearing, the subcommittee may require, by subpoena or otherwise, the attendance and testimony of such witnesses and production of such books, records, correspondence, memoranda, papers, documents, and other items as it deems necessary. Depositions, interrogatories, and sworn statements taken under any investigative subcommittee direction may be accepted into the hearing record.

(e) The procedures set forth in clause 2(g) and (k) of Rule XI of the Rules of the House of Representatives shall apply to adjudicatory hearings. All such hearings shall be open to the public unless the adjudicatory subcommittee, pursuant to such clause, determines that the hearings or any part thereof should be closed.

(f)(1) The adjudicatory subcommittee shall, in writing, notify the respondent that the respondent and his or her counsel have the right to inspect, review, copy, or photograph books, papers, documents, photographs, or other tangible objects that the adjudicatory subcommittee counsel intends to use as evidence against the respondent in an adjudicatory hearing. The respondent shall be given access to such evidence, and shall be provided the names of witnesses the subcommittee counsel intends to call, and a summary of their expected testimony, no less than 15 calendar days prior to any such hearing. Except in extraordinary circumstances, no evidence may be introduced or witness called in an adjudicatory hearing unless the respondent has been afforded a prior opportunity to review such evidence or has been provided the name of the witness.

(2) After a witness has testified on direct examination at an adjudicatory hearing, the Committee, at the request of the respondent, shall make available to the respondent any statement of the witness in the possession of the Committee which relates to the subject matter as to which the witness has testified.

(3) Any other testimony, statement, or documentary evidence in the possession of the Committee which is material to the respondent's defense shall, upon request, be made available to the respondent.

(g) No less than five days prior to the hearing, the respondent or counsel shall provide the adjudicatory subcommittee with the names of witnesses expected to be called, summaries of their expected testimony, and copies of any documents or other evidence proposed to be introduced.

(h) The respondent or counsel may apply to the subcommittee for the issuance of subpoenas for the appearance of witnesses or the production of evidence. The application shall be granted upon a showing by the respondent that the proposed testimony or evidence is relevant and not otherwise available to respondent. The application may be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(i) During the hearing, the procedures regarding the admissibility of evidence and rulings shall be as follows:

(1) Any relevant evidence shall be admissible unless the evidence is privileged under the precedents of the House of Representatives.

(2) The Chairman of the subcommittee or other presiding member at an adjudicatory subcommittee hearing shall rule upon any question of admissibility or pertinency of evidence, motion, procedure, or any other matter, and may direct any witness to answer any question under penalty of contempt. A witness, witness's counsel, or a member of the subcommittee may appeal any ruling to the members present at that proceeding. The majority vote of the members present at such proceeding on such an appeal shall govern the question of admissibility and no appeal shall lie to the Committee.

(3) Whenever a witness is deemed by a Chairman or other presiding member to be in contempt of the subcommittee, the matter may be referred to the Committee to determine whether to refer the matter to the House of Representatives for consideration.

(4) Committee counsel may, subject to subcommittee approval, enter into stipulations with the respondent and/or the respondent's counsel as to facts that are not in dispute.

(j) Unless otherwise provided, the order of an adjudicatory hearing shall be as follows:

(1) The Chairman of the subcommittee shall open the hearing by stating the adjudicatory subcommittee's authority to conduct the hearing and the purpose of the hearing.

(2) The Chairman shall then recognize Committee counsel and the respondent's counsel, in turn, for the purpose of giving opening statements.

(3) Testimony from witnesses and other pertinent evidence shall be received in the following order whenever possible:

(i) witnesses (deposition transcripts and affidavits obtained during the inquiry may be used in lieu of live witnesses if the witness is unavailable) and other evidence offered by the Committee counsel,

(ii) witnesses and other evidence offered by the respondent,

(iii) rebuttal witnesses, as permitted by the Chairman.

(4) Witnesses at a hearing shall be examined first by counsel calling such witness. The opposing counsel may then cross-examine the witness. Redirect examination and recross examination by counsel may be permitted at the Chairman's discretion. Subcommittee members may then question witnesses. Unless otherwise directed by the Chairman, questions by Subcommittee members shall be conducted under the five-minute rule.

(5) The Chairman shall then recognize Committee counsel and respondent's counsel, in turn, for the purpose of giving closing arguments. Committee counsel may reserve time for rebuttal argument, as permitted by the Chairman.

(k) A subpoena to a witness to appear at a hearing shall be served sufficiently in advance of that witness' scheduled appearance to allow the witness a reasonable period of time, as determined by the Chairman of the adjudicatory subcommittee, to prepare for the hearing and to employ counsel.

(l) Each witness appearing before the subcommittee shall be furnished a printed copy of the Committee rules, the pertinent provisions of the Rules of the House of Representatives applicable to the

rights of witnesses, and a copy of the Statement of Alleged Violation.

(m) Testimony of all witnesses shall be taken under oath or affirmation. The form of the oath or affirmation shall be: "Do you solemnly swear (or affirm) that the testimony you will give before this subcommittee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth (so help you God)?" The oath or affirmation shall be administered by the Chairman or Committee member designated by the Chairman to administer oaths.

(n) At an adjudicatory hearing, the burden of proof rests on Committee counsel to establish the facts alleged in the Statement of Alleged Violation by clear and convincing evidence. However, Committee counsel need not present any evidence regarding any count that is admitted by the respondent or any fact stipulated.

(o) As soon as practicable after all testimony and evidence have been presented, the subcommittee shall consider each count contained in the Statement of Alleged Violation and shall determine by a majority vote of its members whether each count has been proved. If a majority of the subcommittee does not vote that a count has been proved, a motion to reconsider that vote may be made only by a member who voted that the count was not proved. A count that is not proved shall be considered as dismissed by the subcommittee.

(p) The findings of the adjudicatory subcommittee shall be reported to the Committee.

*Rule 24. Sanction Hearing and Consideration of Sanctions or Other Recommendations*

(a) If no count in a Statement of Alleged Violation is proved, the Committee shall prepare a report to the House of Representatives, based upon the report of the adjudicatory subcommittee.

(b) If an adjudicatory subcommittee completes an adjudicatory hearing pursuant to Rule 23 and reports that any count of the Statement of Alleged Violation has been proved, a hearing before the Committee shall be held to receive oral and/or written submissions by counsel for the Committee and counsel for the respondent as to the sanction the Committee should recommend to the House of Representatives with respect to such violations. Testimony by witnesses shall not be heard except by written request and vote of a majority of the Committee.

(c) Upon completion of any proceeding held pursuant to clause (b), the Committee shall consider and vote on a motion to recommend to the House of Representatives that the House take disciplinary action. If a majority of the Committee does not vote in favor of the recommendation that the House of Representatives take action, a motion to reconsider that vote may be made only by a member who voted against the recommendation. The Committee may also, by majority vote, adopt a motion to issue a Letter of Reapproval or take other appropriate Committee action.

(d) If the Committee determines a Letter of Reapproval constitutes sufficient action, the Committee shall include any such letter as a part of its report to the House of Representatives.

(e) With respect to any proved counts against a Member of the House of Representatives, the Committee may recommend to the House one or more of the following sanctions:

- (1) Expulsion from the House of Representatives.
- (2) Censure.
- (3) Reprimand.
- (4) Fine.

(5) Denial or limitation of any right, power, privilege, or immunity of the Member if under the Constitution the House of Representatives may impose such denial or limitation.

(6) Any other sanction determined by the Committee to be appropriate.

(f) With respect to any proved counts against an officer or employee of the House of Representatives, the Committee may recommend to the House one or more of the following sanctions:

- (1) Dismissal from employment.
- (2) Reprimand.
- (3) Fine.

(4) Any other sanction determined by the Committee to be appropriate.

(g) With respect to the sanctions that the Committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member or dismissal of an officer or employee is appropriate for the most serious violations. A recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit; and a recommendation of a denial or limitation of a right, power, privilege, or immunity of a Member is appropriate when the violation bears upon the exercise or holding of such right, power, privilege, or immunity. This clause sets forth general guidelines and does not limit the authority of the Committee to recommend other sanctions.

(h) The Committee report shall contain an appropriate statement of the evidence supporting the Committee's findings and a statement of the Committee's reasons for the recommended sanction.

*Rule 25. Disclosure of Exculpatory Information to Respondent*

If the Committee, or any investigative or adjudicatory subcommittee at any time receives any exculpatory information respecting a Complaint or Statement of Alleged Violation concerning a Member, officer, or employee of the House of Representatives, it shall make such information known and available to the Member, officer, or employee as soon as practicable, but in no event later than the transmittal of evidence supporting a proposed Statement of Alleged Violation pursuant to Rule 26(c). If an investigative subcommittee does not adopt a Statement of Alleged Violation, it shall identify any exculpatory information in its possession at the conclusion of its inquiry and shall include such information, if any, in the subcommittee's final report to the Committee regarding its inquiry. For purposes of this rule, exculpatory evidence shall be any evidence or information that is substantially favorable to the respondent with respect to the allegations or charges before an investigative or adjudicatory subcommittee.

*Rule 26. Rights of Respondents and Witnesses*

(a) A respondent shall be informed of the right to be represented by counsel, to be provided at his or her own expense.

(b) A respondent may seek to waive any procedural rights or steps in the disciplinary process. A request for waiver must be in writing, signed by the respondent, and must detail what procedural steps the respondent seeks to waive. Any such request shall be subject to the acceptance of the Committee or subcommittee, as appropriate.

(c) Not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a Statement of Alleged Violation, the subcommittee shall provide the respondent with a copy of the Statement of Alleged Violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews, and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness, but if such evidence is withheld, the subcommittee shall inform the respondent that evidence is being withheld and of the count to which such evidence relates.

(d) Neither the respondent nor his counsel shall, directly or indirectly, contact the subcommittee or any member thereof during the period of time set forth in paragraph (c) except for the sole purpose of settlement discussions where counsels for the respondent and the subcommittee are present.

(e) If, at any time after the issuance of a Statement of Alleged Violation, the Committee or any subcommittee thereof determines that it intends to use evidence not provided to a respondent under paragraph (c) to prove the charges contained in the Statement of Alleged Violation (or any amendment thereof), such evidence shall be made immediately available to the respondent, and it may be used in any further proceeding under the Committee's rules.

(f) Evidence provided pursuant to paragraph (c) or (e) shall be made available to the respondent and his or her counsel only after each agrees, in writing, that no document, information, or other materials obtained pursuant to that paragraph shall be made public until—

(1) such time as a Statement of Alleged Violation is made public by the Committee if the respondent has waived the adjudicatory hearing; or

(2) the commencement of an adjudicatory hearing if the respondent has not waived an adjudicatory hearing; but the failure of respondent and his counsel to so agree in writing, and therefore not receive the evidence, shall not preclude the issuance of a Statement of Alleged Violation at the end of the period referenced to in (c).

(g) A respondent shall receive written notice whenever—

(1) the Chairman and Ranking Minority Member determine that information the Committee has received constitutes a complaint;

(2) a complaint or allegation is transmitted to an investigative subcommittee;

(3) that subcommittee votes to authorize its first subpoena or to take testimony under oath, whichever occurs first; and

(4) the Committee votes to expand the scope of the inquiry of an investigative subcommittee.

(h) Whenever an investigative subcommittee adopts a Statement of Alleged Violation and a respondent enters into an agreement with that subcommittee to settle a complaint on which the Statement is based, that agreement, unless the respondent requests otherwise, shall be in writing and signed by the respondent and the respondent's counsel, the Chairman and Ranking Minority Member of the subcommittee, and the outside counsel, if any.

(i) Statements or information derived solely from a respondent or his counsel during any settlement discussions between the Committee or a subcommittee thereof and the respondent shall not be included in any report of the subcommittee or the Committee or otherwise publicly disclosed without the consent of the respondent.

(j) Whenever a motion to establish an investigative subcommittee does not prevail, the Committee shall promptly send a letter to the respondent informing him of such vote.

(k) Witnesses shall be afforded a reasonable period of time, as determined by the Committee or subcommittee, to prepare for an appearance before an investigative subcommittee or for an adjudicatory hearing and to obtain counsel.

(l) Prior to their testimony, witnesses shall be furnished a printed copy of the Committee's Rules of Procedure and the provisions of the Rules of the House of Representatives applicable to the rights of witnesses.

(m) Witnesses may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights. The Chairman may punish breaches of order and decorum, and of professional responsibility on the part of counsel, by censure and exclusion from the hearings; and the Committee may cite the offender to the House of Representatives for contempt.

(n) Each witness subpoenaed to provide testimony or other evidence shall be provided the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, officers and employees of the House, and as the Chairman considers appropriate, actual expenses of travel to or from the place of examination. No compensation shall be authorized for attorney's fees or for a witness' lost earnings. Such per diem may not be paid if a witness had been summoned at the place of examination.

(o) With the approval of the Committee, a witness, upon request, may be provided with a transcript of his or her deposition or other testimony taken in executive session, or, with the approval of the Chairman and Ranking Minority Member, may be permitted to examine such transcript in the office of the Committee. Any such request shall be in writing and shall include a statement that the witness, and counsel, agree to maintain the confidentiality of all executive session proceedings covered by such transcript.

#### *Rule 27. Frivolous Filings*

If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee, the Committee may take such action as it, by an af-

firmative vote of its members, deems appropriate in the circumstances.

*Rule 28. Referrals to Federal or State Authorities*

Referrals made under clause 3(a)(3) of Rule XI of the Rules of the House of Representatives may be made by an affirmative vote of two-thirds of the members of the Committee.

## **APPENDIX II**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,  
*Washington, DC, March 11, 2004.*

DEAR COLLEAGUE: In recent weeks a number of statements have appeared in the news media that reflect a serious misunderstanding of the work and the practices of the Committee on Standards of Official Conduct. While we are confident that the overwhelming majority of Members correctly understand the Committee and its processes, we, as the Chairman and Ranking Minority Member of the Committee, wanted to provide you with our thoughts and experiences on this important subject.

Turning first to the fundamentals, both of us devote a great deal of time and energy to the Committee's work, and we take our responsibilities very seriously. We are absolutely committed to taking all reasonable steps to ensure that all House Members and staff comply fully with the House rules and standards of conduct. We are also fully committed to pursuing any credible claim that a Member or staff person has violated any provision of the House rules. An equally important commitment we share is to perform our Committee responsibilities on an entirely non-partisan basis, and to ensure that the Committee and the ethics processes of the House are not again used—as they were used in the past—for partisan or political purposes. All of these commitments are ones that we share as well with all of the Committee members, with whom we are proud to serve.

While conducting inquiries on possible violations of the rules is an important part of the Committee's work, the Committee has at least two other broad responsibilities:

- To educate Members and staff on the rules and standards of conduct, and to respond to their inquiries on how the rules apply in specific circumstances (and, as a related matter, to propose changes in the rules as the need arises); and
- To review the Financial Disclosure Statements and the travel disclosure forms filed by Members and staff (as well as the financial disclosures of candidates for the House) for the purpose of ensuring both that the disclosure requirements are being complied with, and that the activity reflected in the disclosures is in accord with the applicable laws and rules.

Some elaboration on each of these Committee responsibilities follows.

Committee enforcement actions since 1997. Commentors on the House ethics process often note that in 1997, the House deleted from its rules a provision that gave outside organizations and individuals a limited ability to file complaints with the Committee, and they assert that as a result, there has been a severe drop-off in Committee enforcement actions. Nothing could be further from the truth, because, in fact, since 1997, the Committee has made extensive use of its authority under the rules to self-initiate inquiries. While the Committee has long had the authority to self-initiate cases, this authority has been used far more frequently since 1997 than it was prior to then.

Specifically, the Committee rules authorize the Chairman and the Ranking Minority Member to initiate informal fact-finding whenever information indicating a violation of the House rules or

standards of conduct comes to their attention. Since 1997, that authority has been exercised in 18 instances.<sup>1</sup> Usually these inquiries were initiated on the basis of information in the news media that came to our attention directly and/or was provided by an outside organization, but some were initiated based on information provided directly to the Committee by individuals. Most of these matters are now closed, but a number of them are ongoing. In two of those instances, both of which are a matter of public record, the result of the inquiry was a recommendation to the full Committee that a formal investigation be initiated, and in both, such an investigation was completed. We noted one other informal inquiry we have undertaken in a public statement that we issued last month.

Otherwise, it has been our practice, as well as that of our predecessors since 1997, not to publicly disclose any information on these inquiries, or the conclusions that have been reached in them. The major reason for this is that our experience has been that this procedure is most effective when conducted on a confidential basis. In undertaking any inquiry, our major purposes are to learn what occurred, and, unless the conduct involved warrants a sanction, to ensure that any improper conduct ceases and does not recur. Provided that the Member or staff person involved cooperates fully with the Committee, and we are satisfied that we have obtained all of the material facts, these purposes can be achieved expeditiously, and without resort to a time-consuming, expensive formal investigation. In short, it has been our experience that confidentiality facilitates cooperation and compliance. If and when, in our conduct of an inquiry, we determine that these purposes have been achieved, we bring the matter to a close.<sup>2</sup>

Nevertheless, we are concerned to the extent our treatment of these matters on a confidential basis results in a perception, however incorrect, that we have taken no action on matters where there is credible information indicating a violation of the rules. As in the past, it is our intention to consider, on a case-by-case basis, whether information on the status or disposition of a particular matter may be appropriate to release.

The so-called "ethics truce". Commentors on the House ethics process often refer to a "truce" between the parties regarding the filing of ethics complaints.<sup>3</sup> There was a House-imposed moratorium on the filing of complaints that was in effect for most of 1997, pending House consideration of proposed changes in the ethics process. That moratorium was in effect only until action on the rules changes was completed, and it expired once the Committee was reconstituted. Nevertheless, it may well be that Members have

<sup>1</sup>As we discuss below, there are, in addition, a number of instances in which the Committee commenced an enforcement action on the basis of information contained in a financial disclosure or travel disclosure form filed by a Member or staff person that indicated a possible violation of House rules or law.

<sup>2</sup>Certain of these inquiries have indicated a need for the Committee to issue an advisory memorandum to House Members and staff on a particular subject, and in those instances, we have followed up by issuing such an advisory.

<sup>3</sup>It should also be noted that not all complaints filed with the Committee necessarily become public knowledge. There is certainly no requirement that the filer of a complaint publicly disclose his or her action, and, indeed, the decision of a complainant to refrain from making a public statement may be taken as an indication that the action is not motivated by political considerations. A provision of the House rules prohibits the Committee from publicly disclosing "the contents of a complaint or the fact of its filing . . . unless specifically authorized in each instance by a vote of the full committee." House Rule 11, cl. 3(b)(6).

refrained from filing complaints, which they believed in good faith should have been filed, simply out of concern that such action would prompt the filing of retaliatory complaints against members of their own party. To the extent this has occurred, we believe that it is regrettable, and that we can assuage the concerns of any Member in that position.

To begin with, we believe that in recent years the Committee has developed a well-deserved reputation for acting in an entirely fair, non-partisan manner. Every Member can be assured that any complaint filed with the Committee will be handled in a fair, thorough and non-partisan manner. We also believe that we and the other Committee members are more than capable of identifying any complaint that is, in fact, frivolous, and of sanctioning any Member who attempts to misuse the ethics process for partisan or political purposes. It is also conceivable that some Members may have had a concern of an entirely different nature, i.e., the possibility that filing a complaint may generate other complaints, with the result that there would be Committee inquiries on matters on which the Committee otherwise would not have acted. To the extent there is any such concern, it is clearly not well founded, because of our extensive use of the authority to self-initiate enforcement actions.

Any Member considering filing a complaint should pay close attention to the applicable House and Committee rules. For example, the Committee is prohibited from undertaking an investigation of an alleged violation that occurred before the third previous Congress, unless the Committee determines that the alleged violation is directly related to one that occurred in a more recent Congress (House Rule 11, cl. 3(b)(3); Committee Rule 15(i)). In addition, the Committee will not accept any complaint that is submitted within 60 days prior to an election in which the subject of the complaint is a candidate (Committee Rule 15(h)). Furthermore, the Committee may defer action on a complaint when the Committee has reason to believe that the conduct involved is being reviewed by law enforcement or regulatory authorities (Committee Rule 15(f)). Finally, a number of specific requirements for complaints are set out in Committee Rule 15, clauses (a)–(e).

But it is important for everyone to understand that, as we indicated earlier, Member complaints are by no means the only vehicle by which Committee enforcement actions are begun. Outside individuals and organizations are free to submit to the Committee any information they wish relating to the conduct of a Member or a staff person, and as we've made clear, any credible information that is submitted to the Committee or otherwise comes to our attention may be used as the basis for a self-initiated inquiry.

The Committee's advice and education efforts. We believe that the Committee's advice and education efforts—that is, its efforts aimed at preventing violations from occurring in the first place—are as important as its enforcement activities. Thus for a number of years the Committee has maintained a vigorous advice and education program that has included issuance of numerous advisory memoranda and other publications, the holding of briefings open to all House Members and staff, holding briefings for individual offices upon request, and maintaining a staff of attorneys who are readily available to discuss the rules and respond to questions.

In addition, in response to the written request of any Member or staff person on his or her current or proposed conduct, the Committee will issue a private, formal advisory opinion letter. We especially encourage Members and staff to seek a written advisory opinion where the circumstances involved are unusual or complex.

We are very pleased that in this Congress, Members and staff are showing a greatly increased willingness to use this service of the Committee. Thus far in this Congress, the Committee has issued over 600 advisory opinion letters to Members and staff and letters providing information on the rules to outside organizations that are planning a trip or an event. The advisory opinion letters cover virtually the entire range of subjects addressed in the House rules, including gifts and travel offered to Members and staff, campaign activity by congressional staff members, the outside earned income and employment limitations applicable to Members and senior staff, conflict of interest, and the post-employment restrictions.

Review of Financial Disclosure Statements and travel disclosure forms. Yet another Committee responsibility is to oversee the financial disclosure system for House Members and staff and candidates for the House. The task of reviewing the statements is performed by the Committee staff, and staff also reviews the Member and employee travel disclosure forms that are filed under the House gift rule. In this Congress to date, staff has reviewed over 2,300 Financial Disclosure Statements, and we anticipate that the total number of financial disclosures that will be filed this year, including the candidate statements, will be about 4,000.

There is a two-fold purpose to these reviews: to ensure that the disclosure requirements are being complied with, and that the activity reflected in the disclosures filed by House Members and staff is in accord with the applicable rules and laws. At times these disclosures will indicate an action that was possibly improper, such as acceptance of impermissible travel expenses under the gift rule, acceptance of income in violation of the outside earned income or outside employment limitations, or the making of an excessive charitable donation in lieu of an honorarium. Where this occurs, the Committee requests pertinent information from the individual. Where it is determined that a violation has occurred, the Committee takes appropriate action. In the case of improper acceptance of travel expenses or outside income, the remedy has frequently included a requirement for repayment with personal funds.

At times such an action will necessitate the filing of an amended disclosure, but the Committee's practice has not been to publicize these actions otherwise. This practice has been based on the same reasons that underlie the Committee's general policy of maintaining its informal inquiries on a confidential basis, as explained above.

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The Committee on Standards of Official Conduct is a unique entity in the House, having a membership that is equally divided between the parties, and the sensitive nature of its responsibilities requires that its duties be performed with diligence and discretion. In fulfilling our responsibilities, we seek neither to protect Members from valid claims of improper conduct nor to needlessly harass

Members. Rather, we seek simply to apply the rules in a fair, non-partisan and even-handed manner, to the end of protecting the integrity and the reputation of the House of Representatives.

We recognize that it is possible for individuals reasonably to disagree with the determinations that we and the Committee have made in interpreting and implementing the House rules and standards of conduct. But we can assure you that our actions have and will continue to reflect our best judgment on the requirements of the rules, and the needs and interests of the House. We would be happy to discuss with you any questions or concerns you may have regarding the Committee and its processes.

Sincerely,

JOEL HEFLEY,  
*Chairman.*

ALAN B. MOLLOHAN,  
*Ranking Minority Member.*

## **APPENDIX III**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,  
*Washington, DC, October 6, 2004.*

Hon. TOM DELAY,  
*Majority Leader,  
House of Representatives, Washington, DC.*

DEAR COLLEAGUE: As you are aware, the Committee has made a number of decisions regarding the allegations made in the complaint that was filed against you by Representative Bell on June 15, 2004. This letter implements determinations made by the Committee that you be admonished for your conduct in two respects:

- Your participation in and facilitation of an energy company golf fundraiser at The Homestead resort for your leadership PACs on June 2–3, 2002. Those actions were objectionable under House standards of conduct because, at a minimum, they created an appearance that donors were being provided special access to you regarding the then-pending energy legislation.
- Your intervention in a partisan conflict in the Texas House of Representatives using the resources of a Federal agency, the Federal Aviation Administration. This action raises serious concerns under House standards of conduct that preclude use of governmental resources for a political undertaking.

The bases of these Committee determinations are as follows.

*Your actions regarding the energy company golf fundraiser at The Homestead resort on June 2–3, 2002.* With regard to the solicitation and receipt of campaign contributions, the Committee has clearly stated that a Member may not make any solicitation that may create even an appearance that, because of a contribution, a contributor will receive or is entitled to either special treatment or special access to the Member in his or her official capacity. This point is made on p. 34 of the Campaign Activity booklet that the Committee issued in December 2001.<sup>1</sup> In the same vein, a Member should not participate in a fundraising event that gives even an appearance that donors will receive or are entitled to either special treatment or special access.

On the basis of the information before the Committee, the Committee concluded that your participation in and facilitation of the energy company golf fundraiser at The Homestead resort on June 2–3, 2002 is objectionable in that those actions, at a minimum, created such an improper appearance. As a general matter, fundraisers directed to a particular industry or to others sharing a particular federal interest are permissible, and at such events Members are free to talk about their record and positions on issues of interest to the attendees. In addition, of course, a Member has no control over what the donors at a fundraising event spontaneously say to or ask of the Member with regard to their legislative interests. Nevertheless, there are a number of considerations regarding this particular fundraiser that make your participation in and fa-

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<sup>1</sup>More generally, under House standards of conduct as set out in Committee publications, a Member may not make any solicitation for campaign or political contributions that is linked with any specific official action taken or to be taken by that Member. In addition, a Member may not accept any contribution that is linked with any specific official action taken or to be taken by that Member.

cilitation of the fundraiser objectionable under the above-stated standards of conduct.

In particular, there was the timing of the fundraiser, i.e., it took place just as the House-Senate conference on major energy legislation, H.R. 4, was about to get underway. Indeed, one of the communications between organizers of the fundraiser that you provided to us—an e-mail of May 30, 2002 from Mr. Maloney to Mr. Perkins that notes the legislative interests of each of the attendees—includes a specific reference to the conference. That legislation was of critical importance to the attendees. In addition, there was the fact that you were in a position to significantly influence the conference, both as a member of the House leadership and, by action taken about a week and a half after the fundraiser, your appointment as one of the conferees.

In view of these considerations, other aspects of the fundraiser that would have been unobjectionable otherwise had the effect, in these specific circumstances, of furthering the appearance that the contributors were receiving impermissible special treatment or access. One of these aspects was the presence at the fundraiser of two of your key staff members from your leadership office: Jack Victory, who handled energy issues, and your office counsel, Carl Thorsen. In addition, there were the limited number of attendees, and the fact that the fundraiser included several events at a resort over a two-day period, both of which facilitated direct contact with you and your congressional staff members.

We also note the description of the event that was provided to the Committee by counsel for the attendees of one of the contributors, Westar Energy, Inc. That description includes the following:

On Sunday, June 2, 2002 Douglas Sterbenz and Doug Lawrence [Westar executives] attended a reception and dinner with fifteen to twenty others at the Homestead. Representative Tom DeLay was present for the reception and dinner. *Mr. DeLay asked the group to advise him of any interest we had in Federal Energy Legislation.* Mr. Lawrence advised Mr. DeLay that Westar supported repeal of the P.U.C.H.A. [sic] provision in the Energy Bill, provided that Westar's restructuring wouldn't be harmed by the [r]epeal. Lawrence advised that Westar needed a grandfather clause to continue as a safe harbor if P.U.C.H.A. was to be repealed. The following day, Mr. Lawrence provided a staff aide to Rep. DeLay a bound briefing book that Westar had put together on this issue. [emphasis added]

On June 3rd, 2002, Mr. Lawrence attended a golf outing at the Homestead where he played golf with the attendees. Mr. Lawrence shared a cart with an aide to Congressman DeLay and advised the aide he would give him the materials in the briefing book and later did. At lunch that day, Mr. Sterbenz, Mr. Lawrence and others participating in the golf outing had lunch. During the lunch Mr. Lawrence restated to Rep. DeLay Westar's position regarding the need for a grandfather clause if P.U.H.C.A. was to be repealed.

When we brought the above-quoted statement to your attention and requested your response to it, you stated that you gave a general briefing on energy issues at that event, but that you have no recollection of your specific remarks. You also stated that “it would not be typical” for you to have made such a statement at a fundraiser, and that this is not at all consistent with the manner in which you “normally would interact with attendees at such an event.” In view of your response, the Committee’s determination on this matter is not based on Mr. Lawrence’s characterization of your remarks. Rather, the other circumstances of the event, as set forth above, are more than sufficient to support the Committee’s determination.

In addition, while the views of any one donor are not dispositive on whether a fundraising activity creates an appearance of impropriety, the documents we obtained indicate that the individuals who were active on Westar’s behalf were of the view that the company’s participation in the fundraiser provided special access to you. In this regard, later in June 2002, when Mr. Lawrence was proposing that Westar executives make additional contributions, he stated that Westar had made “significant progress” with you and Representative Barton, and that, “The contributions made in the first round were successful in opening the appropriate dialogue.” When we asked Mr. Lawrence about that statement, he said he was referring to the presentations he was able to make at the fundraiser earlier that month. In addition, the following month, when Westar’s lobbyist, Mr. Richard Bornemann, sent a memorandum to your staff seeking an appointment with you for the company’s CEO, he noted Westar’s participation in The Homestead fundraiser.

*Your use of governmental resources for a political undertaking.* The Committee has long taken the position that House standards of conduct prohibit Members from taking (or withholding) any official action on the basis of the partisan affiliation (or the campaign support) of the individuals involved. This is the point made in an advisory memorandum that the Committee issued to House Members, officers and employees on May 11, 1999. In addition, a provision of the Code of Ethics for Government Service, which the Committee deems to be fully applicable to House Members and staff, requires that federal officials “[u]phold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.” These laws include, of course, those that generally prohibit the use of governmental resources for political purposes—particularly 31 U.S.C. § 1301, which provides that official funds are to be used only for the purposes for which appropriated, and, with regard to executive branch personnel, the Hatch Act, which prohibits those employees from engaging in political activity while on duty or in a government building.

Your intervention in a partisan conflict in the Texas House of Representatives using the resources of a Federal agency, the Federal Aviation Administration, raises serious concerns under these standards of conduct. Your contacts with the FAA were in connection with the dispute over congressional redistricting in the Texas House of Representatives that occurred in May 2003. The purpose of these contacts was to obtain information on the whereabouts of Democratic Members of the Texas House who had absented themselves from Austin for the purpose of denying the House a quorum. You have stated to us that you made these contacts at the request of the Speaker of the Texas House of Representatives, who was seeking information on the location of an airplane that was shuttling the absent legislators, and that you relayed the information you had obtained on the location of the airplane solely to the Texas House Speaker.

The submissions that you made to the Committee argue that those contacts with the FAA were proper, but those arguments are not persuasive.

First, your submissions assert that the Inspector General of the U.S Department of Transportation (DOT IG) found no wrongdoing in this matter. It is correct that the statement that the DOT IG submitted to the House Transportation and Infrastructure Committee states, "We did not find that actions [taken by the FAA official whom your office contacted] in this matter to have violated any rules or regulations." However, the assertion made in your submissions disregards a number of important considerations. To begin with, the DOT IG's statement raises specific concern about the FAA official's failure to inquire of your staff member as to why she was requesting information on the location of the particular airplane, "[W]e do not understand why he did not ask the staffer about the purpose of her request—particularly since he told us he thought it might involve a safety issue." In addition, there are the statements made by the FAA official to the DOT IG regarding his views of the requests of your office and his handling of them after he learned about the absent Texas legislators on May 13th:

I figured out why they were calling . . . I just felt like I had been used . . . I don't do anything for political purposes . . . and I just did not like . . . somebody calling me for political reasons . . . I would never use my office to help somebody politically, for any political reasons, period.

He also stated that in hindsight, "he would have handled the staffer's request differently, by coordinating with the FAA Chief Counsel's Office and senior agency officials, along with asking the requestor for background about the request." In short, without being apprised of the reason for the request, the FAA was denied the opportunity to make a prior, reasoned determination on whether collecting and

providing the requested information would be both permissible and appropriate under the laws, rules and policies governing the FAA at the time.

Yet another pertinent point here is that on July 15, 2003, upon the recommendation of the DOT IG, the FAA issued an order setting out a specific policy regarding disclosure of aircraft and flight data from FAA information systems. That policy includes the following basic provision:

No request for Flight Track Data shall be granted unless it is first determined that the request is being made in the interest of aviation safety or efficiency, or for an official purpose by a United States Government agency or law enforcement organization with respect to an ongoing investigation.

In sum, the statements made by the FAA official regarding his views of his actions after he had learned the purpose of the requests, and the FAA's later establishment of a restrictive policy on responding to such requests, indicate a larger concern about the propriety of the FAA's response to your requests for information, regardless of whether, in the specific circumstances, the actions of the FAA official did not violate the FAA rules or regulations that were in effect at the time.

Second, it is asserted that the House Committee on Transportation and Infrastructure found no wrongdoing in this matter. In this regard, the report that the Transportation Committee issued on this matter states with regard to the DOT IG's report, "[T]here were no findings that federal resources were misused or that agency personnel violated any departmental rules or regulations." Because the Transportation Committee report merely characterizes the findings of the DOT IG, the materials set out above regarding the DOT IG's report respond to this assertion as well. It should also be noted that it is the Committee on Standards of Official Conduct, and not the Transportation Committee, that has the jurisdiction to make determinations regarding the official conduct of House Members and staff.

Third, your submissions assert that the information that you sought and that was provided to you is publicly available over the Internet. Indeed, according to the statement of the DOT IG, "[C]omparable information—including near real-time aircraft locator data—is currently available to the general public through commercial databases accessible via the internet." However, the issues discussed here have arisen because you did not obtain the information on the location of the particular aircraft from one of the commercial databases, but instead you obtained it from FAA databases using the services of FAA personnel.

Finally, your submissions assert that these contacts were proper because they were made in the context of a "legitimate law enforcement issue." While acknowledging that this matter arose out of a political dispute, one of your submissions states that it "was a proper matter for the law enforcement authorities of Texas," citing certain letters of the Sergeant-at-Arms and the Texas Attorney General on the matter. However, review of those documents establishes that to the extent that there was any "enforcement" issue

here, it was solely a matter of enforcement of rules of the Texas House of Representatives that govern its Members.

Indeed, this consideration highlights a separate basis on which the contacts with the FAA were objectionable, and that is that such use of federal executive branch resources to resolve an issue before a state legislative body raises serious concerns under the fundamental concepts of separation of powers and federalism. The enforcement of the rules of the Texas House—like enforcement of the rules of the U.S. House of Representatives or any other legislative body—is the responsibility of the Members, officers and employees of that body.

Insofar as enforcing the rules of the Texas House on Member attendance is concerned, the rules of that body provide that this is the responsibility of “the sergeant-at-arms or an officer appointed by the sergeant-at-arms.” Whether it is permissible and appropriate for the Texas House Sergeant-at-Arms to appoint every official of the Texas Department of Public Safety as such an officer, as occurred here, is a matter to be resolved by Texas authorities under Texas law. However, the invocation of Federal executive branch resources in a partisan dispute before a state legislative body is a different matter entirely, and such action raises the serious concerns that are set out here.

\* \* \* \* \*

We note that your response to the Committee’s decision of last week included the statement, “During my entire career I have worked to advance my party’s legislative agenda.” Your actions that are addressed in this letter, as well as those addressed in the Committee’s decision of last week and in prior Committee actions, are all ones that, in a broad sense, were directed to the advancement of your legislative agenda. Those actions are also ones that your peers who sit on this Committee determined, after careful consideration, went beyond the bounds of acceptable conduct.

As you are aware, it does not suffice for any House Member to assert that his or her actions violated no law, or violated no specific prohibition or requirement of the House Rules. The House Code of Official Conduct broadly requires that every House Member, officer and employee “conduct himself at all times in a manner that shall reflect creditably on the House.” It is particularly important that members of the House leadership, who are the most publicly visible Members, adhere to this requirement scrupulously. The fact that a violation results from the overaggressive pursuit of one’s legislative agenda simply does not constitute a mitigating factor.

In addition, a state criminal investigation of the 2002 election activities of the Texans for a Republican Majority PAC, with which you were involved during the period in question, is underway. While Committee action on Count II of the complaint regarding those activities has been deferred pending further action in the state cases and investigation, the Committee will act on the underlying allegations at an appropriate time.

In view of the number of instances to date in which the Committee has found it necessary to comment on conduct in which you

have engaged,<sup>2</sup> it is clearly necessary for you to temper your future actions to assure that you are in full compliance at all times with the applicable House Rules and standards of conduct. We remind you that the House Code of Official Conduct provides the Committee with authority “to deal with any given act *or accumulation of acts* which, in the judgment of the committee, are severe enough to reflect discredit on the Congress.”<sup>3</sup>

Sincerely,

JOEL HEFLEY,

*Chairman.*

ALAN B. MOLLOHAN,

*Ranking Minority Member.*

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<sup>2</sup>In addition to the two matters addressed in this letter and the conduct addressed in the Committee report of last week, there was the Committee letter to you of November 7, 1997 that concerned, in part, statements that may create the impression that official access or action are linked with campaign contributions, and a confidential Committee letter to you of May 7, 1999.

<sup>3</sup>House Ethics Manual at 12 (reprinting excerpt from the 1968 committee report on the House Code of Official Conduct (emphasis added)).

## **APPENDIX IV**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,  
*Washington, DC, November 18, 2004.*

Hon. CHRIS BELL,  
*House of Representatives,  
Cannon House Office Building, Washington, DC.*

DEAR COLLEAGUE: As you know, last month the Committee made a number of decisions regarding the complaint you filed against Representative Tom DeLay on June 15, 2004, but the Committee deferred decision on the issue of whether your complaint violated Committee Rule 15(a)(4). That provision states that a complaint "shall not contain innuendo, speculative assertions, or conclusory statements."

As detailed in this letter, the Committee finds that your complaint violated Committee Rule 15(a)(4) in a number of respects. Because you personally signed this complaint and transmitted it directly to the Committee under Committee Rule 14(a)(1), you are responsible for the contents of the complaint in their entirety, and thus you are responsible for these violations.

This is a serious matter. The House Code of Official Conduct provides that a House Member, officer or employee "shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof." House Rule 23, cl. 2. In addition, the Committee Rule implicated here is an important one, the purposes of which, quite clearly, are to maintain a level of decorum in Committee proceedings and to discourage use of the Committee for political purposes. Indeed, it appears there is no purpose for including excessive or inflammatory language or exaggerated charges in a complaint except in an attempt to attract publicity and, hence, a political advantage. This improper political purpose was highlighted in this instance by the various efforts you undertook to promote your complaint publicly, by including such excessive or inflammatory language or exaggerated charges in press releases and other public statements. The fact that the Committee ultimately determined to issue a letter of admonition to Representative DeLay on bases other than the materials specified below does not mitigate your violation.

The specific respects in which your complaint violated the rule include the following. To begin with, ¶ 7 of the complaint asserted that,

Congressman DeLay violated 18 U.S.C. § 201(b)(2), as well as clause 3 of House Rule XXIII (the Code of Official Conduct), by soliciting campaign contributions from Westar Energy in return for legislative assistance on the energy bill.

The statute that is referred to in this paragraph, 18 U.S.C. § 201(b)(2), is the federal criminal statute on bribery. There can hardly be a more serious charge against a public official than that he or she solicited a bribe, i.e., something of value that is given or received specifically in exchange for an official act. Yet as the Committee noted in its analysis of Count I, the facts relating to Westar

that were alleged in the complaint did not come even close to supporting this extremely serious claim.<sup>1</sup>

Other assertions made in the complaint that constituted innuendo, speculative assertions, or conclusory statements include the following:

- Paragraph 4 of the complaint stated, “Since first assuming a position in the House Leadership, Representative Tom DeLay has engaged in a concerted and relentless effort to use the official resources of office to advance and underwrite a program of blatantly partisan political activities in violation of rules, statutes and standards of conduct applicable to Members.” This broad allegation of serious misconduct spanning a period of years was not supported by the facts alleged in the complaint.
- Paragraph 17 asserted that “the Standards of Official Conduct Committee should . . . find that Rep. DeLay was ‘dispensing special favors’ [to Westar] in violation of the House Rules.” However, while the complaint made allegations regarding actions taken on the legislative provision sought by Westar, it alleged no action whatsoever taken by Representative DeLay with regard to that legislation.<sup>2</sup>
- A footnote to ¶ 19 of the complaint referred to contributions received by Representative DeLay from Bacardi U.S.A. and its PAC and asserts that, “In return for Bacardi’s financial support, DeLay has pushed a piece of legislation . . . that would alter U.S. trademark rules to benefit Bacardi.” However, no facts supporting the allegation that Representative DeLay’s actions on this matter were “[i]n return for” the contributions were asserted.

In addition, the complaint made a number of allegations against Representative DeLay with regard to his staff’s contacts with the Federal Aviation Administration and the Department of Justice, and assertedly those allegations were based on the reports issued by the Inspectors General of Departments of Justice and Transportation respectively. However, those allegations did not correctly reflect the information set out in those reports, and specifically,

- Paragraph 50 of the complaint described the activities undertaken by the FAA with regard to the particular aircraft involved, and the clear implication of this paragraph was that *all* of those activities resulted from the contact from Representative DeLay’s office.<sup>3</sup> In fact, the report of the DOT IG attributes the described agency activities to *all* of the contacts it had received regarding the particular aircraft, including those received from the Texas Department of Public Safety, and *not* solely to the contacts from Representative DeLay’s office. In addition, according to the report, the FAA safety “alert” that

<sup>1</sup>The facts alleged in the complaint with regard to Westar are summarized and discussed on pp. 6–8 and 14 of the memorandum that the Committee released on October 6, 2004.

<sup>2</sup>The facts alleged in the complaint with regard to this matter are summarized and discussed on pp. 8 and 22 of the Committee memorandum.

<sup>3</sup>Paragraph 49 of the complaint makes allegations regarding the DeLay staff contact with the FAA, and ¶ 50 states, “According to the Department of Transportation’s Inspector General, the request for information regarding the location of Rep. Laney’s airplane required at least 13 FAA officials at several different facilities to check records and contact other FAA officials in an effort to locate the plane. H.R. Rep. 108–220 at 8. The FAA instituted a safety ‘alert’ on the Laney plane for the region covered by the FAA’s Dallas-Ft. Worth Control Center. Under the alert, a message was sent to all 29 air traffic control facilities and airport towers in the region asking if they had any information about the aircraft.”

was referenced in ¶ 50 was the result of an inquiry from the Texas DPS, not from Representative DeLay's office.

- Paragraph 51 of the complaint alleged that counsel to Representative DeLay contacted a Justice Department official "requesting the Department's assistance in enforcing the 'arrest' warrant issued by the Texas Sergeant-at-Arms" and contacted the United States Attorney for the Western District of Texas. However, according to the pages of the DOJ IG report that were cited in this paragraph of the complaint, Representative DeLay's counsel did *not* make such a request of the Justice Department official, and he did *not* contact the U.S. Attorney.

- Paragraph 52 alleged that Representative DeLay contacted the Federal Bureau of Investigation, as well as the FAA and the Justice Department, but the report of the DOJ IG reflects *no* contact made by Representative DeLay's office with the FBI.

Finally, one allegation against Representative DeLay, made in ¶ 13, was based on a misstatement of the law. That paragraph alleged, in part, the following:

If Mr. DeLay sought political donations from Westar in return for his support of the Westar amendment, he violated ... the federal gratuity statute, 18 U.S.C. 201(c), which provides that a public official who demands, seeks or agrees to receive anything of value for or because of any official act performed or to be performed by such official is guilty of an offense.

While this allegation purported to paraphrase the illegal gratuity statute, it omitted the term "personally," which appears in the statute after the phrase "anything of value." Because of this term in the statute, it is well established that a bona fide campaign contribution cannot be the subject of an illegal gratuity charge, as such a contribution is not a benefit that is received "personally."<sup>4</sup>

At the time that we, in our capacities as Chairman and Ranking Minority Member, performed our initial review of your complaint under Committee Rule 16(a), we had the option to determine, on the basis of the above considerations, that your complaint did not satisfy "the requirements of the Committee's rules for what constitutes a complaint" and to return the complaint to you under Committee Rule 16(e). We elected not to do so for essentially two reasons. First, while your complaint contained innuendo, speculative assertions and conclusory statements, it also contained allegations that warranted Committee consideration. In addition, while this Committee rule has been in force for over 10 years, the Committee had not previously rejected any complaint for violating this rule, and the Committee had not previously issued any interpretations of the rule.

This letter is being released publicly, and by its issuance, the Committee is putting all Members on notice of the need to comply with Committee Rule 15(a)(4), as well as all of the other provisions of Committee Rule 15, when submitting a complaint to the Committee. All Members are also now on notice that violation of any

<sup>4</sup>U.S. Dep't of Justice, Criminal Resources Manual § 2045; *United States v. Brewster*, 506 F.2d 62, 77 (D.C. Cir. 1974).

of those rules is a basis for summarily rejecting a complaint under Committee Rule 16(e) and depending on the circumstances, may also be the basis for initiating disciplinary action against the Member who makes the filing.

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We also wish to bring to your attention a separate matter regarding the Committee's consideration of your complaint against Representative DeLay. In a newspaper article that appeared on September 15, 2004, a member of your staff, Eric Burns, was quoted as follows:

The Republicans on the committee know DeLay would not survive a full investigation, so they're trying to protect their party boss. The committee faces a very clear choice: They can stand up for the integrity of the House, or they can protect politics as usual.<sup>5</sup>

We have not inquired of your staff member whether he was quoted accurately, and we do not assume that he was. Nevertheless, we also wish to make the point to you—and, by public release of this letter, to all House Members and staff—that it is highly improper, and a basis for the initiation of disciplinary action, for any House Member or staff person to attack the integrity of this Committee or any of its members.

Sincerely,

JOEL HEFLEY,  
*Chairman.*  
ALAN B. MOLLOHAN,  
*Ranking Minority Member.*

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<sup>5</sup>Bresnahan and Chappie, "DeLay Probe Faces Deadlock," Roll Call, Sept. 25, 2004, p. 23.