

**SUMMARY OF ACTIVITIES**  
**ONE HUNDRED EIGHTH CONGRESS**

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

**REPORT**

**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***

(l) 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 investigation 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 together 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 108<sup>th</sup> 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 108<sup>th</sup> 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 particular concern, through the issuance of advisory memoranda and letters to all Members and staff. The letters and memoranda issued during the 108<sup>th</sup> 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 108<sup>th</sup> 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 108<sup>th</sup> 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 109<sup>th</sup> Congress.

The Committee also made a presentation to the Members-elect of the 109<sup>th</sup> 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 108<sup>th</sup> Congress. Opinions issued by the Committee in the 108<sup>th</sup> 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 & 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 15<sup>th</sup> 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 15<sup>th</sup> 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 108<sup>th</sup> Congress. See Appendix I. These rules were substantially identical to the Committee Rules for the 107<sup>th</sup> 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 congressional 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 approved 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 107<sup>th</sup> Congress fact-gathering under Committee Rule 18(a) regarding the conduct of nine other Members. Of these matters, five were resolved during the 108<sup>th</sup> Congress without the empanelment of an investigative subcommittee or other formal action by the Committee, and the remaining matters are still pending.