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BUSINESS MEETING

Friday, February 27, 2009

OFFICE OF CONGRESSIONAL ETHICS

Washington, D.C.

The members of the OCE board met, pursuant to call, at 11:00 a.m., in Room 1310, Longworth House Office Building, Hon. David Skaggs [chairman of the OCE board] presiding.

Present: David Skaggs (Chair); Porter Goss (Co-Chair); Yvonne B. Burke; Karan English; Allison Hayward; and Bill Frenzel.

Staff Present: Leo Wise, Staff Director and Chief Counsel.

The Chairman. Welcome, everyone. We will call the meeting of the Board of the Office of Congressional Ethics to order.

Present are Former Representative English, Ms. Hayward, myself; David Skaggs, chairman; co-chairman Porter Goss; former Representative Burke; and former Representative Frenzel. Mr. Eagen is not with us today and Judge Mikva is not with us today.

The purpose of this meeting is to consider revisions to the Rules of Procedure and to the Code of Conduct adopted at our meeting last month; but we wanted to be receptive to suggestions for improvements early on, and so have reviewed a number of submissions that have come to us from various interested organizations.

And let me ask our staff director and chief counsel, Leo Wise, to walk through proposed changes to the rules and code. Mr. Wise.

Mr. Wise. Thank you, Mr. Chairman.

Beginning with the rules for conduct of investigations, the first proposed revision for consideration is to rule 2 on board meetings. And I will read the proposed revised language and just indicate that this particular language relates to how alternates shall participate in board meetings.

The following current language reads, "Alternates shall participate in all board meetings and conferences but may not vote."

The proposed revision is an amendment to that statement that reads -- following but may not vote -- if, and then, first, a vacancy occurs; second, a board member disqualifies him or herself because of a financial conflict of interest; third, a board member recuses him or herself because of a lack of impartiality in a particular matter; or, fourth, if a voting board member is otherwise unable to participate in board business for good cause as determined by the Chairman. The most senior alternate board member nominated by the same individual who nominated the unavailable board member shall fill the voting board member's seat until the voting board member is again available or until a permanent replacement is selected.

The Chairman. Is there a motion to adopt this change? Mr. Frenzel moves.

Second? Ms. English. Thank you.

Discussion? Seeing none, all those in favor will indicate by saying "aye."

Opposed, the same sign.

That change is adopted unanimously. Thank you.

Mr. Wise.

Mr. Wise. The next proposed revision is to rule 3, Information for Board Consideration. And this is a proposed revision to subpart (a) on submissions. And this would be an amendment, an additional sentence now added to subsection (a), this proposed revision would now be the new last sentence in

subsection (a). And the sentence reads, "The staff shall keep the board apprised at all times of information the Office has received." And, again, this relates to submissions to the board from citizens.

The Chairman. Thank you.

Is there a motion to adopt this change? Ms. Burke.

And seconded by Mr. Frenzel.

Discussion on this? Seeing none, all those in favor please say "aye."

Opposed, the same sign. Adopted unanimously.

Mr. Wise.

Mr. Wise. The second, staying in rule 3, subsection (b), Submission From a Board or Staff Member. A proposed revision is to add the following language to subsection (b) at the end of existing subsection (b). "The staff or board member submitting information shall include the facts outlined in subsection (a) above to the best of his or her ability."

This essentially imposes the same requests for information on the staff as are requested of citizens submitting information.

The Chairman. And on members of the board.

Mr. Wise. And on members of the board.

The Chairman. Motion to adopt this, Ms. Hayward.

Seconded by Ms. English.

Discussion? All those in favor. Opposed.

That is approved unanimously.

Mr. Wise.

Mr. Wise. The next proposed revision is a new subsection (c) again of the same rule, rule 3. The title of this proposed subsection is Allegations Against a Board Member or Staff Person. And the text of the new section reads, "In the event a submission alleges a member of the board of directors of the OCE has violated any law, rule, regulation, or other standard of conduct applicable to the board member in the performance of his or her duties or the discharge of his or her responsibilities, the Office shall immediately forward such information to the Speaker of the House and the minority leader.

Second paragraph: "In the event a submission alleges that a staff person in the OCE has violated any law, rule, regulation, or other standard of conduct applicable to the staff person in the performance of his or her duties or the discharge of his or her responsibilities, the staff director shall notify the Chairman and Co-Chairman, who shall take appropriate action."

And then what follows is proposed commentary. Commentary: Allegations against a board member shall be forwarded to the Speaker and minority leader because as appointing authorities, the Speaker and minority leader are empowered to remove members of the board for cause.

The Chairman. Thank you.

Motion? Ms. English.

Seconded by Mr. Frenzel.

Discussion on this proposed change? Seeing none, all those in favor please say "aye." Opposed, the same sign.

Hearing no objection, that is adopted unanimously.

Mr. Wise.

Mr. Wise. The next proposed change is to rule 12 titled Requests from the Standards Committee. And the proposed change is the addition of commentary to subpart (b), Matters Unresolved by the Standards Committee, and the proposed commentary reads as follows.

Commentary: If the matter was in a second phase review when the Standards Committee asked the board to cease the review, then for purposes of calculating the second phase review time period, the number of calendar days remaining when the Standards Committee asked the board to cease its review shall be available to the board when the second phase review resumes."

And the purpose of this additional commentary is to make it clear when the clock, essentially -- how it runs in the case of a matter that was asked to be reviewed by the Standards Committee and then sent back to the board.

The Chairman. Thank you.

Is there a motion on this change? Ms. Hayward. Thank you.

Second? Mr. Goss.

Further discussion? Seeing none, all those in favor please say "aye." Opposed, the same sign.

Adopted unanimously.

Mr. Wise.

Mr. Wise. The next proposed revision is to rule 13, Referrals to Other Entities, and the proposal is to subpart (d), State and Federal Authorities. The current rule reads, "The staff, in consultation with the Chairman and Co-Chairman, may refer information to State and Federal authorities in the event that information indicates," and the proposed change is to strike "imminent harm or a threat to public safety," and amend that with "a crime has occurred or is about to occur."

The Chairman. Motion? Mr. Goss. Thank you.

Second? Second by Ms. Burke.

Discussion on this proposed change? Seeing none, all those in favor please say "aye." Opposed, the same sign.

That is adopted.

Mr. Wise.

Mr. Wise. And that completes the proposed revisions to the rules for the conduct of investigation.

The Chairman. Before we move to the Code of Conduct, are there any other proposed amendments to our Rules of Procedure that any member of the board would like to propose? Seeing none, please go ahead.

Mr. Wise. The proposed revisions to the Code of Conduct are as follows:

First, in the introductory paragraph, the following two sentences are proposed as additions. After the first sentence,

"This code applies to the board and staff of the OCE," in addition, "The code of official conduct and all other relevant statutes, regulations, rules, and standards of conduct applicable to House employees apply to the staff of the OCE."

The Chairman. Is there a motion on this? Mr. Frenzel, thank you.

Second? Ms. English.

Discussion? Those in favor please say "aye." Opposed, the same sign.

Adopted unanimously.

Mr. Wise.

Mr. Wise. Next is a proposed new item 2 entitled Statement of Principles that reads as follows:

"The board and staff shall endeavor at all times to uphold the highest ethical standards. In so doing, the board and staff will be guided by the following principles:

"A, upholding this code and the applicable rules of the U.S. House of Representatives in all activities of the OCE; B, discharging all official duties in a nonpartisan manner; C, maintaining objectivity in the review of all allegations against any member, officer, or staff person; D, acting in a manner that is faithful to the letter and spirit of the transparency and confidentiality provisions of H.Res. 895 of the 110th Congress; E, serving as good stewards of public funds and House resources; and, F, remaining free of conflicts of interest."

The Chairman. Thank you.

Is there a motion to adopt this change? Ms. Hayward, thank you.

Second? Mr. Goss.

Discussion on the inclusion of a statement of principles in our code? Seeing none, those in favor of this change please say "aye." Opposed?

Adopted unanimously.

Mr. Wise.

Mr. Wise. The next is a revision to what had been rule 3, is now rule 4; what had been titled Compensation for Board Service. The proposed revision is to add to the title, "Compensation, Gifts, and Gratuities," those three words are the addition, "for Board Service." And the proposed revision is to add the following sentence at the end of that provision. "A member of the board may not accept or solicit a gift or gratuity linked to any official action a board has taken or is asked to take."

The Chairman. Motion? Ms. Burke, thank you.

Second? Ms. Hayward.

Mr. Goss. May I make a comment, Mr. Chairman?

The Chairman. Mr. Goss.

Mr. Goss. I think for the record it is very important to understand that no board member actually was considering doing any of this. It was just we wanted an abundance of caution and clarity to reassure the public.

The Chairman. Thank you, Mr. Goss.

Further discussion? Seeing none, all those in favor of this amendment please say "aye." Opposed, the same sign.

Adopted unanimously.

Mr. Wise.

Mr. Wise. Next is a revision to what previously had been numbered provision 5, is now provision 6, entitled Disqualification for Financial Conflict of Interest. The revision adds or proposes to add several additional items.

The current rule reads, "if any matter before the board." The proposed revision is, "or transaction with the office." Current rule reads, "involves a close relative partner," strike "or client." Proposed revision is to add, "or business associate of a board member."

Again, current rule reads, "or any person or organization with which a board member is affiliated, is negotiating, or has any arrangement concerning prospect of employment or financial interests, that member, one, shall promptly so notify the other members of the board." And the proposed revision is to add, "when that member first learns of the transaction or matter."

And then continuing, after subpart 5, the following language is proposed to be added, again to the same rule, "In addition, if a board member has a connection with a vendor, consultant, or other contractor with whom the board is considering entering into any relationship which would give rise to a perception of conflict

of interest, the board member shall disclose that fact to the board when the board member first learns that the board is considering entering into any such relationship."

And then the following sentence in addition is proposed. "Staff shall review the financial disclosure form submitted by each board member for any potential conflicts prior to presenting any transaction to the board in any form."

The Chairman. Thank you.

Do we have a motion on this proposed change? Ms. Hayward, thank you.

Second? Ms. English.

Discussion on this? And I think, if I may comment, this was really intended to be as inclusive as possible in putting us on notice to advise our colleagues if there is anything that might appear to present a conflict of interest because of proposed transactions or arrangements being entered into. So it is really a further reach in our self-reporting.

Any further discussion? Seeing none, all those in favor of this amendment please say "aye." Opposed.

That is adopted without objection.

Mr. Wise.

Mr. Wise. The next proposed revision is to what had been item 6, is now item 7, entitled Recusal. The following language is proposed to be added at the end of the current text. "If a board member has made a political contribution to a subject or a

subject's opponent in any election, or to any entity controlled by a subject or a subject's opponent, or to a legal defense fund either for a subject or a subject's opponent in any election in the last 5 years, the board member shall recuse him or herself from any matter involving allegations against that subject."

The Chairman. Is there a motion on this? Ms. English, thank you.

Second? Mr. Goss.

Discussion? Seeing none, those in favor of this amendment please say "aye." Opposed.

Hearing no objection, that is adopted.

Mr. Wise.

Mr. Wise. The final proposed revision or the next proposed revision is to add a new item 13 entitled Certification and Annual Training that reads as follows. "Each member of the board and staff shall certify that they have read and agreed to abide by the provisions of this code and to participate in annual ethics training."

The Chairman. Is there a motion on this proposed change? Ms. Burke, thank you.

Second? Ms. Hayward.

Discussion? Seeing none, those in favor please say "aye." Opposed, the same sign.

Seeing no objection, that is adopted unanimously.

Mr. Wise. An additional revision to item 12 -- what had been

item 11 is now item 12 -- Prohibition on Partisan Activity by Board and Staff. The proposed revision is to add, "the board and the board as a whole," to the existing language which reads, "The staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner."

So the new language will read -- the proposed new language, "The board as a whole and the staff as a whole and each member of the staff shall perform all official duties in a nonpartisan manner."

The Chairman. And I believe, Mr. Wise, we also included, "and each board member as well as the board as a whole," is that -- "in the performance of our official duties."

Mr. Wise. I apologize.

The Chairman. Is there a motion on this change? Mr. Frenzel, thank you.

Second? Ms. English.

Is there further discussion on this change?

Seeing none, all those in favor please say "aye." Opposed, the same sign.

No objection, this is adopted unanimously.

And that, I believe, completes the proposed amendments to our Rules of Procedure and Code of Conduct.

I would now like to open the meeting to any comments that the public would like to make to the board. Anyone there wishing to give us any advice or counsel? Ms. McGee?

Ms. McGee. Thank you. And I appreciate all the work that went into these. I know there was a lot of thought given to each of these. I simply have a question, because I think most of these look terrific and I appreciate the changes. And that is simply to raise the question of the time period on the political contributions.

I notice it was 5 years. And I would just like to pose kind of the issue that often is, you know, for candidates, you can go along for a long period of time and not have a particularly competitive election, and then all of a sudden have a very tough election. And if people that came to your rescue, if you will, in that election are people that you remember for the rest of your lives because they came in your time of need; and then, again, you may go back to where you have members who don't have competitive elections after that.

So I would just simply raise the question if there was more consideration to giving a little bit longer time period than the 5 years. I appreciate the fact that you put this in. I think it is very important, and the way that it was worded that was not just campaign contributions, and I want to note that that is -- that I think that was important. But I just simply wanted to raise that question because I have some concerns that a 5-year lookback may not be appropriate. But I want to commend you for the rest of the changes.

The Chairman. Thank you for those comments. I think the

board deliberated with due care on this particular prohibition, and the change reflects our collective judgment.

Any other comments from the public? If not, is there a motion that we adjourn?

Thank you, Mr. Goss, who has moved that we adopt the rules, as amended, and the code, as amended. Is there a second?

Mr. Frenzel. Second.

The Chairman. Any further discussion?

Proceed to a vote. All those in favor of Mr. Goss' motion, please say "aye." Opposed.

Unanimously passed. Thank you very much.

And now shall we adjourn? I appreciate your attendance. This meeting is adjourned.

[Whereupon, at 11:26 a.m., the hearing of the Office of Congressional Ethics was adjourned.]