



KENTUCKY LEGISLATIVE ETHICS COMMISSION
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January 21, 2009

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Mr. Leo J. Wise
Staff Director and Chief Counsel
Office of Congressional Ethics
United States House of Representatives
1017 Longworth House Office Building
Washington, DC 20515

Dear Mr. Wise:

As we discussed, I am writing this to make comments on the proposed OCE Code of Conduct and Rules For The Conduct of Investigations. These comments are based on the experience of the Kentucky Legislative Ethics Commission. I realize that your situation is somewhat different from ours since our office performs both the investigations, which will be conducted by the OCE, and the final disposition of matters, which in your situation will be disposed of by the Standards Committee. Nevertheless, I hope these comments will be helpful.

I. Code of Conduct

Section 6. It would be hard to overemphasize the importance of the Board's being impartial and non-partisan toward establishing and maintaining its credibility. Likewise it is of almost equal importance that it appears to be so. The distinguished make-up of the present Board would seem to ensure actual impartiality. However, to further bolster the appearance of impartiality it might be useful to provide that during service on the Board no member contribute to the campaign of any candidate for election or re-election to the House or serve as a fundraiser or participate in the management or conduct of such a campaign. Also a member should not serve as an officer in a political party.

Section 9. You should consider a two rather than one year limitation on former staff members appearing before the OCE. While burdensome to the former staff members marketing their skills it would greatly diminish a perception that these former staff members "have a leg up."

II. Rules For The Conduct of Investigations

Rule 3.

- (A) The requirement that once staff finds that the information it has received sufficiently alleges a violation it may spend a reasonable time gathering additional information only with the authorization of the Chair and Co-Chair seems unnecessarily restrictive. Plus this is apt to make the positions of Chair and Co-Chair nearly fulltime jobs. At this stage no formal investigation has been initiated so it would seem practical and advisable to permit staff to proceed on its own to gather information for the Board's review. The Staff Director and Chief Counsel can ensure that this is done in a discrete and professional manner.

Rule 7.

- (A) The standard of proof set out here appears to be unnecessary surplusage since preliminary reviews are not initiated by a majority vote of the Board based upon an evidentiary standard but rather by the written request of two members based on no such standard.
See Rule 3(c)
- (F) The provision that four members of the Board may vote to terminate a preliminary review at anytime is confusing. Is it intended to mean that a majority of the members of the Board voting to terminate a preliminary inquiry must consist of no less than four members? That seems to be the sounder approach and perhaps more in keeping with the intent of H. Res. 895.

Rule 8.

- (A) The standard of proof set out here and that set out in Rule 9.(A) appear to be aimed at raising the standard as the Board proceeds from second-phase review to referral. I'm not sure there is any real substantive difference in the two standards. In any event it might be simpler and less confusing to use one standard viz. "probable cause." The second phase review is begun on the basis of probable cause to believe an alleged violation has occurred and if after further investigation there is still probable cause to so believe the matter is referred to the Standards Committee.

Rule 9.

- (C) The vote necessary for the report to the Standards Committee is unclear. Is the intent that the majority of the Board present and voting on the report must consist of at least four members as opposed e.g. to a vote of three out of a five person quorum? Also does the provision

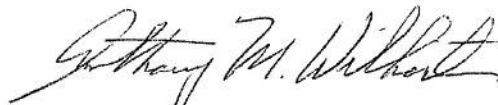
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about members not supporting either further review or dismissal apply only in four/four tie vote?

After the House has become more comfortable with its new OCE and its operation, I believe it would be very helpful if some method of issuing subpoenas, perhaps upon approval for or issuance by the Standards Committee could be established. You will be working within a limited time frame on each case and may find that potential witnesses will be reluctant to answer your interrogatories or testify before you for any other motive than that they don't want to get involved if nothing makes them be.

I look forward to seeing you on Friday.

Very truly yours,



ANTHONY M. WILHOIT
Executive Director

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