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Chapter 25

Ethics; Committee on Standards of Official Conduct

A. INTRODUCTORY

§ 1. In General
§ 2. Committee on Standards of Official Conduct
§ 3. — Membership; Eligibility for Committee Service; Disqualification
§ 4. — Publications; Advisory Opinions
§ 5. Initiating an Investigation; Complaints
§ 6. Persons Subject to Disciplinary Procedures

B. BASIS FOR IMPOSING SANCTIONS

§ 7. In General; The Code of Official Conduct
§ 8. Code of Ethics for Government Service
§ 9. Violations of Statutes
§ 10. Misuse of Hiring Allowance; False Claims
§ 11. Discrimination in Employment
§ 12. Campaign Fund Irregularities
§ 13. Solicitation of Contributions From Government Employees
§ 14. Limitations on Earned Income; Honoraria
§ 15. Acceptance of Gifts
§ 16. Financial Disclosure
§ 17. Professional Practice Restrictions
§ 18. Acts Committed in Prior Congress or Before Becoming a Member

C. NATURE AND FORMS OF DISCIPLINARY MEASURES

§ 19. In General
§ 20. Expulsion
§ 21. — Procedure; Resolutions of Expulsion
§ 22. Censure; Reprimand
§ 23. — Grounds; Particular Conduct
§ 24. — Censure Resolutions

§ 25. Fines; Restitution of Funds
§ 26. Deprivation of Status; Caucus Rules
§ 27. Letter of Reproval

Research References

U.S. Const. art. I, § 5, cl. 2; § 6, cl. 1
2 Hinds §§ 1236–1289
6 Cannon §§ 236–238
Deschler Ch 12 §§ 2–18
Manual §§ 62, 738, 759, 806, 853, 1095–1103
House Ethics Manual, 102d Cong.; *Gifts and Travel*, 106th Cong., and *Campaign Activity*, 107th Cong., Committee on Standards of Official Conduct

A. Introductory

§ 1. In General

Authority; Definitions and Distinctions

The authority of the House to discipline its Members flows from the Constitution. It provides that each House may ''punish its Members for disorderly Behaviour, and, with the concurrence of two thirds, expel a Member.'' U.S. Const. art. I, § 5, cl. 2.

Among the sanctions that the House may impose under this provision, the rules of the Committee on Standards of Official Conduct outline the following:

- Expulsion from the House.
- Censure.
- Reprimand.
- Fine.
- Denial or limitation of any right, power, privilege, or immunity of the Member if not in violation of the Constitution.
- Any other sanction determined by the committee to be appropriate.

Rule 25, Committee on Standards of Official Conduct, 107th Cong; see §§ 19–27, infra.

These sanctions are not mutually exclusive. In a given case, a Member may be censured, fined, and deprived of his seniority. Deschler Ch 12 § 12.1. A Member also may be reprimanded and ordered to reimburse the costs of the committee's investigation. *Manual* § 63.

Imprisonment of a Member is a form of punishment that is theoretically within the power of the House to impose, but such action has never been

taken by the House. Deschler Ch 12 § 12. The disciplinary measures referred to herein are separate and distinct from the sanctions of fine or imprisonment that may be available under a criminal statute at the State or Federal level. See § 9, infra.

Exclusion Distinguished

The power of exclusion is derived from the right of each House to determine the qualifications of its Members, whereas the power of expulsion stems from its authority to discipline Members for misconduct. This distinction has not always been recognized. In 1870 a Member was excluded from the 41st Congress on the ground that he had sold appointments to the Military Academy. 1 Hinds § 464. In 1967, after an investigating committee recommended that a Member be fined and censured for improperly maintaining his wife on the clerk-hire payroll and for improper use of public funds for private purposes, the House voted to impose a stronger penalty—to exclude him by denying him his seat. Deschler Ch 12 §§ 14.1, 16.1. However, the Supreme Court determined such exclusion was not a sanction to be invoked in cases involving the misconduct of a Member. It is available only for failure to meet the constitutional qualifications of Members as to age, citizenship, and inhabitancy. *Powell* v. *McCormack*, 395 U.S. 486 (1969).

§ 2. Committee on Standards of Official Conduct

Generally

Before the 90th Congress, select temporary committees were created to consider allegations of improper conduct against a Member and to recommend such disciplinary measures as might be appropriate. Deschler Ch 12 § 2. In the 90th Congress, the Committee on Standards of Official Conduct was established as a standing committee of the House. 90–1, H. Res. 418, Apr. 13, 1967, p 9425. Under rule XIII clause 5(a)(5), the committee may report as privileged resolutions recommending action by the House with respect to the official conduct of any Member, officer, or employee of the House. *Manual* § 853.

Legislative Jurisdiction

The jurisdiction of the Committee on Standards of Official Conduct, as set forth in rule X clause 1(p), consists of measures relating to the Code of Official Conduct. *Manual* § 737. Measures proposing to amend the Code are not privileged for immediate consideration when reported by that committee but may be considered in the House pursuant to a special order from the Committee on Rules. See *Manual* § 853.

Investigative Jurisdiction; Recommendations and Reports

Pursuant to rule XI clause 3, the Committee on Standards of Official Conduct is authorized to conduct investigations, hold hearings, and report any findings and recommendations to the House. *Manual* § 806. This committee has been given similar responsibilities under House resolutions authorizing specific investigations. Where the House has directed the committee to conduct such a specific investigation, it has, on occasion, authorized the committee to take staff depositions, to serve subpoenas within or without the United States, and to participate by special counsel in relevant judicial proceedings. See, *e.g.*, 95–1, H. Res. 252, Feb. 9, 1977, pp 3966, 3975; 96–2, H. Res. 608, Mar. 27, 1980, p 6995. The committee also has been authorized to investigate, with expanded subpoena authority, persons other than Members, officers, and employees. 94–2, H. Res. 1054, Mar. 3, 1976, p 5165–68.

By resolutions considered as questions of the privileges of the House, the committee has been directed:

- To investigate illegal solicitation of political contributions in the House Office Buildings by unnamed sitting Members.
- To review GAO audits of the operations of the ''bank'' in the Office of the Sergeant-at-Arms.
- To disclose the names and pertinent account information of Members found to have abused the privileges of the ''House bank.''
- To investigate violations of confidentiality by staff engaged in the investigation of the operation and management of the Office of the Postmaster.

Manual § 703.

Extensive Revision of Ethics Process

In the 105th Congress the House adopted a resolution sponsored by the chairman and ranking minority member of a bipartisan leadership task force on reform of the ethics process. The resolution included provisions amending the rules of the House as follows:

- Establishment of a ''pool'' of non-committee Members who may be assigned to serve on investigative subcommittees, and exclusion of service on such subcommittee from the limitation on subcommittee service. Rule X clause 5.
- Requirement that a complaint placed on the committee agenda before expiration of the time limit set forth in the rules of the committee be referred to an investigative subcommittee only by an affirmative vote of the members of the committee. Rule XI clause 3.
- Change in the duration of service on the committee. Rule X clause 5.

- Requirement that each meeting be held in executive session unless opened by an affirmative vote of a majority of the members, and requirement that each adjudicatory subcommittee hearing or full-committee sanction hearing be open unless closed by an affirmative vote of a majority of its members. Rule XI clause 3(c).
- Requirement of confidentiality oath by a Member, officer, or employee having access to committee information. Rule XI clause 3(d).
- Exception for committee votes taken in executive session from requirement that committees disclose record votes. Rule XIII clause 3(b).
- Permission for a non-Member to file information offered as a complaint only if a Member certifies the information is submitted in good faith and warrants committee consideration. Rule XI clause 3(b)(2)(B).
- Authority for the chairman and ranking minority member jointly to appoint members from the ''pool'' to serve on an investigative subcommittee. Rule X clause 5.
- Authority for the chairman and ranking minority member of the committee jointly to gather preliminary additional information with regard to a complaint or information offered as a complaint. Rule XI clause 3(b)(1).
- Authority for a subcommittee to authorize and issue a subpoena only by affirmative vote of a majority of its members. Rule XI clause 2(m)(2).
- Authority for the committee to refer substantial evidence of a violation of law to Federal or State authorities either with approval of the House or by an affirmative vote of two-thirds of the members of the committee. Rule XI clause 3(a)(3).
- Authority for the committee to take appropriate action in the case of a frivolous complaint. Rule XI clause 3(e).

The resolution also included provisions requiring the committee to adopt the following committee rules (which were codified in rule XI clause 3 in the 108th Congress):

- Guaranteeing the ranking minority member the right to place an item on the agenda.
- Setting specified standards for staff, providing for appointment of staff, permitting the retention of outside counsel or temporary staff, and permitting both the chairman and the ranking minority member one additional staff member.
- Permitting only the chairman or ranking minority member to make public statements regarding matters before the committee, unless otherwise determined by a vote of the committee.
- Providing the chairman and ranking minority member 14 calendar days or five legislative days (whichever occurs first) to determine whether information offered as a complaint constitutes a complaint.

- Granting the chairman and ranking minority member, unless otherwise determined by an affirmative vote of the majority of committee members, 45 calendar days or five legislative days (whichever occurs later) after the date they determine the information filed constitutes a complaint to: (1) recommend disposition of the complaint; (2) establish an investigative subcommittee; or (3) request an extension.
- Requiring the chairman and ranking minority member to establish an investigative subcommittee to consider a complaint not disposed of by the expiration of the time limit.
- Providing for disposal of information not constituting a proper complaint.
- Setting parameters for the composition of investigative and adjudicatory subcommittees.
- Establishing a standard of proof for the adoption of a statement of alleged violation.
- Authorizing expansion of the scope of an investigation by an investigative subcommittee upon an affirmative vote of a majority of the members of the full committee.
- Authorizing an investigative subcommittee to amend its statement of alleged violation any time before it is transmitted to the committee and granting 30 calendar days for a respondent to file an answer to the amended statement of alleged violation.
- Establishing procedures to protect the due process rights of respondents.
- Requiring the committee to transmit to the House upon an affirmative vote of a majority of its members an investigative subcommittee report that it did not adopt a statement of alleged violation.
- Detailing a mode of proceeding upon an approved waiver of an adjudicatory hearing, including committee reporting requirements and opportunity for respondent views.
- Clarifying that, when the committee authorizes an investigation on its own initiative, the chairman and ranking minority member shall establish an investigative subcommittee.

105–1, H. Res. 168, Sept. 18, 1997, p ____; *Manual* § 806.

§ 3. — Membership; Eligibility for Committee Service; Disqualification

The Committee on Standards of Official Conduct, unlike other standing committees of the House (where the majority party has a preponderance of the elected membership), is composed of 10 members in equal numbers from the majority and minority parties. Rule X clause 5(a)(3). Service on the committee also is limited to no more than three Congresses in any 10-year period. However, a member of the committee may serve during a fourth Congress as either the chairman or the ranking minority member of the committee. *Manual* § 759. At the beginning of each Congress, the Speaker and the Minority Leader each name 10 Members from their respec-

tive parties who are not members of the committee to be available to serve on investigative subcommittees during that Congress. Rule X clause 5(a)(4).

Rule XI clause 3(b)(4) provides that a member of the committee shall be ineligible to participate in a committee proceeding relating to his or her own conduct. Under this rule, where it was contended that four members of the committee were ineligible to adjudicate a complaint because of their personal involvement in the relevant conduct, the Speaker named four other Members to act as members of the committee in all proceedings on the complaint in the same political-party ratio represented by the party affiliation of the four ineligible members. *Manual* § 806.

Rule XI clause 3(b)(5) permits a member of the committee to disqualify himself from participation in any committee investigation in which he certifies that he could not render an impartial decision and authorizes the Speaker to appoint a replacement for that investigation. Under this rule, where a member of the committee submits an affidavit of disqualification in a disciplinary investigation of another Member, or where a member of the committee is himself the subject of an ethics inquiry and has notified the Speaker of his ineligibility, the Speaker may appoint another Member to serve on the committee during the investigation. *Manual* § 806.

§ 4. — Publications; Advisory Opinions

Under rule XI clause 3(a)(4), the Committee on Standards of Official Conduct is authorized to issue and publish advisory opinions (also known as ''pink sheets'') with respect to the general propriety of any current or proposed conduct. The committee's advisory opinions are incorporated in the *House Ethics Manual*. The *House Ethics Manual* also includes advisory opinions issued by the former Select Committee on Ethics, which was established during the 95th Congress and was the precursor of the present standing committee. More recent advisory opinions may be found on the committee's website and include the following:

- Salary Levels at which the Outside Earned Income Limitation, Financial Disclosure Requirement, and Post-Employment Restrictions Apply for Calendar Year 2003—January 16, 2003.
- Post-Employment and Related Restrictions for Staff—November 25, 2002.
- Post-Employment and Related Restrictions for Members and Officers—November 25, 2002.
- Gift Rule Provisions on Meals, Entertainment and Recreational Activities from Lobbyists—November 14, 2002.
- Applicability of the Financial Disclosure Reporting Requirement, the Outside Employment and Earned Income Restrictions, and the Post-Employment Restrictions to House Employees—October 2, 2002.

- Member Use of Campaign Funds to Pay Food and Beverage Expenses at Events Sponsored by Their Office and Other Official House Events—May 8, 2002.
- Member Office Activities in Areas Added by Redistricting—February 15, 2002.
- Olympics Tickets Under the Gift Rule—December 20, 2001.
- Classified Information Oath—October 12, 2001.
- Prohibition Against Private Subsidy of Conferences, Meetings and Other Events Sponsored by a House Office—September 28, 2001.
- Rules and Standards of Conduct Applicable to Committee Consultants—April 12, 2000.
- ''Lump Sum'' Payments to House Employees—October 15, 1999.
- Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain—May 11, 1999.
- Employment Recommendations—October 1, 1998.
- Answers to the ''Top 20 Questions''—March 4, 1998.
- Outside Earned Income Restrictions on Members and Senior Staff—February 23, 1998.
- Rules Governing (1) Solicitation by Members, Officers and Employees in General, and (2) Political Fundraising Activity in House Offices—April 25, 1997.
- Classified Information Oath—July 12, 1995.
- Revised Solicitation Guidelines—April 4, 1995.

In addition to the *House Ethics Manual*, the committee published the booklet *Gifts and Travel* in the 106th Congress and the booklet *Campaign Activity* in the 107th Congress. Advisory opinions issued by the committee also may be found in these publications and in the appendix to Chapter 12 of Deschler's Precedents. Additional information also is available electronically from the committee's website.

In accordance with section 803(i) of the Ethics Reform Act of 1989, the committee has established an Office of Advice and Education. The primary responsibility of the office is to provide information and guidance to Members, officers, and employees regarding all standards of conduct that apply to them.

§ 5. Initiating an Investigation; Complaints

Generally

In addition to an investigation directed by House resolution, called up as a question of the privileges of the House, an investigation of particular conduct may be initiated pursuant to adoption of a resolution reported from the Committee on Rules. See, *e.g.*, 96–2, H. Res. 608, Mar. 27, 1980, p 6995–98. A resolution directing the committee to investigate a possible un-

authorized disclosure of classified information by the Speaker in violation of House rules was introduced through the hopper and referred to the Committee on Rules. 100–2, Sept. 30, 1988, p 27329.

Under rule XI clause 3(b)(1)(A), an investigation of particular conduct also may be initiated by the Committee on Standards of Official Conduct, if approved by a majority vote of the members of that committee. An investigation also may be initiated pursuant to information offered as a complaint filed with the committee by a Member. A complaint may be filed by a non-Member if the complaint is accompanied by a certification from a Member that the information is submitted in good faith and warrants committee consideration. Rule XI clause 3(b)(2); *Manual* § 806.

Under rule XI clause 3(b)(1), the chairman and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of 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 such subcommittee. *Manual* § 806.

Complaint Requirements; Unfounded Charges

Information offered as a complaint filed with the committee must comply with the requirements of rule XI clause 3(b)(2), including the requirement that it be in writing and under oath. *Manual* § 806. Each complaint received by the committee is examined to determine whether it complies with that rule. Complaints that are not in compliance are returned. Those that comply with the rule are considered by the committee for appropriate disposition.

Under rule XI clause 3(e)(1), a complaint determined by the Committee on Standards of Official Conduct to be frivolous may give rise to action by that committee. A Member who presented false charges against another Member has himself become the subject of a select committee investigation and report. In 1908 the House adopted a resolution approving a select committee report finding a Member in contempt and in violation of his obligations as a Member where he had presented false charges of corruption against another Member. 6 Cannon § 400.

Disclosure

Rule XI clause 3(b)(6) requires a vote of the Committee on Standards of Official Conduct to authorize the public disclosure of the content of a complaint or the fact of its filing.

Debate

References in floor debate to the content of a complaint or the fact of its filing are governed by the rules of decorum in debate under rule XVII clause 1. Under this stricture a Member should refrain from references in debate to the official conduct of a Member where such conduct is not the subject then pending before the House by way of either a report of the Committee on Standards of Official Conduct or another question of the privileges of the House. This stricture also precludes a Member from reciting news articles discussing a Member's conduct, reciting the content of a previously tabled resolution raising a question of the privileges of the House, or even referring to a Member's conduct by mere insinuation.

The fact that a complaint has been filed does not open up its allegations to debate on the floor. Notice of an intention to offer a resolution as a question of the privileges of the House under rule IX does not render a resolution ''pending'' and thereby permit references to the conduct of a Member proposed to be addressed therein. *Manual* § 361.

§ 6. Persons Subject to Disciplinary Procedures

The investigative authority that is given under rule XI clause 3(a)(1) to the Committee on Standards of Official Conduct over alleged violations extends to ''Members, Delegates, the Resident Commissioner, officers, and employees of the House.'' *Manual* § 806. The Speaker has been subject to the investigative authority of this committee. 101–1, Statement of the Committee on Standards of Official Conduct *In re* Wright, Apr. 17, 1989; H. Res. 31, H. Rept. 105–1, *In re* Gingrich, Jan. 21, 1997, p 459. A Delegate has been subject to censure for misconduct. 2 Hinds § 1305. With respect to violations by House officers or employees, the rules of the committee authorize it to recommend to the House dismissal from employment, fine, or any other sanction determined by the committee to be appropriate. Rule 25, Rules of the Committee on Standards of Official Conduct, 107th Cong.

On one occasion, the House, by adopting a resolution presented as a question of privilege (dealing with the unauthorized disclosure of a House report), authorized the Committee on Standards of Official Conduct to investigate persons not associated with the House. 94–2, H. Res. 1042, Feb. 19, 1976, p 3914. The House considered it necessary to enlarge the subpoena authority of the committee to carry out this investigation. 94–2, H. Res. 1054, Mar. 3, 1976, p 5165. Private citizens have been censured or reprimanded by the Speaker at the bar of the House for attempting to bribe a Member or for assaulting a Member. 2 Hinds §§ 1606, 1616–1619, 1625; 6 Cannon § 333.

Under rule XI clause 3(a)(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 of a law by a Member, officer, or employee of the House that is applicable to the performance of his duties or the discharge of his responsibilities that may have been disclosed in a committee investigation.

B. Basis for Imposing Sanctions

§ 7. In General; The Code of Official Conduct

Generally

Before the 90th Congress, there was no formal code of conduct for Representatives. However, in 1968 the rules were amended to establish a Code of Official Conduct for Members and employees of the House. 90–1, H. Res. 1049, Apr. 3, 1968, p 8803; rule XXIII. The Code, along with rules XXIV through XXV, contain provisions governing the receipt of compensation, gifts, and honoraria. It also addresses the use of campaign funds, proscribes discrimination in employment, and bars certain ''non-House'' uses of House stationery. *Manual* §§ 1095–1102.

Conduct Reflecting Discredit on the House

Under the Code of Official Conduct, disciplinary measures may be invoked against a Member, officer, or employee on the ground that he has violated the requirement in clause 1 of the Code of Official Conduct that he behave ''at all times'' in a manner that reflects ''creditably'' on the House. *Manual* § 1095. Examples of disciplinary measures recommended by the Committee on Standards of Official Conduct against certain Members for conduct that violated clause 1 of the Code include:

- Failure to report campaign contributions, and perjury. These Members were officially reprimanded by the House. H. Res. 1415, H. Rept. 95–1742, *In re* McFall, Oct. 13, 1978, p 37005; H. Res. 1416, H. Rept. 95–1743, *In re* Roybal, Oct. 13, 1978, p 37009.
- Conviction by a jury on bribery or other corruption charges. Member was expelled by the House. H. Res. 794, H. Rept. 96–1387, *In re* Myers, Oct. 2, 1980, p 28953; H. Res. 495, H. Rept. 107–594, *In re* Traficant, July 24, 2002, p ____.
- Misuse of the congressional clerk-hire allowance for personal gain. Member was censured by the House by a unanimous vote and was required to make restitution of monies in the amount that he had personally benefited. H. Res. 378, H. Rept. 96–351, *In re* Diggs, July 31, 1979, p 21584.

- Engagement in sexual relationships with pages employed by the House. Although the committee recommended that both Members be reprimanded, the House voted to censure. H. Res. 265, H. Rept. 98–295, *In re* Studds, July 20, 1983, p 20030; H. Res. 266, H. Rept. 98–296, *In re* Crane, July 20, 1983, p 20020.

The committee may find that a Member has brought discredit to the House, but recommend no formal sanction. H. Rept. 104–876, *In re* Collins; H. Rept. 105–797, *In re* Kim. The committee also may send the offending Member a letter of reproval. H. Rept. 106–979, *In re* Shuster.

The House voted to reprimand the Speaker for bringing discredit on the House. H. Res. 31, H. Rept. 105–1, *In re* Gingrich, Jan. 21, 1997, p 393.

Adhering to the ''Spirit and Letter'' of the Rules

Clause 2 of the Code of Official Conduct provides that a Member, officer, or employee of the House must ''adhere to the spirit and the letter'' of the rules of the House and to the rules of its committees. *Manual* § 1095. This rule has been interpreted to mean that a Member or employee may not do indirectly what the Member or employee would be barred from doing directly. Advisory Opinion No. 4, Select Committee on Ethics, 95th Cong.

In 1988 the Committee on Standards of Official Conduct concluded that a Member's acceptance of an illegal gratuity on three occasions constituted action that discredited the House as an institution in violation of rule XXIII clause 1; and, having violated the ''spirit'' of clause 1, he also violated rule XXIII clause 2. H. Rept. 100–506, *In re* Biaggi. Although purposeful violation of any rule of the House could potentially be considered an infraction under rule XXIII clause 2, the committee has issued advisory opinions touching on some of the rules that specifically pertain to Members' conduct. In addition to the restrictions contained in the Code of Conduct, rules XXIV (Limitations on Use of Official Funds), XXV (Limitations on Outside Earned Income and Acceptance of Gifts), and XXVI (Financial Disclosure) have been addressed by the committee in its *House Ethics Manual* and its booklets entitled *Gifts and Travel* and *Campaign Activity*.

§ 8. Code of Ethics for Government Service

A Code of Ethics to be adhered to by all government employees, including office holders, was adopted by concurrent resolution in 1958. 85–2, H. Con. Res. 175, July 11, 1958; 85–2; *House Ethics Manual*, 102d Cong. This Code requires that any person in government service should, among other things, give a full day's labor for a full day's pay; never accept favors or benefits under circumstances that ''might be construed by reasonable persons as influencing the performance of his governmental duties;''

engage in no business with the government, either directly or indirectly, that is inconsistent with the conscientious performance of his governmental duties; and never use any information coming to him confidentially in the performance of governmental duties as a means of making a private profit.

The Committee on Standards of Official Conduct has indicated that the Code of Ethics is an expression of traditional standards of conduct that continues to be applicable, even though the Code was enacted merely in the form of a concurrent resolution that expired with the adjournment of the Congress in which it was adopted. H. Rept. 94–1364, *In re* Sikes.

The ethical standards of this Code have provided the basis for disciplinary proceedings against Members. *E.g.*, H. Rept. 100–506, *In re* Biaggi. In one instance, charges concerning the use of a Member's official position for pecuniary gain were heard by the committee. The committee found that the Member had failed to report his ownership of certain stock and that he bought stock in a bank following active efforts in his official capacity to obtain a charter for the bank. These charges resulted in a reprimand of the Member. H. Res. 1421, H. Rept. 94–1364, *In re* Sikes, July 29, 1976, p 24379.

§ 9. Violations of Statutes

Generally

The Members of Congress, unless immunized by the Speech or Debate Clause of the Constitution, are subject to the same penalties under the criminal laws as are all citizens. *Manual* § 93; Deschler Ch 12 § 3. In addition to rules XXIII through XXVI, the Federal criminal code addresses the conduct of Members, officers, and employees with respect to bribery of public officials (18 USC § 201), claims against the Government (18 USC §§ 203–205, 207(e), 216), and public officials acting as agents of foreign principals (18 USC § 219). The violation of such statutes may be considered by the Committee on Standards of Official Conduct in recommending disciplinary actions to the House.

Thus, a Member's conviction under section 201 of title 18, United States Code, of accepting an illegal gratuity was cited as one of the grounds for the committee's recommendation that the Member be expelled. H. Rept. 100–506, *In re* Biaggi. The committee may find that a Member has violated certain statutes but recommend no formal sanction. H. Rept. 104–876, *In re* Collins; H. Rept. 105–797, *In re* Kim. The committee also may send the offending Member a letter of reproval. H. Rept. 106–979, *In re* Shuster. The House voted to reprimand a Speaker for violating certain provisions of the

Internal Revenue Code. 105–1, H. Res. 31, H. Rept. 105–1, *In re* Gingrich, Jan. 21, 1997, p 393.

Any disciplinary measure that the House invokes against a Member for an alleged or proven violation of such a statute is separate and distinct from sanctions that may be sought by law enforcement authorities at the State or Federal level. Criminal prosecution may precede or follow committee investigation or House censure for the same offense. See *United States* v. *Diggs*, 613 F.2d 988 (D.C. Cir. 1979), cert. denied, 446 U.S. 982 (1980); H. Res. 378, H. Rept. 96–351, *In re* Diggs, July 31, 1979, p 21584.

Rule XI clause 3 authorizes the Committee on Standards of Official Conduct to report to the appropriate Federal or State authorities, by majority vote with the approval of the House or by two-thirds vote of the committee alone, any substantial evidence of a violation of an applicable law by a Member, officer, or employee of the House, that may have been disclosed in a committee investigation. *Manual* § 806. During the committee's investigation of Speaker Gingrich, the committee received documents that may have proved useful to the Internal Revenue Service. The House adopted the recommendation of the committee to make those documents available to the Internal Revenue Service and to establish a liaison to aid the transfer of documents. H. Res. 31, H. Rept. 105–1, *In re* Gingrich, Jan. 21, 1997, p 393.

Conviction as Basis for Committee Action

Rule 19(e) of the rules of the Committee on Standards of Official Conduct requires the committee to undertake an investigation with regard to any felony conviction of a Member, officer, or employee of the House in a Federal, State, or local court. The rule further provides that the investigation may proceed at any time before sentencing. See, *e.g.*, H. Rept. 107–594, *In re* Traficant. The committee may review evidence presented at the Member's trial, including the trial transcript, transcripts of recorded phone conversations, and oral intercepts. H. Rept. 100–506, *In re* Biaggi. Examples of disciplinary measures recommended by the Committee on Standards of Official Conduct based on criminal convictions include bribery convictions or findings as to the receipt of money by a Member for exercising his influence in the House. H. Rept. 96–1387, *In re* Myers; H. Rept. 96–856, *In re* Flood; H. Rept. 96–1537, *In re* Jenrette; H. Rept. 97–110, *In re* Lederer; H. Rept. 100–506, *In re* Biaggi; H. Rept. 107–594, *In re* Traficant.

In 1980, charges involving alleged bribes of Members of Congress led to investigations by both the Committee on Standards of Official Conduct and the Department of Justice. The committee was authorized to conduct an inquiry into such alleged improper conduct, to coordinate its investigation with the Justice Department, to enter into agreements with the Justice De-

partment, and to participate, by special counsel, in any judicial proceeding concerning or relating to the inquiry. 96–2, H. Res. 608, Mar. 27, 1980, p 6995; 97–1, H. Res. 67, Mar. 4, 1981, p 3529.

The House may choose to initiate disciplinary proceedings against a Member upon a Member's conviction even when that Member has not exhausted all of his appeals in the criminal process. See § 19, infra.

§ 10. Misuse of Hiring Allowance; False Claims

Rule XXIII clause 8 prohibits a Member from retaining anyone under his payroll authority who does not perform duties commensurate with the compensation he receives. Closely related to this rule is the False Claims Act, which imposes liability on persons making claims against the government knowing such claims to be false or fraudulent. 31 USC § 3729; 18 USC § 287. Because a Member must formally authorize salary payments to his aides, he may be found to have violated Federal law if he knows that such payments are being made to an aide who is not doing official work commensurate with such pay, or if he is drawing on clerk-hire funds to meet his own personal or congressional expenses. See *United States* v. *Diggs*, 613 F.2d 988 (D.C. Cir. 1979), cert. denied, 446 U.S. 982 (1980). The False Claims Act is applicable where a Member submits false travel vouchers to the Clerk of the House. See *U.S. ex rel. Hollander* v. *Clay*, 420 F. Supp. 853 (D.D.C. 1976). Liability under the Act likewise arises where a Member has falsely certified certain long-distance phone calls as being official calls in order to obtain reimbursement for them. *United States* v. *Eilberg*, 507 F. Supp. 267 (E.D. Pa. 1980).

§ 11. Discrimination in Employment

Rule XXIII clause 9 includes provisions barring discrimination against any individual with respect to compensation or other conditions of employment because of such individual's race, color, religion, sex, handicap, age, or national origin. The Committee on Standards of Official Conduct has concluded that sexual harassment is a form of discrimination in employment that is prohibited by clause 9. In one case the committee issued a letter of reproval to a Member for his conduct in interacting with two female employees on his staff. H. Rept. 101–293, *In re* Bates.

The earliest form of the rule on ''employment practices''grew out of the Fair Employment Practices Resolution first adopted in the 100th Congress. 100–2, H. Res. 558, Oct. 3, 1988, p 27840; 101–1, H. Res. 15, Jan. 3, 1989, p 85. The terms of that resolution were incorporated by reference in a standing in the 102d Congress. 102–1, H. Res. 5, Jan. 3, 1991, p 39.

It was codified in full text, with certain amendments, in the 103d Congress. 103–1, H. Res. 5, Jan. 5, 1993, p 49. The Employment Practices rule was overtaken by the earliest form of a rule addressing the ''application of certain laws,'' in the 103d Congress. 103–2, H. Res. 578, Oct. 7, 1994, p 29326. The Application of Laws rule, in turn, was overtaken by the Congressional Accountability Act of 1995. 2 USC § 1301. Certain savings provisions appear in section 506 of that Act. 2 USC § 1435.

§ 12. Campaign Fund Irregularities

Members of the House are governed by many restrictions and regulations concerning the use of campaign funds and must comply with various campaign finance procedures. These requirements are found primarily in the Federal Election Campaign Act of 1971. 2 USC § 431. Under this statute, the Federal Election Commission was established as an independent regulatory agency with jurisdiction over Federal campaign finance practices. 2 USC §§ 437c–438.

Rule XXIII clause 6 requires that Members use campaign funds solely for campaign purposes and specifically prohibits the personal use of such funds. This includes the requirements that Members keep campaign funds separate from personal funds; may not convert campaign funds to personal use except for reimbursement for legitimate, verifiable prior campaign expenses; and may not expend campaign funds for other than *bona fide* campaign or political purposes. The committee has taken the position that any use of campaign funds that personally benefits the Member rather than exclusively and solely benefiting the campaign is not a ''bona fide campaign purpose.'' H. Rept. 99–933, *In re* Weaver; H. Rept. 100–526, *In re* Rose. Although campaign funds may be invested, a candidate who borrows money from his own campaign is presumed to be receiving a personal benefit; that is, the use of the money.

The Committee on Standards of Official Conduct has found that Members have violated rule XXIII clause 6 by transferring campaign funds to personal accounts or borrowing from their campaign funds. See, *e.g.*, H. Rept. 96–930, *In re* Wilson; H. Rept. 99–933, *In re* Weaver.

The House has adopted reports of the committee recommending reprimand of Members who have failed to report a campaign contribution or have converted a campaign contribution to personal use See, *e.g.*, H. Res. 1415, H. Rept. 95–1742, *In re* McFall, Oct. 13, 1978, p 37005; H. Res. 1416, H. Rept. 95–1743, *In re* Roybal, Oct. 13, 1978, p 37009. In two cases, Members were found to have violated Federal election campaign

laws, but no formal sanctions were issued. H. Rept. 104–876, *In re* Collins; H. Rept. 105–797, *In re* Kim.

Rule XXIII clause 7 requires any proceeds from testimonials or other fund-raising events to be treated by Members as campaign contributions. The Committee on Standards of Official Conduct has compiled a complete statement of the rules on campaign funds, which supersedes chapter 8 of the 1992 *House Ethics Manual*, entitled *Campaign Activity*, 107th Cong.

§ 13. Solicitation of Contributions From Government Employees

A Federal statute prohibits Members of Congress (and candidates for Congress) from soliciting political contributions from employees of the House and from other Federal government employees. 18 USC § 602. Under this statute it must actually be known that the person who is being solicited is a Federal employee. Inadvertent solicitations to persons on a mailing list during a general fund-raising campaign are not prohibited. H. Rept. 96–930, *In re* Wilson. Because the statute by its terms is directed at protecting ''employees,'' it does not prevent one Member from soliciting another Member. See 6 Cannon § 401 (in which the House adopted a resolution construing the predecessor statute).

In 1985, the Committee on Standards of Official Conduct initiated a preliminary investigation into charges that a ''Dear Colleague'' letter had been used to solicit Members' staffs in House office buildings. However, the committee took the view that the statute was directed against coercive activities; that is, political ''shakedowns.'' The committee concluded that, in the absence of any evidence of ''victimization'' (*i.e.*, coercion of congressional staff) the solicitations were not precluded by that law. H. Rept. 99–277. The committee concluded, however, that neither staff (paid or volunteer) while on official time, nor Federal office space at any time, should be used to prepare or distribute material involving solicitations of political contributions. H. Rept. 99–227; see also H. Rept. 99–1019.

§ 14. Limitations on Earned Income; Honoraria

Rule XXV clause 1 places restrictions upon the amount of outside-earned income a Member, officer, or employee may receive. This provision limits the amount of aggregate outside-earned income in a calendar year to 15 percent of an annual congressional salary. The limitation applies to earned income for personal services, rather than monies that are essentially a return on equity. In this regard, the facts of a particular case will be regarded as controlling, rather than the characterization of such monies as out-

side-earned income. Advisory Opinion No. 13, Select Committee on Ethics, 95th Cong. (reprinted in H. Rept. 95-1837).

Under rule XXV clause 3, a Member, officer, or employee may receive neither an advance payment on copyright royalties nor copyright royalties under a contract unless it is first approved by the Committee on Standards of Official Conduct as complying with the requirement that the royalties are received from an established publisher under usual and customary contractual terms.

A restriction against honoraria is imposed by rule XXV clause 1. In 1989 special outside counsel concluded that Speaker Wright had retained excessive honoraria and other outside income, styled as ''royalties,'' which he accepted from special interest groups from the sale of his book. 101–1, Statement of the Committee on Standards of Official Conduct *In re* Wright, Apr. 17, 1989.

§ 15. Acceptance of Gifts

Rule XXV clause 5 permits acceptance of a gift only if it has an individual value of less than $50 and a cumulative value from any one source in the calendar year of less than $100 (the value of perishable food sent to an office is allocated among the individual recipients and not to the Member). Clause 5 defines the term ''gift'' and outlines various exceptions to the rule. The Committee on Standards of Official Conduct in the 96th Congress recommended the censure of a Member for misconduct that included the acceptance of gifts of money from a person with a ''direct interest in legislation'' before Congress. The committee determined that certain checks that had been marked ''loans'' were not true loans. On the basis of this and other violations, the House, after rejecting a motion to recommit that would have permitted a reprimand, voted to censure. H. Res. 660, H. Rept. 96–930, *In re* Wilson, June 10, 1980, p 13801. In 1988 the committee concluded that a Member's acceptance of illegal gratuities in trips to St. Maarten and Florida established *per se* violations of the gift rule since those events, both individually and in the aggregate, far exceeded the $100 limit then imposed by the gift rule. H. Rept. 100–506, *In re* Biaggi.

In 1977 the committee was empowered to investigate the alleged receipt by Members of ''things of value'' from the Korean government. 95–1, H. Res. 252, Feb. 9, 1977, p 3966. Subsequently, the House adopted a committee report recommending the reprimand of a Member on the basis of the committee's finding that he had failed to disclose, in a questionnaire sent to all Members by the committee, his receipt of currency and valuables

worth more than $100 from representatives of Korea. H. Res. 1414, H. Rept. 95–1741, *In re* Wilson, Oct. 13, 1978, p 36976.

The Committee on Standards of Official Conduct has compiled a complete statement of the rules on gifts and travel. The new compilation supersedes chapter 2 of the 1992 *House Ethics Manual*, entitled *Gifts and Travel*, 106th Cong.

§ 16. Financial Disclosure

Title I of the Ethics in Government Act of 1978 requires Members, officers, and certain employees of the House to file an annual Financial Disclosure Statement. 5 USC App §§ 101–111. This law, which is incorporated into House rule XXVI, was intended to regulate and monitor possible conflicts of interest due to outside financial holdings. *Manual* § 1103.

In the 94th Congress the House reprimanded a Member for certain conduct occurring during prior Congresses, which included failure to make proper financial disclosures. H. Res. 1421, H. Rept. 94–1364, *In re* Sikes, July 29, 1976, p 24379. The Committee on Standards of Official Conduct has concluded that a Member accepted certain gifts that were subject to mandatory disclosure under the Ethics in Government Act. H. Rept. 100–506, *In re* Biaggi; H. Rept. 105–797, *In re* Kim.

§ 17. Professional Practice Restrictions

Members are subject to various restrictions relating to their professional affiliations while serving in the House. Thus, Members are prohibited from receiving compensation for legal services before agencies of the Federal government. Rule XXV clause 2; 18 USC § 205. Under this rule, Members, officers, and certain senior employees may not:

- Receive compensation from affiliation with a firm providing professional services for compensation that involve a fiduciary relationship except for the practice of medicine.
- Permit their names to be used by any such firm or other entity.
- Practice a profession for compensation that involves a fiduciary relationship except for the practice of medicine.
- Serve for compensation on the board of directors of any association, corporation, or other entity.
- Receive compensation for teaching without prior notification and approval.

Manual § 1099.

§ 18. Acts Committed in Prior Congress or Before Becoming a Member

Under rule XI clause 3(b)(3), the Committee on Standards of Official Conduct may not investigate an alleged violation of a law, rule, regulation, or standard of conduct that was not in effect at the time of the alleged violation. Also excepted from investigation are alleged violations that occurred before the third previous Congress unless the committee determines that such matters were directly related to an alleged violation that occurred in a more recent Congress. *Manual* § 806.

Historically, it has been within the prerogative of the House to censure a Member for misconduct occurring in a prior Congress, notwithstanding his reelection. Deschler Ch 12 § 16. However, the question whether the offense was known to his constituency at the time of his election is a factor to be considered. 2 Hinds § 1286. Thus, in 1976 the House adopted the recommendation of the committee that a Member be reprimanded for certain conduct occurring during prior Congresses that involved financial irregularities but declined to recommend punishment for prior conflict-of-interest conduct that had occurred in 1961, where such conduct had apparently been known to a constituency that had continually reelected him. H. Res. 1421, H. Rept. 94–1364, *In re* Sikes, July 29, 1976, p 24379.

The House has asserted jurisdiction under article I, section 5 of the Constitution to inquire into the misconduct of a Member occurring before his last election and to impose at least those sanctions short of expulsion. H. Res. 378, H. Rept. 96–351, *In re* Diggs, July 31, 1979, p 21584; 2 Hinds § 1283. In one case, the committee investigated violations of Federal election laws that allegedly occurred before the respondent became a Member. H. Rept. 105–797, *In re* Kim.

Expulsion thus far has been applied to Members only with respect to offenses occurring during their terms of office and not to action taken by them before their election. Deschler Ch 12 § 13. A resolution calling for the expulsion of a Member was reported adversely by the committee and tabled by the House, where the Member had been convicted of bribery under California law for acts occurring while he served as a county tax assessor and before his election to the House. The committee found that although the conviction related to moral turpitude, it did not relate to official conduct while a Member of Congress. H. Res. 1392, H. Rept. 94–1478, *In re* Hinshaw, Sept. 8, 1976, p 29274, Oct. 1, 1976, p 35111.

If a Member's term of office expires before a pending resolution of expulsion against him is adopted, the proceedings are discontinued. 2 Hinds § 1276.

C. Nature and Forms of Disciplinary Measures

§ 19. In General

Kinds of Disciplinary Measures

The primary disciplinary measures that may be invoked by the House against a Member include expulsion, censure or reprimand, fines or other economic sanctions (such as reimbursement of the investigative costs of the committee), and deprivation of seniority or committee status.

Reprimand is appropriate for serious violations, censure is appropriate for more-serious violations, and expulsion of a Member is appropriate for the most-serious violations. Rule 25(g), Rules of the Committee on Standards of Official Conduct, 107th Cong.

Generally, the type of disciplinary measure invoked will depend on the nature of the offense charged. Where there are mitigating circumstances, the committee sometimes issues a public letter of reproval. See, *e.g.*, H. Rept. 100–526, *In re* Rose; H. Rept. 106–979, *In re* Shuster. This letter may include a direction to the Member that he apologize. H. Rept. 101–293, *In re* Bates. The House itself may extract an apology from the offending Member. 2 Hinds §§ 1650, 1657.

Effect of Court Conviction or Pendency of Judicial Proceedings

Under a former practice, where a Member had been convicted of a crime, the House would defer taking disciplinary action until the judicial processes had been exhausted. 6 Cannon § 238. Under the more recent practice, the House may choose—as it did in the 96th and 107th Congresses—to initiate disciplinary proceedings against a Member for conduct even when that Member has not exhausted all of his appeals in the criminal process. H. Res. 378, H. Rept. 96–351, *In re* Diggs, July 31, 1979, p 21584; H. Res. 495, H. Rept. 107–594, *In re* Traficant, July 24, 2002. p ____. Although a criminal conviction may be appealed, such a course of action and its outcome have no bearing on either the timing or the nature of the decision reached by the House. H. Rept. 100–506, *In re* Biaggi.

Rule XXIII clause 10 provides that a Member who is convicted of a crime for which a prison sentence of two or more years could be imposed should refrain from committee business and from voting in the House until judicial or executive proceedings reinstate the Member's presumption of innocence or until he is reelected to the House after his conviction. *Manual* § 1095.

Resolutions and Reports

A resolution proposing disciplinary action against a Member may be called up in the House as a question of privilege. *Manual* § 703; 2 Hinds § 1254; 3 Hinds §§ 2648–2651. Where the Committee on Standards of Official Conduct after investigation recommends that disciplinary action be taken against a Member by the House, it normally files a privileged report with a form of resolution proposing the action. However, where the committee finds an allegation without merit or issues a lesser sanction, such as a letter of reproval, the committee files its report for the information of the House without an accompanying resolution. Where a Member is defeated (including in a primary), the committee may report violations to the House at the end of the Congress without recommending sanctions. H. Rept. 105–797, *In re* Kim.

Under rule XI clause 3(a), 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. However, a letter of reproval or other administrative action of the committee that resulted from an investigation under clause 3(a)(2) may be implemented only as a part of its report to the House. The rule also requires that the committee report to the House on the final disposition of any case it has voted to investigate. *Manual* § 806.

A resolution adopting a committee report may be offered as follows:

> *Resolved*, That the House of Representatives adopt the report by the Committee on Standards of Official Conduct dated _____ in the matter of Representative _____.

Consideration and Debate

A disciplinary resolution presents a question of privilege. *Manual* § 66. If reported by the Committee on Standards of Official Conduct (or a derivation thereof), a disciplinary resolution may be called up at any time after the committee has filed its report. *Manual* § 66. An unreported resolution may be called up by any Member as privileged under rule IX *with* proper notice (or by the Majority or Minority Leader *without* notice). *Manual* § 703; 3 Hinds § 2649.

Rule IV clause 2(a)(16) permits an accused Member to be accompanied by counsel on the floor of the House when the committee's recommendation on his case is under consideration by the House. *Manual* § 678.

Debate on a disciplinary resolution reported by the committee is under the hour rule, the chairman of the committee being recognized for the entire hour. 8 Cannon § 2448; Deschler Ch 12 § 16. Debate on a resolution raising

a question of the privileges of the House (which may include a disciplinary resolution) offered from the floor under rule IX also is debatable for one hour but the hour is equally divided between the proponent and the Majority Leader or Minority Leader. *Manual* § 713.

The manager of a disciplinary resolution may yield time to the Member charged to speak or to yield in his behalf. 107–2, July 24, 2002, p ____. In one instance the Member charged, after declining to speak, yielded all of his time to another Member. 96–1, July 31, 1979, p 21584.

A Member whose expulsion is proposed may be permitted to present a written defense. 2 Hinds § 1273. However, if the previous question is moved on a proposition to censure, the effect may be to prevent the Member charged from making an explanation or presenting a defense. After the House has voted to censure, it is too late for the Member to be heard. 2 Hinds § 1259; 5 Hinds § 5459.

Debate on a pending privileged resolution recommending disciplinary action against a Member necessarily may involve personalities. However, rule XVII clause 1 still prohibits the use of language that is personally abusive or profane. During the actual pendency of such a resolution, a Member may discuss a prior case reported to the House by the Committee on Standards of Official Conduct for the purpose of comparing the severity of the sanction recommended in that case with the severity of the sanction recommended in the pending case, provided that the Member does not identify, or discuss the details of the past conduct of, a sitting Member. *Manual* § 361.

The Speaker also has advised that Members should refrain from references in debate to the motivations of a Member who filed a complaint before the Committee on Standards of Official Conduct, to personal criticism of a member of the committee, and to an investigation undertaken by the committee, including the suggestion of a course of action or the advocacy of an interim status report by the committee. *Manual* § 361.

Because an accurate record of disciplinary proceedings is important, the House may agree by unanimous consent to ban revisions or extensions of remarks delivered during the floor debate. Compare 96–2, May 29, 1980, p 12661, with 107–2, July 24, 2002, p ____ (general leave granted).

It is for the House and not the Speaker to judge the conduct of Members. It is, accordingly, not a proper parliamentary inquiry to ask the Chair to interpret the application of a criminal statute to a Member's conduct. *Manual* § 1095.

Effect of Resignation

The resignation of a Member at a time when expulsion proceedings against him are pending generally results in the suspension or discontinuance of the proceedings. 2 Hinds § 1275; 6 Cannon § 238. Similarly, where a Member resigns after a committee of investigation has found him guilty of improper conduct and deserving of censure, the House may discontinue the proceeding. 6 Cannon § 398. However, the House may adopt a resolution censuring his conduct even after his resignation has been submitted. 2 Hinds §§ 1239, 1273, 1275.

§ 20. Expulsion

The House has the power under the Constitution to expel a Member by a two-thirds vote. U.S. Const. art. I, § 5, cl. 2. The discretionary power of the House to expel one of its Members has been said to be unlimited. 6 Cannon § 78. However, the House has consistently refused to expel a Member for acts unrelated to him as a Member or to his public trust and duty. H. Rept. 56–85; 1 Hinds § 476. In 1976 an expulsion resolution was reported adversely and tabled by the House where a Member had been convicted of bribery under State law for acts occurring before his election to the House, because the conviction did not relate to his official conduct while a Member of Congress. Deschler Ch 12 § 13.1.

The power to expel extends to all cases where the offense is such as to be inconsistent with the trust and duty of the Member. *In re* Chapman, 166 U.S. 661, 669 (1897). The purpose of expulsion is not merely to provide punishment but also to remove a Member whose character and conduct show that he is unfit to participate in the deliberations and decisions of the House and whose presence in it tends to bring that body into contempt and disgrace. 2 Hinds § 1286. The fundamental governing consideration underlying expulsion proceedings is whether the individual charged has displayed conduct inconsistent with the trust and duty of a Member. *In re* Chapman, 166 U.S. 661, 669 (1897).

The House has considered proposals to expel on many occasions. Expulsion was used during the Civil War against three Members charged with being in rebellion against the United States or with having taken up arms against it. 2 Hinds §§ 1261, 1262. More recently, the House expelled a Member who had been convicted in a Federal court of bribery and conspiracy in accepting funds to perform official duties. H. Res. 794, H. Rept. 96–1387, *In re* Myers, Oct. 2, 1980, p 28953. The Committee on Standards of Official Conduct recommended the expulsion of two Members who had, among other acts of misconduct, accepted illegal gratuities. H. Rept. 97–

110, *In re* Lederer; H. Rept. 100–506, *In re* Biaggi. Both cases terminated with the Members' resignations.

In 2002 the House expelled a Member for illegal activities that resulted in Federal criminal convictions including (1) trading official acts and influence for things of value; (2) demanding and accepting salary kickbacks from his congressional employees; (3) influencing a congressional employee to destroy evidence and to provide false testimony to a Federal grand jury; (4) receiving personal labor and the services of his congressional employees while they were being paid by the taxpayers to perform public service; and (5) filing false income tax returns. H. Res. 495, H. Rept. 107–594, *In re* Traficant, July 24, 2002, p ____.

Following the expulsion of a Member, the Clerk notifies the Governor of the relevant State of the action of the House. 107–2, July 24, 2002, p ____.

There have been many instances in which an expulsion proposal considered in the House has failed, either because it was not supported by a two-thirds vote or because the House preferred some lesser penalty, such as reprimand. This has occurred where a Member was charged with:

- Publishing an article alleged to be in violation of the privileges of the House. 2 Hinds § 1245.
- Abuse of the leave to print. 6 Cannon § 236.
- Involvement in an affray on the floor of the House. 2 Hinds § 1643.
- Assaulting a Senator. 2 Hinds § 1621.
- Uttering words alleged to be treasonable. 2 Hinds §§ 1253, 1254.
- Accepting money for nominating a person to the military academy. 2 Hinds § 1274.
- Attempting to bribe Members of Congress by offering them shares of stock at sums below their actual value. 2 Hinds § 1286.
- Assaulting another Member for words spoken in debate. 2 Hinds § 1656.
- Using offensive language toward another Member on the floor and deceiving the Speaker when the Speaker attempted to control the debate. 2 Hinds § 1251.
- Seeking improper dismissal of parking tickets and making misstatements of fact in a memorandum relating to an associate's criminal probation record. H. Res. 440, H. Res. 442, H. Rept. 101–610, *In re* Frank, July 26, 1990, pp 19705, 19717.

§ 21. — Procedure; Resolutions of Expulsion

Generally; Form

Expulsion proceedings may be initiated by the introduction of a resolution containing explicit charges, as follows:

> *Whereas*, the Hon. _____, a Member of the House of Representatives from the State of _____, has, upon this day _____: Therefore, be it
>
> *Resolved*, That the said _____, be, and he hereby is, expelled from the House of Representatives.

2 Hinds §§ 1254, 1261, 1262.

Under the more recent practice, allegations of misconduct have not been included in the resolution as reported from the Committee on Standards of Official Conduct but rather in the accompanying report:

> *Resolved*, That pursuant to article I, section 5, clause 2 of the United States Constitution, Representative_____, be, and he hereby is, expelled from the House of Representatives.

H. Res. 495, H. Rept. 107–594, *In re* Traficant, July 24, 2002, p ____.

The resolution should be limited in its application to one Member only, although several may be involved. Separate resolutions should be prepared on each Member. Deschler Ch 12 § 13.

A resolution proposing expulsion may provide for a committee to investigate and report on the matter. Referral of such a resolution normally is made to the Committee on Standards of Official Conduct. Deschler Ch 12 § 13. The resolution is subject to the motion to lay on the table. *Manual* § 66.

Under the Constitution, a resolution of expulsion requires the support of two-thirds of those Members present and voting. An amendment proposing expulsion may be agreed to by a majority vote; but, on the proposition as amended, a two-thirds vote is required. 2 Hinds § 1274. An amendment providing for censure is not germane to a resolution of expulsion. 6 Cannon § 236 (distinguishing 5 Hinds § 5923).

§ 22. Censure; Reprimand

Generally

Censure and reprimand are two other forms of discipline that may be administered pursuant to article I, section 5, clause 2 of the Constitution, which authorizes the House to punish a Member for disorderly behavior. *Manual* § 63. These punitive measures are ordered in the House by a majority of those voting, a quorum being present. The House itself must order the sanction. The Speaker cannot on his own authority censure a Member. Deschler Ch 12 § 16.

During its history, the House has censured or reprimanded numerous Members or Delegates. The House on occasion has made a distinction between censure and reprimand, the latter being somewhat less punitive. Cen-

sure is administered by the Speaker to the Member at the bar of the House, perhaps in a manner specified in the resolution, including the reading of the censure resolution. See, *e.g.*, 96–1, July 31, 1979, p 21592; 96–2, June 10, 1980, p 13820. On the other hand, reprimand is administered to the Member merely by the adoption of a committee report. Deschler Ch 12 § 16; 105–1, Jan. 21, 1997, p 459.

If necessary, the Member to be censured may be arrested and brought to the bar for the Speaker's pronouncement. 2 Hinds §§ 1251, 1305. The censure appears in full in the Journal. 2 Hinds § 1656; 6 Cannon § 236. In rare instances, the House has reconsidered a vote of censure or expunged a censure from the Journal of a preceding Congress. 2 Hinds § 1653; 4 Hinds §§ 2792, 2793.

§ 23. — Grounds; Particular Conduct

The conduct for which censure may be imposed is not limited to acts relating to the Member's official duties. The power to censure extends to any reprehensible conduct that brings the House into disrepute. Deschler Ch 12 § 16.

Many early cases of censure involved the use of unparliamentary language (2 Hinds §§ 1247–1249, 1251, 1305), assaults on a Member or Senator (2 Hinds §§ 1621, 1656), or insults to the House by the introduction of offensive resolutions (2 Hinds §§ 1246, 1256). During the Civil War, some Members whose sympathies lay with the Confederacy were censured for uttering treasonable words. 2 Hinds §§ 1252–1254. Censure was also invoked on the basis of evidence of corrupt acts by a Member. 2 Hinds §§ 1239, 1273, 1274, 1286.

More recent cases have seen censure or reprimand invoked against a Member for:

- Ignoring the processes and authority of the New York State courts, and improperly using government funds. Deschler Ch 12 § 16.1. Censure recommendation was rejected in favor of other penalties. § 1, supra.
- Failing to report certain financial holdings, in violation of the Code of Official Conduct, and investing in stock in a bank, the establishment of which he was promoting, in violation of the Code of Ethics for Government Service. H. Res. 1421, H. Rept. 94–1364, *In re* Sikes, July 29, 1976, p 24377.
- Failing to report a campaign contribution as required by law. H. Res. 1415, H. Rept. 95–1742, *In re* McFall, Oct. 13, 1978, p 37005.
- Failing to report a campaign contribution, converting a campaign contribution to personal use, and testifying falsely to the committee under oath. H. Res. 1416, H. Rept. 95–1743, *In re* Roybal, Oct. 13, 1978, p 37009.

- Unjust enrichment through increasing an office employee's salary. H. Res. 378, H. Rept. 96–351, *In re* Diggs, July 31, 1979, p 21584.
- Receiving money from a person with direct interest in legislation, in violation of rule XXIII clause 4, and transferring campaign funds into office and personal accounts. H. Res. 660, H. Rept. 96–930, *In re* Wilson, June 10, 1980, p 13801.
- Sexual misconduct with a page. H. Res. 265, H. Rept. 98–295, *In re* Studds, July 20, 1983, p 20030; H. Res. 266, H. Rept. 98–296, *In re* Crane, July 20, 1983, p 20020.
- Filing false financial disclosure statements in violation of the Ethics in Government Act. H. Res. 558, H. Rept. 98–891, *In re* Hansen, July 31, 1984, p 21650.
- ''Ghost voting,'' improperly diverting government resources, and maintaining a ''ghost employee'' on his staff. H. Res. 335, H. Rept. 100–485, *In re* Murphy, Dec. 18, 1987, p 36266.
- Seeking improper dismissal of parking tickets and for misstating facts in a memorandum relating to an associate's criminal probation record. H. Res. 440, H. Rept. 101–610, *In re* Frank, July 26, 1990, p 19717.

§ 24. — Censure Resolutions

Generally

The censure of a Member is imposed pursuant to a resolution adopted by the House. Deschler Ch 12 § 16. The resolution may take the following form:

> *Resolved*, That the Member from _____, Mr. _____, in _____ has been guilty of a violation of the rules and privileges of the House and merits the censure of the House for the same.
>
> *Resolved*, That said _____ be now brought to the bar of the House by the Sergeant-at-Arms, and the censure of the House be administered there by the Speaker.

2 Hinds § 1259.

The resolution may call for direct and immediate action by the House. Deschler Ch 12 § 16. Such a resolution should be drafted to apply to only one Member, although two or more Members may be involved. 2 Hinds §§ 1240, 1621.

A resolution of censure presents a question of privilege. 3 Hinds §§ 2649–2651; 6 Cannon § 239. The Speaker may recognize a Member to offer a resolution of censure after the question on agreeing to a resolution calling for expulsion has been decided adversely. 6 Cannon § 236. A resolution reported from committee may be adopted with an amendment converting the resolution from one of censure to one of a lesser sanction, such as reprimand. Deschler Ch 12 § 16.1; 95–2, Oct. 13, 1978, p 37009.

Effect of Apologies or Explanations

In situations involving censure for unparliamentary language or behavior, the House may accept an apology or explanation from the Member and terminate the proceedings. 2 Hinds §§ 1250, 1257, 1258, 1652. The resolution of censure may be withdrawn. 2 Hinds § 1250. If the House already has voted to censure, it may reconsider its vote and decide against censure. 2 Hinds § 1653.

§ 25. Fines; Restitution of Funds

Pursuant to its constitutional authority to punish its Members, the House may levy a fine as a disciplinary measure against a Member for certain misconduct. U.S. Const. art. I, § 5, cl. 2; Deschler Ch 12 § 17. The fine may be coupled with certain other disciplinary measures deemed appropriate by the House. Examples of such fines include the following:

- For improper expenditure of House funds for private purposes, a fine of $25,000, to be deducted in monthly installments from the Member's salary. 91–1, H. Res. 2, Jan. 3, 1969, p 29.
- For misuse of congressional clerk-hire, restitution of monies in the amount in which the Member personally benefited by such misuse. H. Res. 378, H. Rept. 96–351, *In re* Diggs, July 31, 1979, p 21584.
- For a serious violation that, in the opinion of the Committee on Standards of Official Conduct, was more serious than one deserving reprimand but less serious than one deserving censure, reimbursement to the committee for the cost of conducting the investigation, which was $300,000. H. Res. 31, H. Rept. 105–1, *In re* Gingrich, Jan. 21, 1997, p 393.

Fines imposed by the House are separate and distinct from those for which a Member might be liable under Federal law.

§ 26. Deprivation of Status; Caucus Rules

Seniority Status

Deprivation of seniority status is a form of disciplinary action that may be invoked by the House against a Member under article I, section 5, clause 2 of the Constitution. Thus, the House may reduce a Member's seniority to that of a first-term Congressman. Deschler Ch 12 § 18.2. The House may also reduce a Member's committee seniority as a result of party discipline enforced through the Member's party caucus. Deschler Ch 12 § 18.1.

Committee Participation; Committee Chairman

The chairman of a committee of the House may be subjected to a variety of disciplinary measures for misconduct in his capacity as chairman. In

one instance, a party caucus removed a Member from his position as chairman of a committee based on a report disclosing certain improprieties concerning his travel expenses and clerk-hiring practices. Deschler Ch 12 § 9.2. The members of a committee may, consistent with the House rules, restrict a chairman's authority to appoint special subcommittees or transfer authority from the chairman to the membership and the subcommittee chairmen. Deschler Ch 12 §§ 12.3, 12.4. The House, through the adoption of a resolution, may restrict the power of the chairman to provide for funds for investigations by subcommittees. Deschler Ch 12 § 12.2. A resolution alleging that a Member willfully abused his power as chairman of a committee investigating campaign finance improprieties by unilaterally releasing records of the committee in contravention of its rules, and expressing disapproval of such conduct, constitutes a question of the privileges of the House and may be tabled without debate. 105–2, H. Res. 431, May 14, 1998, p ____.

Rule 25 of the rules of the Republican Conference requires the chairman of any committee or subcommittee to step aside temporarily when indicted for a felony for which a prison sentence of two or more years could be imposed. Rule 26 imposes a similar requirement on a member of the leadership. Rule 27 imposes a more stringent requirement that the chairman of any committee or subcommittee be replaced when censured by the House or convicted of a felony for which a prison sentence of two or more years could be imposed. Rules of the Republican Conference, 107th Cong. Rules 50 and 51 of the rules of the Democratic Caucus impose similar step-aside requirements on its chairmen or ranking minority members. Rules of the Democratic Caucus, 107th Cong.

Under rule XXIII clause 10, a Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a prison sentence of two or more years could be imposed should refrain from participation in the business of each committee of which he is a member.

Voting by a Member Convicted of Certain Crimes

Under rule XXIII clause 10, a Member who has been convicted by a court of record for the commission of a crime for which a prison sentence of two or more years could be imposed should refrain from voting on any question in the House or the Committee of the Whole, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

§ 27. Letter of Reproval

A letter of reproval is a sanction the Committee on Standards of Official Conduct may impose by majority vote. Rule 25(c), Rules of the Committee on Standards of Official Conduct, 107th Cong. The committee may issue a letter of reproval as indicated in the following examples:

- For bringing discredit to the House with respect to a Member's ongoing professional relationship with a former member of his staff, with respect to his campaign committee, and for violating House gift restrictions. H. Rept. 106–979, *In re* Shuster.
- For bringing discredit to the House by conduct in interacting with two female employees. H. Rept. 101–293, *In re* Bates.
- Where the committee cited mitigating circumstances. H. Rept. 100–526, *In re* Rose.

A letter of reproval may direct the Member to apologize. Deschler Ch 12 § 13; H. Rept. 101–293, *In re* Bates.