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Enforcement of Congressional Rules of Conduct: A Historical Overview

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Summary

The Constitution vests Congress with broad authority to discipline its Members. Only since 1967, however, have both houses established formal rules of conduct and disciplinary procedures whereby allegations of illegal or unethical conduct may be investigated and punished.

In 1964, the Senate established its first permanent ethics committee, the Select Committee on Standards and Conduct, which was renamed the Select Committee on Ethics in 1977. In 1967, the House first established a permanent ethics committee, the Committee on Standards of Official Conduct, which was renamed the Committee on Ethics in 2011. A year after being established, each chamber adopted rules of conduct. Previously, Congress had dealt case by case with misconduct and relied on election results as the ultimate arbiter in questions of wrongdoing.

In 2008, with the adoption of H.Res. 895, the House created the Office of Congressional Ethics (OCE) to review allegations of impropriety by Members, officers, and employees of the House and, when appropriate, to refer "findings of fact" to the Committee on Standards of Official Conduct. The OCE board of directors comprises six board members and two alternates. Current Members of the House, federal employees, and lobbyists are not eligible to serve on the board. The OCE was reauthorized at the beginning of the 113th Congress. The Senate has not established a comparable office.

This report describes the evolution of enforcement by Congress of its rules of conduct for the House and Senate and summarizes the disciplinary options available to the House Committee on Ethics and the Senate Select Committee on Ethics.

For additional information, please refer to CRS Report RL30650, *Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Jacob R. Straus; CRS Report 98-15, *House Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Jacob R. Straus; CRS Report R40760, *House Office of Congressional Ethics: History, Authority, and Procedures*, by Jacob R. Straus; and CRS Report RL31382, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, by Jack Maskell.

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Congressional authority to discipline Members is found in Article I, Section 5, clause 2 of the Constitution, which provides that "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."[1] Through the years, disorderly behavior has been interpreted as improper conduct and included support of rebellion, disloyalty, corruption, and financial wrongdoing. Only since the 1960s has each chamber systematically undertaken self-discipline related to conduct.

This report examines the creation and evolution of the House and Senate ethics committees and the formalization of the House and Senate ethics processes. It also describes some of the recent changes, implemented or proposed, in congressional enforcement of rules of conduct. It does not deal with changes to federal or state criminal law or with criminal prosecutions of Members of Congress.[2]

History of Congressional Ethics Enforcement

Prior to the 1960s, neither the House nor the Senate had a mechanism to consistently exercise disciplinary powers against Members. When allegations of misconduct were investigated, it was often by an ad hoc or select committee created for that purpose.[3] In addition, allegations were sometimes considered by the whole House or Senate without prior committee action.[4] During this time, publicity and reelection were considered the major forms of redress for allegedly unethical behavior in Congress.[5]

Creating Ethics Codes of Conduct

Historically, Congress did not have a formal ethics process. "For nearly two centuries," former Senate historian Richard Baker observed, "a simple and informal code of behavior existed. Prevailing norms of general decency served as the chief determinants of proper legislative conduct."[6] During that time, Congress chose "to deal, on a case-by-case basis, only with the most obvious acts of wrongdoing, those clearly 'inconsistent with the trust and duty of a member.'"[7]

Perceptions of wrongdoing or conflicts of interest by Members of Congress have changed over time. What might be viewed today as blatant impropriety could have been an accepted norm or simply ignored years ago. For example, when Daniel Webster was chair of the Senate Finance

[1] U.S. Congress, House, "Article I, Section 5, clause 2," *The Constitution of the United States*, 108th Cong., 1st sess., H.Doc. 108-96 (Washington: GPO, 2003), p. 4.

[2] For more information on Members indicted or convicted of a felony see CRS Report RL33229, *Status of a Member of the House Who Has Been Indicted for or Convicted of a Felony*, by Jack Maskell.

[3] For example, see Clarence Cannon, *Cannon's Precedents of the House of Representatives of the United States*, vol. VI (Washington: GPO, 1935), Ch. CLXXXVIII, §§396-398, pp. 551-560 [hereinafter *Cannon's Precedents*]; and U.S. Congress, Senate Select Committee for Contribution Investigation, *Report of the Select Committee*, pursuant to S.Res. 205, as extended by S.Res. 218 and S.Res. 227, 84th Cong., 2nd sess., April 7, 1956, S.Rept. 84-1724 (Washington: GPO, 1956).

[4] For example, see *Cannon's Precedents*, vol. VI, Ch. CLXXV, §236, pp. 402-405.

[5] James C. Kirby, Armin Rosencranz, and Ellen W. Ober, *Congress and the Public Trust* (New York: Atheneum, 1970), p. 203. See also "Qualifications and Conduct," in *Guide to Congress*, 5th ed., vol. II (Washington: CQ Press, 2000), p. 930.

[6] Richard Baker, "The History of Congressional Ethics," in Bruce Jennings and Daniel Callahan, eds., *Representation and Responsibility: Exploring Legislative Ethics* (New York: Plenum Press, 1985), p. 4.

[7] Ibid., p. 3

Committee (1833-1837), he was also on the payroll of the Bank of the United States. Very few colleagues, however, criticized him for being a bank official or for his practice of going from the Senate to the Supreme Court, which was then housed in the Capitol, to argue cases in which he had a legislative or financial interest. According to Dr. Baker, Webster made no effort to keep his business ties a secret.[8]

Not until the 1940s were concerns raised over the lack of specific standards of conduct and requirements for financial disclosure for government officials,[9] and about the potential impact outside income might have on Members' decision making and behavior.[10] For example, in 1946, during the 79th Congress (1945-1946), Senator Wayne Morse introduced S.Res. 306, to require Senators to disclose sources of outside income. His resolution, which was not adopted, was predicated on the idea that Members' behavior should be above suspicion and that the disclosure of income would dispel rumors of impropriety.[11]

In 1951, criticism of congressional investigative procedures began to increase with some commentators claiming that Members were abdicating responsibility for their behavior by relying on voters to "punish" misbehavior. Voters, however, might not possess adequate knowledge of their Member's behavior and were often quick to "forgive" Members disciplined by the chamber in which they served.[12]

The 85th Congress (1957-1958) adopted a general Code of Ethics for Government Service covering officials and employees in the three branches of government.[13] Initially proposed in 1951 by Representative Charles Bennett, the Code of Ethics was adopted following a House investigation of presidential chief of staff Sherman Adams, who was alleged to have received valuable gifts from an industrialist being investigated by the Federal Trade Commission.[14] The standards included in the Code of Ethics for Government Service are still recognized as continuing ethical guidance in the House and Senate. They are, however, not legally binding because the code was adopted by congressional resolution, not by public law.[15]

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[8] Ibid., p. 8.

[9] "Ethics," in *Congress and the Nation, 1945-1964* (Washington: Congressional Quarterly Inc, 1965), p. 1409.

[10] Sen. Wayne Morse, "Reports by Senators on Sources of Outside Income," remarks in the Senate, *Congressional Record*, vol. 92, part 8 (July 23, 1946), p. 9741.

[11] Ibid. Senator Morse continued to introduce his measure into the 1960s and expanded its scope to include all three branches of government. For more information see Sen. Wayne Morse, "Disclosure of Assets by Members of Congress," remarks in the Senate, *Congressional Record*, vol. 109, part 19 (December 20, 1963), pp. 25275-25278. In 1951, President Harry S. Truman sent a message to Congress supporting public disclosure of personal finances by senior members of all three branches of government. "Financial Disclosure Law Recommended by President Harry S Truman on September 27, 1951," *Congressional Record*, vol. 123, part 24 (September 27, 1977), pp. 31313-31314.

[12] H.H. Wilson, *Congress: Corruption and Compromise* (New York: Rinehart and Co., 1951), p. 116. Wilson recounts that in 1914 Representative James McDermott (IL) was censured by the House and subsequently reelected in 1916.

[13] 72 Stat. B12, H.Con.Res. 175. See also "Code of Ethics For Government Service," House proceeding, *Congressional Record*, vol. 103, part 12 (August 28, 1957), p. 16297; and "Code of Ethics For Government Service," Senate proceeding, *Congressional Record*, vol. 104, part 10 (July 11, 1958), p. 13556.

[14] Rep. Charles Bennett, "Code of Ethics for Government Service," remarks in the House, *Congressional Record*, vol. 97, part 5 (June 26, 1951), pp. 7176-7178; and Testimony of Rep. Charles Bennett, in U.S. Congress, House Committee on Post Office and Civil Service, *Code of Ethics For Government Service*, hearings, 84th Cong., 2nd sess., March 29, 1956 (Washington: GPO, 1956), pp. 3-5.

[15] The Code of Ethics for Government Service is cited by many House and Senate investigations. For example, see U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, report, 108th Cong., 2nd sess., H.Rept. 108-722 (Washington: GPO, 2004), p. 38; and U. S. Congress, Senate Select Committee on Ethics, *Korean*

The existence of a "club spirit" and reliance on unwritten norms of conduct continued in Congress until the 1960s. In 1966, political scientist Robert Getz observed that "the combination of historical precedent, the fear of partisan motivations, and the requirement of functioning in an atmosphere of mutual respect and cooperation has given rise to the view that Congress is not the forum before which the membership should be disciplined."[16]

In the 1960s, investigations of alleged misconduct by Bobby Baker, secretary to the Senate majority, and Representative Adam Clayton Powell drew attention to the lack of specific congressional standards of conduct and a means of enforcing congressional self-discipline.[17] Subsequently, the Senate created the Select Committee on Standards and Conduct in 1964,[18] and the House established the Committee on Standards of Official Conduct in 1967.[19] Each committee was given the authority to investigate allegations of wrongdoing by Members, officers, and employees; to adjudicate evidence of misconduct; to recommend penalties, when appropriate; and to provide advice on actions permissible under congressional rules and law.[20]

Proposals for Extra-Congressional Ethics Enforcement

In seeking to be fair to Members, and not to prejudice the consideration of an allegation, the House and Senate ethics committees have operated quietly over the years. They often have been perceived, however, to be slow or reluctant to investigate and discipline colleagues and have been criticized on the basis of that perception.[21] Subsequently, numerous proposals have been introduced in the Senate and the House to create an "independent" ethics organization. In the

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Influence Investigation, report, 95th Cong., 2nd sess., S. Rept. 95-1314 (Washington: GPO, 1975), pp. 5-6.

[16] Robert S. Getz, *Congressional Ethics: The Conflict of Interest Issue* (Princeton, NJ: Van Nostrand & Co., 1966), p. 113.

[17] "Ethics and Criminal Prosecutions," in *Guide to Congress*, 5th ed., vol. II (Washington: CQ Press, 2000), pp. 943-988.

[18] "Proposed Amendment of Rule XXV of the Standing Rules of the Senate Relative to the Jurisdiction of the Committee on Rules and Administration," *Congressional Record*, vol. 110, part 13 (July 24, 1964), pp. 16929-16940. The Senate Committee was renamed the Select Committee on Ethics in 1977. See U.S. Congress, Senate Rules and Administration Committee, *Committee System Reorganization Amendments of 1977*, report to accompany S.Res. 4, 95th Cong., 1st sess., S. Rept. 95-1 (Washington: GPO, 1977), pp. 4-5; and "Committee System Reorganization," *Congressional Record*, vol. 123, part 3 (February 1, 1977), pp. 3660-3699. For more information on the Senate Select Committee on Ethics see CRS Report RL30650, *Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Jacob R. Straus.

[19] "Committee on Standards of Official Conduct," *Congressional Record*, vol. 113, part 7 (April 13, 1967), pp. 9426-9448. For more information on the House Committee on Standards of Official Conduct see CRS Report 98-15, *House Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Jacob R. Straus.

[20] U.S. Congress, Senate, "Standing Order 77," *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, S. Doc. 110-1, 110th Cong., 2nd sess. (Washington, GPO, 2008), pp. 128-137; and U.S. Congress, House, "House Rule XI, cl. 3," *Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States, One Hundred Tenth Congress*, H.Doc. 109-157, 109th Cong., 2nd Sess. (Washington, GPO, 2007), pp. 568-593.

[21] Dennis F. Thompson, *Ethics in Congress: From Individual to Institutional Corruption* (Washington: The Brookings Institution, 1995), p. 135. Both committees have throughout their existence been criticized by the media as "watchdogs without teeth." See, for example, Robert Sherrill, "We Can't Depend on Congress to Keep Congress Honest," *The New York Times Magazine*, July 19, 1970, pp. 5-7, 13-14; Jerry Landauer, "Senate Ethics: Hear No Evil, See No Evil," *The Washington Star*, September 19, 1976, p. E3; Editorial, "Got Ethics?" *Roll Call*, June 25, 2001, p. 4; Helen Dewar, "Ethics: Can the Senate Police Its Own?" *The Washington Post*, February 5, 2002, p. A2; Norman Ornstein, "The Senate Is Unable to Police Itself," *Roll Call*, March 8, 2006, p. 6; Editorial, "Weak Reforms," *Roll Call*, March 20, 2006, p. 4; and Wilson Abney, "Congressional Ethics: An Evolve or Die Proposition" *Roll Call*, September 17, 2007, p. 10.

110th Congress (2007-2009), the House, for the first time, created the Office of Congressional Ethics, an independent ethics review body. The Senate has not established a comparable office.

During the 82nd Congress (1951-1953), Senator J. William Fulbright introduced S.Con.Res. 21 to create an ethics commission of private citizens appointed by the Speaker of the House and the President pro tempore of the Senate.[22] While not adopted by the Senate, S.Con.Res. 21 was favorably reported by a subcommittee of the Senate Labor and Human Resources Committee. In addition, the subcommittee, chaired by Senator Paul Douglas, recommended government-wide ethics changes including financial disclosure, restrictions on lobbying by former Members of Congress, regulation of campaign costs, restrictions on honoraria, and guidelines for representing constituent concerns before executive agencies.[23]

In the 96th Congress (1979-1981), Senator William Roth introduced S.J.Res. 144 to "establish an Independent Investigating Commission on Ethics to conduct investigations of allegations of improper conduct by Members of Congress arising out of the FBI investigation known as 'ABSCAM.'"[24] The commission would have

> establish[ed] a five-person independent commission of senior statesman to assist the Ethics Committees in both the Senate and the House by conducting investigations and making reports concerning the serious allegations of wrongdoing that have been made. These senior statesmen would have [had] the right to independently receive complaints and initiate investigations only of those matters directly related to the FBI investigation known as "ABSCAM." The Ethics Committees, would [have] retained the right to review any findings and to recommend any appropriate action to the full Senate and House.[25]

S.J.Res. 144 was referred to the Committee on Governmental Affairs and did not receive further consideration.

The next discussion of a non-congressional ethics entity occurred during the 103rd Congress (1993-1994), when the Joint Committee on the Organization of Congress held hearings on the congressional ethics process.[26] Sitting and former Members of Congress, as well as congressional scholars, discussed the pros and cons of entities outside Congress assisting the ethics committees in the enforcement of congressional rules of conduct. Subsequently, the House Members on the committee recommended that "the Committee on Standards of Official Conduct should be authorized to use, on a discretionary basis, a panel of non-Members in ethics cases."[27] No further action was taken.

During the 105th Congress (1997-1998), the House Ethics Reform Task Force, co-chaired by Representatives Robert Livingston and Benjamin Cardin, considered the use of "distinguished private citizens" (including former Members of the House and judges) in the ethics process. Some

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[22] U.S. Congress, Senate Committee on Labor and Human Resources, Subcommittee to Study Senate Concurrent Resolution 21, *Establishment of a Commission on Ethics in Government*, hearings , 82nd Cong., 1st sess., June 19-22, June 25-29, July 2-3, July 5-6, and July 9-11, 1951 (Washington: GPO, 1951).

[23] U.S. Congress, Senate Committee on Labor and Public Welfare, *Ethical Standards in Government*, committee print, 82nd Cong., 1st sess. (Washington: GPO, 1951).

[24] "Introduction of Bills and Joint Resolutions," *Congressional Record*, vol. 126, part 2 (February 6, 1980), p. 2088.

[25] Sen. William Roth, "Statements on Introduced Bills and Joint Resolutions," remarks in the Senate, *Congressional Record*, vol. 126, part 2 (February 6, 1980), p. 2099.

[26] U.S. Congress, Joint Committee on the Organization of Congress, *Ethics Process*, hearings, 103rd Cong., 1st sess., February 16 and February 23, 1993 (Washington: GPO, 1993).

[27] U.S. Congress, Joint Committee on the Organization of Congress, *Organization of Congress*, final report, 103rd Cong., 1st sess., H. Rept. 103-413 (Washington: GPO, 1993), pp. 12-13.

witnesses before the task force had suggested the participation of "outsiders" would enhance public trust and confidence and minimize partisanship. Task force members, however, feared that the use of private citizens would interfere with the constitutional responsibility of each House to discipline its Members. A majority of the task force also believed that incumbent House Members better understand the practices of the House, and that Members accused of misconduct should be judged by their peers.[28]

Accordingly, the task force recommended, and the House adopted, a policy of appointing a bipartisan reserve "pool" of House Members to serve on any House Committee on Ethics investigative subcommittees if needed.[29] This is still the practice in the House.

There was a high level of interest in an independent ethics authority in the 109th Congress (2005-2006) when numerous bills were introduced.[30] Nonetheless, in March 2006, the Senate Committee on Homeland Security and Governmental Affairs voted against a proposal to establish an independent office to enforce congressional ethics and lobbying laws. Subsequently, the Senate defeated a similar amendment to a pending gift and lobbying reform measure (S. 2349).[31]

In the 110th Congress, on January 18, 2007, during consideration of the Legislative Transparency and Accountability Act of 2007 (S. 1), the Senate again rejected an amendment to establish a Senate Office of Public Integrity.[32]

Outside enforcement of conduct or anti-corruption provisions against Members of the House and Senate is potentially complicated by Article I, Section 6, clause 1 of the Constitution, which provides Member protection from prosecution and questioning by outside law enforcement for certain official, legislative conduct. The Constitution states, "for any Speech or Debate in either House, they [Senators and Representatives] shall not be questioned in any other place."[33] The Constitution's "Speech or Debate" clause may provide a practical necessity for internal congressional investigations and punishment of Members who violate chamber rules, federal law, or state law.[34]

House of Representatives

Since the creation of the Committee on Ethics, the House of Representatives has amended the ethics review process to include both internal and external entities. The Committee on Ethics was initially created in 1967, as the Committee on Standards of Official Conduct, with the adoption of

[28] U.S. Congress, House, *Report of the Ethics Reform Task Force on H. Res. 168*, committee print, 105th Cong., 1st sess. (Washington: GPO, 1997), p. 6.

[29] "Implementing the Recommendations of the Bipartisan House Ethics Task Force," *Congressional Record*, vol. 143 (September 18, 1997), pp. 19302-19340.

[30] See for example, H.R. 4975, H.R. 4799, H.R. 4948, H.R. 5677, S. 2259, and S.Con.Res. 82. Some of the bills contained only an independent ethics authority; others contained an authority but additionally proposed wider changes, such as gift and lobbying reform.

[31] "Legislative Transparency and Accountability Act of 2006," *Congressional Record*, daily edition, vol. 152 (March 28, 2006), pp. S2440-S2254 and S2459.

[32] "Legislative Transparency and Accountability Act of 2007," *Congressional Record*, daily edition, vol. 153 (January 18, 2007), pp. S743-S744.

[33] U.S. Congress, House, "Article I, Section 6, clause 1," *The Constitution of the United States*, 108th Cong., 1st sess., H.Doc. 108-96 (Washington: GPO, 2003), p. 4.

[34] U.S. Congress, Senate, *The Constitution of the United States of America: Analysis and Interpretation*, S.Doc. 108-17, 108th Cong., 2nd sess., prepared by the Congressional Research Service (Washington: GPO, 2004), p. 134.

H.Res. 418.[35] It continues to serve as the internal ethics committee. In 2008, the House created the Office of Congressional Ethics (OCE) to serve as an external review body for ethics complaints against Members, officers, and employees of the House. The relationship between the Committee on Ethics and the OCE is established in House and committee rules.

House Committee on Ethics

In the 114th Congress, the Committee on Ethics is comprised of 10 Members, five from each party. A substantial part of the committee's work is advisory and is performed by its Office of Advice and Education, which provides information and guidance to House Members, officers, and employees on House rules and standards of conduct applicable to their official capacities.[36] The committee provides training for House staff, reviews privately sponsored travel, and evaluates and certifies all public financial disclosure reports filed by Members, candidates for the House, and senior House staff.[37]

The remaining committee work comprises investigations of Members, officers, and employees of the House and adjudication of cases against Members. The committee's investigative and adjudicative functions are found in House Rule X, clause 5(a)(4)(A) and (B); Rule XI, clause 3; and the Ethics Reform Act of 1989.[38]

Investigation

Complaints alleging misconduct or House rules violations by House Members or staff can only be filed with the Committee on Ethics by a Member of the House. Alternately, complaints can be filed by a person who is not a Member, but must be accompanied by written certification by a Member that the information is "submitted in good faith and warrants the review and consideration of the committee."[39] Prior to 1997, members of the public (under certain conditions) as well as Members of the House could file a complaint against a Member, officer, or employee of the House. In September 1997, the House amended the rule to prohibit complaints filed by non-Members.[40]

In the 110th Congress, the Office of Congressional Ethics (OCE) was established to collect information from non-Members on potential misconduct and House rules violations by Members, officers, and staff. Following receipt of information, the OCE reviews the allegations and transmits relevant "findings" to the Committee on Standards for further scrutiny, when

[35] Rep. William Colmer, "Committee on Standards of Official Conduct," *Congressional Record*, vol. 113, part 7 (April 13, 1967), pp. 9426-9448. See also U.S. Congress, House Committee on Standards of Official Conduct, *House Ethics Manual*, 110th Cong., 2nd sess. (Washington: GPO, 2008), pp. 4-8.

[36] P.L. 101-194, 103 Stat. 1775-1776, November 30, 1989.

[37] U.S. Congress, House Committee on Ethics, *Summary of Activities, One Hundred Twelfth Congress*, 112th Cong., 2nd sess., December 31, 2012, pp. 13-`14, at http://ethics.house.gov/sites/ethics.house.gov/files/SummaryofActivities.pdf.

[38] P.L. 101-194, 103 Stat. 1774, November 30, 1989.

[39] The committee, under most circumstances, may not investigate alleged violations that occurred before the third previous Congress. See U.S. Congress, House, "House Rule XI, cl. 3 (b) (2)," *Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States, One Hundred Eleventh Congress*, 111th Cong., 2nd Sess., H.Doc. 111-157 (Washington, GPO, 2011), §806, p. 575.

[40] "Implementing the Recommendations of the Bipartisan Ethics Task Force," *Congressional Record*, vol. 143, part 13 (September 18, 1997), pp. 19302-19340.

warranted.[41] For more information on the OCE see the "Office of Congressional Ethics" section below.

Adjudication

If the Committee on Ethics determines that an investigation is necessary, because of a Member complaint, an OCE referral, or direct House action, an ad-hoc investigative subcommittee is formed. Additionally, the Committee on Ethics may also initiate an investigation on its own. If a subcommittee is formed, the subcommittee is either populated by a group of Members, designated by the Speaker and the minority leader at the beginning of each Congress, who do not serve on the Committee on Ethics; by members of the Committee on Ethics; or both.[42]

If the subcommittee finds that a violation of the House rules has occurred and transmits a Statement of Alleged Violations (formal charges) to the chair and ranking Member of the Committee on Ethics, the committee chair is then required to appoint an ad-hoc adjudicative subcommittee. The members of the adjudicative subcommittee are those members of the Committee on Ethics who were not members of the investigative subcommittee together with the chair and ranking Member of the committee. The subcommittee judges the evidence in the Statement of Alleged Violations and recommends sanctions, if the subcommittee concludes they are warranted.

In November 2010, in her opening remarks of an adjudicatory subcommittee hearing, then-chair of the Committee on Standards, Representative Zoe Lofgren, explained the adjudicatory process.

> The role of an Adjudicatory Subcommittee is to determine, at a hearing, whether any count of the Statement of Alleged Violation has been proved by clear and convincing evidence. The purpose of this adjudicatory hearing is to do just that. However, it is important to bear in mind that this proceeding is a hearing, not a trial.
>
> Attorneys from the Committee's non-partisan, professional staff are the moving party in these proceedings. Their role is to make a case for the Statement of Alleged Violation adopted by the Investigative Subcommittee.
>
> At the adjudicatory hearing, the burden of proof rests with the Committee counsel to establish the facts alleged in each count of the Statement of Alleged Violation by clear and convincing evidence.
>
> [The respondent] will have an opportunity to present his side of the story, should he wish to do so. A respondent is not required to present a case in his defense, and should [the respondent] chose not to present a case, the Subcommittee will not and may not draw a negative inference from that fact.
>
> As members of the Adjudicatory Subcommittee, we are neither accusers nor are we defenders of our colleague…. Our job is to act impartially as finders of fact and law. We are honor bound to do so without regard to partisanship or bias of any sort. We are required

[41] For a discussion of the OCE, see CRS Report R40760, *House Office of Congressional Ethics: History, Authority, and Procedures*, by Jacob R. Straus.

[42] "Appointment of Members to be Available to Serve on Investigative Subcommittees of the Committee on Ethics," *Congressional Record*, daily edition, vol. 159 (March 5, 2013), p. H1316; and "Communication from the Democratic Leader," *Congressional Record*, daily edition, vol. 159 (March 14, 2013), p. H1407. Twenty Members (10 from each party) as designated for potential service on an investigative subcommittee. Rules for selecting subcommittee Members can be found in Committee Rule 19 (a)(1). U.S. Congress, House, Committee on Standards of Official Conduct, *Rules*, 113th Cong., 1st sess., February 5, 2013 (Washington: 2013), p. 29, at http://ethics.house.gov/sites/ethics.house.gov/files/CommitteeRulesfor113thCongress.pdf.

> to act honestly and fairly based on the evidence presented to us during the adjudicatory hearing.[43]

Following a subcommittee investigation, the committee has historically recommended several punishments. These have included expulsion,[44] censure,[45] reprimand,[46] and "Letters of Reproval" and "Letters of Admonition."[47] Prior to the completion of House action, some 25 Members have left the House after court convictions, after inquiries were initiated, or after charges were brought by the committee.[48] Departure from the House ends a case because the committee does not have jurisdiction over former Members.

The committee's first publicly announced action was in 1968 at the request of Speaker John McCormack.[49] This was an inquiry into roll-call voting irregularities that resulted in some Members who were out of town being recorded as having voted. The committee concluded that the problem was not deliberate and was the result of an overworked tally clerk, and urged the House to install a modernized system of voting.[50]

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[43] U.S. Congress, House Committee on Standards of Official Conduct, *Adjudicatory Subcommittee Hearing in the Matter of Representative Charles B. Rangel Opening Statement of Chair Zoe Lofgren*, 111th Cong., 2nd sess., November 15, 2010, pp. 1-2, at http://docs.house.gov/ethics/RangelChairOpeningStatement.pdf.

[44] Pursuant to the Article I, Section 5, clause 2 of the Constitution, the House has the power to expel a Member, after the Member has taken the oath of office, by a two-thirds vote those present and voting. Although used sparingly, Members who have been expelled generally committed offenses related to official conduct as a Member or because the Member was deemed "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." For more information see Wm. Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, (Washington: GPO, 2003), Ch. 25, §20, pp. 516-517 (hereinafter Brown and Johnson, *House Practice*); Lewis Deschler, *Deschler's Precedents of the United States House of Representatives* (Washington: GPO, 1976), Ch. 12, §13.1, p. 177 (hereinafter *Deschler's Precedents*); Asher C. Hinds, *Hind's Precedents of the United States House of Representatives* (Washington: GPO, 1907), vol. 2, §1286, pp. 852-857; and CRS Report RL31382, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, by Jack Maskell.

[45] Censure, unlike expulsion, does not appear in the Constitution, although the House derives its authority from Article I, Section 5, clause 2. A censure is a formal vote by the majority of Members present and voting on a resolution disapproving a Member's conduct. Often, the resolution requires the Members to stand in the "well" of the House chamber to receive a verbal rebuke and reading of the censure resolution by the Speaker of the House. For more information see Brown and Johnson, *House Practice*, Ch. 25, §22, pp. 518-519; *Deschler's Precedents*, Ch. 12, §16, pp. 196-198; and CRS Report RL31382, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, by Jack Maskell.

[46] A reprimand is often considered by the House to be a lesser level of disapproval of the conduct of a Member than that of a censure. Prior to the 1970's the terms reprimand and censure were often considered to be synonymous and were often used together in resolutions. While a censure resolution results in the reading of the resolution by the Speaker to a Member standing in the well, a reprimand is merely adopted by a vote of the House with the Member "standing in his place," or is merely implemented by the adoption of the committee's report. For more information see *Deschler's Precedents*, Ch. 12, §16, p. 196; and *Cannon's Precedents*, vol. VI, Ch. CLXXV, §263, pp. 402-405.

[47] A public Letter of Reproval is a sanction created by the committee and first used in 1987. It is an administrative action authorized under the rules of the House and issued as part of a public report from the committee after a formal investigation. The Committee on Ethics has resolved several complaints by means of a letter to a respondent without a formal investigation. According to the committee, "In the past such letters have not been formally termed 'letters of admonition,' but this term accurately describes the substance of these letters." Unlike a Letter of Reproval, a Letter of Admonition is not specifically authorized under House rules. Such a letter was sent to a Member of the House in 2004. For more information see U.S. Congress, House Committee on Standards of Official Conduct, *Summary of Activities One Hundred Eighth Congress*, 108th Cong., 2nd sess., H.Rept. 108-806 (Washington: GPO, 2005), pp. 62-68.

[48] These Members resigned from the House, chose not to run for reelection, or were defeated.

[49] "Communication from the Committee on Standards of Official Conduct," *Congressional Record*, vol. 115, part 12 (June 19, 1969), p. 16629.

[50] Ibid.

Recent Major Procedural Changes

The House has made a number of changes to the ethics process and the Committee on Ethics in the past several Congresses. This section briefly discusses these changes and their effect on the enforcement of the House's rules of conduct.

105th Congress

In February 1997, the House established the 10-member bipartisan Ethics Reform Task Force to review the existing House ethics process and recommend reforms.[51] Co-chaired by Representatives Robert Livingston and Benjamin Cardin, the task force held hearings and issued a report that recommended a series of changes to strengthen the committee and ensure that all Members, officers, and employees were treated equitably.[52] On September 18, 1997, the House adopted H.Res. 168, incorporating the recommendations of the Ethics Reform Task Force.[53] The new adopted rules

- changed the way individuals who are not Members of the House file complaints with the committee by requiring them to have a Member certify in writing that the information was submitted in good faith and warrants consideration by the Committee on Standards of Official Conduct;[54]
- decreased the size of the committee to 10 members from 14;
- established a 20-person pool of Members (10 from each party) to participate in the work of the committee as potential appointees to any investigative subcommittee that the committee might establish;[55]
- required the chair and ranking minority Member of the committee to determine within 14 calendar days or five legislative days, whichever comes first, if the information offered as a complaint meets the committee's requirements;[56]
- allowed an affirmative vote of two-thirds of the members of the committee or approval of the full House to refer evidence of violations of law disclosed in a

[51] Rep. Richard Armey, "Creation of Bipartisan Task Force to Review Ethics Process," *Congressional Record*, vol. 143, part 2 (February 12, 1997), pp. 2058-2059.

[52] U.S. Congress, House Ethics Reform Task Force, *Revisions to the Rules of the House and the Rules of the House Committee on Standards of Official Conduct*, hearings, 105th Cong., 1st sess., March 4 and June 20, 1997 (Washington, GPO, 1997); and U.S. Congress, House Ethics Reform Task Force, *Report of the Ethics Reform Task Force on H. Res. 168*, committee print, 105th Cong., 1st sess. (Washington: GPO, 1997). The Task Force report recommended the strengthening of non-partisan operations, closing of nonadjudicatory and sanction meetings, improving the system for filing information, creating efficient administrative procedures, providing due process for all Members, officers, and employees of the House, encouraging greater involvement by Members, and resolving matters in a timely manner.

[53] "Implementing the Recommendations of the Bipartisan House Ethics Task Force," *Congressional Record*, vol. 143, part 13 (September 18, 1997), pp. 19302-19340.

[54] This procedure superseded a process whereby individuals who were not Members of the House could file complaints with the Committee on Ethics only after they had submitted allegations to at least three House Members, who had refused in writing to transmit the complaint to the committee.

[55] The first pool of 20 Members selected to serve on investigative committees of the Standards of Official Conduct Committee was appointed on November 13, 1997. See "List of Republican Members Selected to Serve as 'Pool' for Purposes Relating to Committee on Standards of Official Conduct," *Congressional Record*, vol. 143, part 18 (November 13, 1997), p. 26569; and List of Democratic Members selected to serve as 'Pool' for purposes relating to Committee on Standards of Official Conduct," *Congressional Record*, vol. 143, part 18 (November 13, 1997), p. 26569. House leaders have subsequently appointed a 20-person pool of Members in each succeeding Congress.

[56] Previously, there was no specific time limit for this determination.

committee investigation to the appropriate state or federal law enforcement authorities;[57]

- provided for a nonpartisan, professional committee staff; and
- allowed the ranking minority Member on the committee to place matters on the committee's agenda.

109th Congress

In the 109th Congress (2005-2006), the House rules adopted on January 4, 2005, included several new provisions affecting investigative procedures of the Committee on Ethics.[58] The changes required the committee to notify any Member, officer, or employee whose conduct was referenced in a complaint against another Member, officer, or employee.[59] In addition, unless the chair or ranking Member placed a complaint on the committee's agenda within 45 days of receipt, the committee was no longer required to act on such complaint.[60] The new provisions, however, were rescinded and the former ones reinstated on April 27, 2005.[61]

110th Congress

During the 110th Congress (2007-2008), the House passed H.Res. 451, which required the Committee on Ethics to act within 30 days after a Member of the House is indicted or otherwise formally charged with criminal conduct in a U.S. court.[62] If the committee does not empanel an investigative subcommittee to review the allegations, it must submit a report to the House describing why it has not done so and detailing what actions, if any, it has taken in response to the allegations. The provisions of H.Res. 451 were included in the rules adopted by the House for the 111th Congress.[63]

111th Congress

In the first session of the 111th Congress (2009-2011), the Committee on Ethics formed a bipartisan working group to help incorporate into the committee's rules the creation of the Office

[57] With the exception of a brief period in 1966, only a vote by the full House previously permitted referrals of possible violations of law to the appropriate authorities.

[58] "Rules of the House," *Congressional Record*, daily edition, vol. 151 (January 4, 2005), pp. H7-H31.

[59] If that complaint was to be disposed of in a letter not requiring House action, the Member, officer, or employee whose conduct the letter referred to would have had the options to review the content of the letter and accept it, contest it in writing (in which case, those views would have been part of the official public record), or contest it by requesting in writing that the committee establish an adjudicatory subcommittee to review the allegations. If an adjudicatory subcommittee had been established for the original complainant, the letter would not have been issued, since its issuance would have been considered "a statement of alleged violations" (formal charges).

[60] The chair and ranking Member could have also requested the committee to extend the applicable 45-day period (or five legislative days, whichever is longer) by one additional 45-day period.

[61] "Amending the Rules of the House," *Congressional Record*, daily edition, vol. 151 (April 27, 2005), pp. H2616-H2626; and Carl Hulse, "House Overturns New Ethics Rule as G.O.P. Relents," *The New York Times*, April 28, 2005, pp. A1, A21. With the repeal of the new provision and the restoration of the original rule for action on a complaint, inaction by the chairman or ranking Member on a properly filed complaint within 45 days automatically sends the complaint to an investigative subcommittee (House Rule XI, cl. 3(k)).

[62] "Directing the Committee on Standards of Official Conduct to Respond to the Indictment of Any Member of the House," *Congressional Record*, daily edition, vol. 153 (June 5, 2007), pp. H5971-H5976, and H5978-H5979.

[63] H.Res. 5, Section 4(e). See "Adopting Rules for the 111th Congress," *Congressional Record*, daily edition, vol. 155 (January 6, 2009), p. H12.

of Congressional Ethics (OCE).[64] The group's recommended revisions were adopted by the committee on June 9, 2009, and cover the committee's role vis-à-vis an OCE review of allegations against a Member, officer, or employee and when a matter has been referred to the committee from the OCE.[65]

113th Congress

At the beginning of the 113th Congress (2013-2014), the House amended the process for releasing an Office of Congressional Ethics report to the Committee on Ethics and made modifications to the Code of Conduct to clarify the hiring of relatives of Members and employees, retention of oaths (or affirmations) by the Clerk of the House and the Sergeant at Arms, and the use of official funds for personal and charter aircraft, when it adopted the rules for the 113th Congress (H.Res. 5).[66]

114th Congress

As part of the rules package for the 114th Congress (2015-2016), the House amended House Rule XI, clause 3 to prohibit the Ethics Committee from taking "any action that would deny any person any right or protection provided under the Constitution of the United States."[67] Additionally, Rule XI, clause 3(a)(6)(B)(i) was amended to require mandatory ethics training for new Members, Delegates, Resident Commissioners, officers or employees. Previously, only new officers or employees were required to undergo mandatory ethics training.[68]

Office of Congressional Ethics

On January 31, 2007, to address criticisms leveled against the closed nature of the Committee on Ethics, then-House Speaker Nancy Pelosi and then-Minority Leader John Boehner, announced the creation of the Special Task Force on Ethics Enforcement in the House of Representatives.[69] Chaired by Representative Michael Capuano, the task force was charged with considering "whether the House should create an outside enforcement entity, based on examples in state legislatures and private entities."[70]

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[64] U.S. Congress, House Committee on Standards of Official Conduct, "Statement of the Chair and Ranking Republican Member Regarding the Activities of the Committee on Standards of Official Conduct for the First Half of the First Session of the 111th Congress," press release, July 17, 2009, pp. 2-3, http://ethics.house.gov/sites/ethics.house.gov/files/documents/First%20Half%20Activities%20111th%20Congress.pdf; and "Establishing An Office of Congressional Ethics," *Congressional Record*, daily edition, vol. 154 (March 11, 2008), pp. H1515-H1536. For an in-depth discussion on all aspects of the Office of Congressional Ethics, refer to CRS Report R40760, *House Office of Congressional Ethics: History, Authority, and Procedures*, by Jacob R. Straus.

[65] U.S. Congress, House Committee on Standards of Official Conduct, "Statement of the Chair and Ranking Republican Member Regarding the Activities of the Committee on Standards of Official Conduct for the First Half of the First Session of the 111th Congress," press release, July 17, 2009, p. 4, http://ethics.house.gov/sites/ethics.house.gov/files/documents/First%20Half%20Activities%20111th%20Congress.pdf Half Activities 111th Congress.pdf.

[66] H.Res. 5 (113th Congress), agreed to January 3, 2013.

[67] H.Res. 5 (114th Congress), §2(a)(10), agreed to January 6, 2015.

[68] H.Res. 5 (114th Congress), §2(g), agreed to January 6, 2015.

[69] U.S. Congress, Speaker of the House of Representatives, "Pelosi Announces Special Task Force on Ethics Enforcement," press release, January 31, 2007.

[70] The other Members of the task force were Representative Bobby Scott, Representative Marty Meehan, Representative Betty McCollum, Representative Lamar Smith (ranking Member), Representative Dave Camp,

On December 19, 2007, Chairman Capuano released a report on behalf of several task force members and introduced H.Res. 895 to create an office of congressional ethics, composed of six board members jointly appointed by House leaders.[71] On March 3, 2008, Chairman Capuano released proposed amendments to H.Res. 895[72] and on March 11, the House adopted H.Res. 895.[73] The first OCE board members were appointed in July 2008.[74] The OCE has been reauthorized by the House as part of the rules package in subsequent Congresses.[75]

The relationship between the OCE and the Committee on Standards continues to evolve. Regardless of the balance between the OCE and the Committee on Standards, OCE only has jurisdiction over House Members, officers, and employees. To date, the Senate does not have a comparable entity.

Senate

Initially created in 1964,[76] the Senate Committee on Standards and Conduct was renamed the Select Committee on Ethics in 1977.[77] Like its House counterpart, the Senate Select Committee on Ethics is bipartisan and in the 114th Congress consists of six members, three from each party. It has both a disciplinary and advisory function.[78] Unlike the House committee, the Senate Ethics

Representative Dave Hobson, and Representative Todd Tiahrt. Representative David Price was appointed to the task force in July 2007 when Representative Meehan resigned from Congress.

[71] U.S. Congress, House Special Task Force on Ethics Enforcement, *Report of the Democratic Members of the Special Task Force on Ethics Enforcement*, committee print, 110th Cong., 1st sess., H.Prt. 110-1 (Washington: GPO, 2007), pp. 4-5. Subsequently, on February 27, 2008, Ranking Member Rep. Lamar Smith and the other Republican Members of the task force introduced H.Res. 1003 to provide increased accountability and transparency in the Committee on Standards of Official Conduct.

[72] Rep. Michael E. Capuano, "Amendments to the Proposed Reforms to the Ethics Process," Dear Colleague letter, March 3, 2008.

[73] "Establishing An Office of Congressional Ethics," *Congressional Record*, daily edition, vol. 154 (March 11, 2008), pp. H1515-H1536.

[74] U.S. Congress, Speaker of the House of Representatives, "Pelosi, Boehner Announce Appointments to New Office of Congressional Ethics," press release, July 24, 2008. The initial members were former Representatives David Skaggs (chair), Porter Goss (vice chair), Karan English, and Yvonne Braithwaite Burke; former House CAO Jay Eagen; and former professor and chief of staff of the Federal Election Commission Allison Hayward. The alternates are former Representative and federal judge Abner Mikva and former Representative Bill Frenzel. In the113th Congress, some of the board members were not reappointed. For a list of current board members, see U.S. Congress, Office of Congressional Ethics, "Board & Staff," at http://oce.house.gov/board-staff.html.

[75] H.Res. 5 (114th Congress), §4(d), agreed to January 6, 2015. For rules from the 111th through the 113th Congresses, see H.Res. 5, Section 4(d) (111th Congress), agreed to January 6, 2009 and "Adopting Rules For the One Hundred Eleventh Congress," *Congressional Record*, daily edition, vol. 155 (January 6, 2009), p. H12; H.Res. 5, Section 4 (c) (112th Congress), agreed to January 5, 2011 and "Rules of the House," *Congressional Record*, daily edition, vol. 157 (January 5, 2009), p. H7; and H.Res. 5, Section 4(d) (113th Congress), agreed to January 3, 2013.

[76] "Proposed Amendment of Rule XXV of the Standing Rules of the Senate Relative to the Jurisdiction of the Committee on Rules and Administration," *Congressional Record*, vol. 110, part 13 (July 24, 1964), pp. 16929-16940.

[77] "Senate Committee Reorganization," *Congressional Record*, vol. 123, part 3, (February 1, 1977), p. 2886. See also "Committee System Reorganization," *Congressional Record*, vol. 123, part 3 (February 4, 1977), pp. 3660-3699; U.S. Congress, Temporary Select Committee to Study the Senate Committee System, *First Report with Recommendations*, 94th Cong., 2nd sess., S.Rept. 94-1395 (Washington: GPO, 1976), pp. 95-96; and U.S. Congress, Senate Rules and Administration Committee, *Committee System Reorganization Amendments of 1977*, report to accompany S.Res. 4, 95th Cong., 1st sess., S.Rept. 95-1 (Washington: GPO, 1977), pp. 4-5.

[78] U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, prepared by Matthew McGowan, 110th Cong., 2nd sess., S.Doc. 110-1 (Washington: GPO, 2008), §80, p. 137 (hereinafter *Senate Manual*).

Committee does not separate its investigative and adjudicatory functions, and it has no "statute of limitations" for investigations of alleged past violations.[79]

Investigations and Adjudication

In the Senate, no restrictions exist on who can file a complaint or allegation with the committee. Once a sworn complaint has been received or if the committee initiates an inquiry into possible wrongdoing by a Senator, Senate officer, or Senate employee, committee rules establish a multi-stage review and adjudication process.[80] The committee first begins a preliminary inquiry. If there is substantial evidence of a violation, charges are brought, and the committee begins an adjudicative process to determine the merits of the charges and appropriate sanctions.

As a consequence of committee action, Senators have been expelled[81] and censured,[82] for their behavior. In addition, at least two Senators resigned prior to expected expulsion and multiple Senators have been admonished by the Select Committee for their actions.[83]

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[79] *Senate Manual*, §77, pp. 128-136. The Senate Select Committee on Ethics website http://ethics.senate.gov/ displays the most recent *Senate Ethics Manual* as well as financial disclosure and travel forms, press statements, and other useful information.

[80] *Senate Manual*, §77 Section 2(d), pp. 131-132.

[81] Pursuant to the Article I, Section 5, clause 2 of the Constitution, the Senate has the power to expel a Member, after the Member has taken the oath of office, by a two-thirds vote those present and voting. Expulsion has been used sparingly by the Senate and has historically concerned cases of perceived disloyalty to the United States Government, or of a violation of criminal law which involved the abuse of one's official position. More recently, the Senate Select Committee on Ethics recommended the expulsion of a Member for conduct not subject to a criminal prosecution, but which involved allegations of abuse of the Senator's office, making unwanted sexual advances, enhancing personal finances, and obstructing and impeding a congressional investigation. For more information, see U.S. Congress, Senate, *Riddick's Senate Procedure: Precedents and Practices*, prepared by Floyd M. Riddick and Alan S. Frumin, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992), pp. 842-843 (hereinafter *Riddick's Senate Procedure*); U.S. Congress, Senate Select Committee on Ethics, *Investigation of Senator Harrison A. Williams, Jr.*, report to accompany S.Res. 204, 97th Cong., 1st sess., September 3, 1981, S.Rept 97-187 (Washington: GPO, 1981). Senator Williams was convicted of bribery, illegal gratuities, conflicts of interest and conspiracy in the so-called ABSCAM influence peddling probe; and U.S. Congress, Senate Select Committee on Ethics, *Resolution for Disciplinary Action*, report to accompany S.Res. 168, 104th Cong., 1st sess., September 8, 1995, S.Rept. 104-137 (Washington: GPO, 1995). Senator Packwood resigned from office prior to full Senate consideration.

[82] Censure, unlike expulsion, does not appear in the Constitution, although the Senate derives its authority from Article I, Section 5, clause 2. The Standing Orders of the Senate provide that the Select Committee on Ethics may recommend disciplinary action "including, but not but not limited to, in the case of a Member: censure, expulsion, or recommendation to the appropriate party conference regarding such Member's seniority or positions of responsibility." A censure by the Senate has traditionally been used to impose a punishment when the full body formally disapproves of the conduct or behavior of a Member. Censure is adopted by majority vote of a resolution expressing the condemnation or disapproval. Pursuant to Senate Rules, a censured Senator does not forfeit his or her rights or privileges. The individual party caucus or conferences, however, may implement rules on censured Members and party or committee leadership positions. For more information see *Riddick's Senate Procedure*, pp. 270-273; *Senate Manual*, §79; U.S. Congress, Senate Committee on Rules and Administration, *Senate Election, Expulsion, and Censure Cases from 1793-1972*, prepared by Richard D. Hupman, Senate Library, 92nd Cong., 1st sess., March 19, 1971, S.Doc. 92-7 (Washington: GPO, 1972); and CRS Report R40105, *Authority of the Senate Over Seating Its Own Members: Exclusion of a Senator-Elect or Senator-Designate*, by Jack Maskell. In addition to expulsion and censure it is possible, and arguably within the authority of the Senate, to punish a Member by way of fine, imprisonment, suspension of privileges, or deprivation of seniority status.

[83] See, for example, U.S. Senate, Select Committee on Ethics, "Public Letter of Admonition," press release, February 13, 2008, at http://www.ethics.senate.gov/public/index.cfm/frequently-asked-questions1.

Recent Major Procedural Changes

In 1993, the Senate established the bipartisan Senate Ethics Study Commission to study the procedures of the Select Committee on Ethics.[84] In March 1994, the commission issued its final report and recommendations.[85] The recommendations languished, however, until the Senate adopted S.Res. 222 on November 5, 1999.[86] S.Res. 222 streamlined the Senate's ethics enforcement process and required the committee to educate Members, officers, and employees about the laws, rules, and regulations applicable in their official duties. The major provisions of S.Res. 222 provided for the following:

- The previous multi-stage process of an "initial review" before a "preliminary inquiry" was replaced by a single-phase "preliminary inquiry." Under this procedure, if there is substantial evidence of a violation, charges are issued and an "adjudicative review" is conducted to determine the merits of charges and appropriate punishment. This phase may include a hearing. The changes did not affect the ability of outside groups to file allegations against a Member, officer, or employee of the Senate.
- A uniform set of potential sanctions were established for rules violations that are to be used alone or in combination.[87] These sanctions include financial restitution, referral to a party conference (regarding seniority or positions of responsibility), censure, and expulsion. The Ethics Committee retained the flexibility to propose other penalties and was authorized to issue a reprimand to an individual without his or her consent (as had been required previously) after the opportunity for a hearing and with the right of appeal to the Senate.
- Also, public or private "Letters of Admonition" can be issued by the Ethics Committee. These letters, which previously had been used by the committee, are not considered a form of discipline.

The reforms added financial restitution to the possible sanctions (in addition to suspension and dismissal) that might be made against a Senate officer or employee.[88]

Conclusion

Since the creation of the House and Senate ethics committees, entities both inside and outside of Congress have periodically evaluated the committees' work.[89] These evaluations have resulted in

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[84] S.Res. 111 (103rd Congress), agreed to in the Senate May 21, 1993 authorized the Senates Ethics Study Commission. Sen. David Boren, "Authorizing the Senate Ethics Study Commission," *Congressional Record*, vol. 139, part 8 (May 21, 1993), pp. 10787-10788.

[85] U.S. Congress, Senate, Ethics Study Commission, *Recommending Revisions to the Procedures of the Senate Select Committee on Ethics, Report to the Senate Leadership Pursuant to S.Res. 111*, 103rd Cong., 2nd sess., S.Prt. 103-71 (Washington: GPO, 1994).

[86] Sen. Pete Domenici, et. al., "Senate Ethics Procedure Reform Resolution of 1999," *Congressional Record*, vol. 145, part 20 (November 5, 1999), pp. 28834-28843.

[87] These sanctions were similar to ones already contained in committee rules, but provided for the payment of restitution as a penalty and emphasized consistency in the wording of the various types of punishment.

[88] The Senate has previously imposed monetary sanctions to remedy financial wrongdoing only by Senators.

[89] For example, see Dennis Thompson, "Both Judge and Party, Why Congressional Ethics Committees are Unethical," *The Brookings Review*, vol. 13, no. 4 (Fall 1995), pp. 44-48; Dennis F. Thompson, *Ethics in Congress: From Individual to Institutional Corruption* (Washington: The Brookings Institution, 1995); Don Wolfensberger, *Punishing Disorderly*

an episodic debate over whether Members of Congress are doing a good job in following the mandate of the Constitution for self-discipline.

Inevitably, congressional ethics enforcement is often linked to appearances of impropriety by Members[90] and changing perceptions on "conflict of interest."[91] Often the perception of wrongdoing or a conflict of interest is all that is needed for an investigation. Ethicist Michael Josephson summarized the importance of the perception of wrongdoing.

> The core concept of this ... ethical consciousness is the demand that public servants perceive and avoid both actual and apparent wrongdoing ... it is no defense that an act is legal or that there is no actual impropriety. It is enough that the conduct creates an inference of wrongdoing in the mind of a reasonable observer. More than ever, the public demands that its elected officials avoid both actual and apparent wrongdoing.[92]

Evaluations often coincide with or follow periods when numerous or notorious ethics questions involving Members arise. Following these periods, Members, experts, and the public often seek to redefine standards and create new enforcement mechanisms. Sometimes the House or Senate or both chambers act; on other occasions, no action is taken, or there is prolonged discussion or delay. Since the 1960s, however, Congress has developed more elaborate ethical standards and more structured means of self-discipline. "While more standards of conduct for all government officials have been enacted to increase public confidence, each new law creates a new offense."[93]

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Behavior in Congress: The First Century, Woodrow Wilson International Center panel on "Congressional Ethics Enforcement," at http://www.wilsoncenter.org/events/docs/ethics-essay-drw.pdf, January 16, 2007; U.S. Congress, Senate, Committee on Labor and Human Resources, Subcommittee to Study Senate Concurrent Resolution 21, Establishment of a Commission on Ethics in Government, hearings , 82nd Cong., 1st sess., June 19, 1951 (Washington: GPO, 1951); and U.S. Congress, Senate, Committee on Labor and Public Welfare, Special Subcommittee on the Establishment of a Commission on Ethics in Government, *Ethical Standards in Government: Proposals for Improvement of Ethical Standards in the Federal Government Including Establishment of a Commission on Ethics in Government*, committee print, 82nd Cong., 1st sess. (Washington: GPO, 1951).

[90] See, for example U.S. Congress, House Committee on Standards of Official Conduct, *Summary of Activities One Hundred Eighth Congress*, 108th Cong., 2nd sess., H.Rept. 108-806 (Washington: GPO, 2005), pp. 62-68; and Peter W. Morgan, "The Appearance of Propriety: Ethics Reform and the Blifil Paradoxes," *Stanford Law Review*, vol. 44, (February 1992), pp. 593-621.

[91] One practical characterization of the term "conflict of interest" has been the "gray area" between activities that are unmistakably appropriate and those that are obviously improper and illegal. See Ralph Eisenberg, "Conflict of Interest Situations and Remedies," *Rutgers Law Review*, vol. 13, 1958-1959, p. 666.

[92] Michael Josephson, "The Best of Times, the Worst of Times," *Spectrum, The Journal of State Government*, Fall 1992, vol. 65 (Lexington, KY: Council of State Governments), p. 36.

[93] Ibid.

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