

Misconduct; Sanctions

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2 Hinds §§ 1236–1289

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6 Cannon §§ 236–239
3 Deschler Ch 12 §§ 12–18
U.S. Const. art. I § 5 clause 2; § 6 clause 1
Manual §§ 62, 698, 726, 939
House Ethics Manual, 102–2, April 1992

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 clause 2.

The primary disciplinary measures that may be invoked by the House against one of its Members include: (1) expulsion, (2) censure (3) reprimand, (4) fine or other economic sanction, and (5) deprivation of seniority or committee status. See §§ 19 *et seq.*, *infra*. These remedies are not mutually exclusive. In a given case, a Member may be censured *and* fined, and deprived of his seniority as well. Deschler Ch 12 § 12.1. 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 springs from Congress’ right 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 (Adam Clayton Powell) be fined and censured for improperly maintaining his wife on the clerk-hire payroll and for improper use of public funds for private purposes (H. Rept. No. 90–27), 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 U.S. Supreme Court determined that exclusion is not a sanction to be invoked in cases involving the misconduct of Members. It is available only for failure to meet the constitutional qualifica-

tions of Members as to age, citizenship, and inhabitancy. *Powell v McCormack*, 395 US 486 (1969).

§ 2. Committee on Standards of Official Conduct

Generally

Prior to the 90th Congress, select temporary committees were ordinarily created to consider allegations of improper conduct against Members, 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 made a standing committee of the House (H. Res. 418, Apr. 13, 1967). It was given the right to report as privileged resolutions recommending action by the House with respect to the official conduct of any Member, officer, or employee of the House. See Rule XI clause 4(a). *Manual* § 726.

Legislative Jurisdiction

The Standards Committee has legislative jurisdiction over measures relating to the Code of Official Conduct. Rule X clause 1(p). *Manual* § 685. Such measures 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. 94–1, Apr. 16, 1975, p 10339 (H. Res. 396).

Investigative Jurisdiction; Recommendations and Reports

Pursuant to Rule X, the Standards Committee is authorized to conduct investigations, hold hearings, and is to report any findings and recommendations to the House. Clause 4(e). *Manual* § 698. This committee has the additional function of conducting investigations and making the reports and recommendations required by House resolutions authorizing specific investigations. On occasions where the House has directed the committee to conduct specific investigations by separate resolution, it has authorized the committee to take depositions, to serve subpoenas within or without the United States, to participate by special counsel in relevant judicial proceedings (see H. Res. 252, Feb. 9, 1977; H. Res. 608, Mar. 27, 1980), and to investigate, with expanded subpoena authority, persons other than Members, officers, and employees (see H. Res. 1054, Mar. 3, 1976).

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 Building by unnamed sitting Members (99–1, July 10, 1985, p 18397);
- To review GAO audits of the operations of the “bank” in the Office of the Sergeant-at-Arms (102–1, Oct. 3, 1991, p ____);
- To disclose the names and pertinent account information of Members found to have abused the privileges of the “House bank” (102–2, Mar. 12, 1992, p ____); and
- To investigate violations of confidentiality by staff engaged in the investigation of the operation and management of the Office of the Postmaster (102–2, July 22, 1992, p ____).

Under § 803 of the Ethics Reform Act of 1989, and effective Jan. 3, 1991, the Standards Committee is directed to adopt rules governing its proceedings that separate the investigative and adjudicative functions within the existing committee structure. An investigative subcommittee is established whenever the committee votes to undertake a preliminary inquiry. If the investigative panel issues a Statement of Alleged Violation, a subcommittee on adjudication, consisting of the remaining members of the full committee, is then constituted to hear the evidence. The findings of the adjudicatory panel are reported to the full committee which then decides what recommendation or sanctions, if any, to submit to the House. The Act also amends Rule X clause 4(e)(1) to provide that any letter of reproof or other administrative action of the committee may only be implemented as a part of its report to the House, and to require the committee to report to the House on the final disposition of any case it has voted to investigate.

§ 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 constituted of equal numbers of members from the majority and minority parties. Rule X clause 6(a)(2). Service on the committee is also limited so no Member can serve for more than three Congresses in any 10-year period. *Manual* § 701a.

The rules provide that a member of the Standards Committee shall be ineligible to participate in a committee proceeding relating to his or her own conduct. Rule X clause 4(e)(2)(D). 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 conduct alleged in the

complaint, 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. 94–1, Sept. 11, 1975, p 28600.

The rules permit 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 authorize the Speaker to appoint a replacement for that investigation. See Rule X clause 4(e)(2)(E). Under this rule, where a member of the committee submits an affidavit of disqualification in a disciplinary investigation of another Member (96–2, Mar. 18, 1980, p 5752), or where a member of the committee is himself the subject of an ethics inquiry and has notified the Speaker of his ineligibility (96–2, Feb. 5, 1980, p 1908), the Speaker may appoint another Member to serve on the committee during the investigation.

§ 4. — Publications; Advisory Opinions

The Committee on Standards of Official Conduct is authorized to issue and publish advisory opinions with respect to the general propriety of any current or proposed conduct. Rule X clause 4(e). The advisory opinions issued by the committee include:

- No. 1—On the role of a Member in communicating with federal agencies
- No. 2—On the subject of a Member’s clerk-hire
- No. 3—On foreign travel at the expense of foreign governments (superseded, 1981)
- No. 4—On the propriety of accepting nonpaid transportation (superseded, 1981)
- No. 5—General interpretation of House Rule XLIII clause 11 as to unauthorized use of congressional letterhead
- No. 6—Interpretation of House Rule XLIII clause 6 and House Rule XLV, as to the use of campaign funds to promote a town meeting

The Select Committee on Ethics, which was established during the 95th Congress, and was the precursor of the present standing committee, was authorized to issue advisory opinions respecting the application of Rules XLIII through XLVII. 95–1, May 18, 1977, p 15449. The advisory opinions included:

- No. 1—Effective date of House Rule XLVI clause 4, relating to the use of private funds for mass mailings
- No. 2—Applicability of House Rule XLIII clause 4, to reimbursement or payment of expenses associated with conference, meeting, or similar event

- No. 3—Applicability of House Rule XLIII clause 4, to acceptance of free transportation on inaugural flights
- No. 4—Solicitation of cash gifts of less than \$100 for personal use through mass mailings
- No. 5—Use of campaign funds to pay for official expenses incurred prior to Mar. 3, 1977
- No. 6—Acceptance of in-kind services for official purposes
- No. 7—Definition of a gift for purposes of House Rule XLIII clause 4
- No. 8—Applicability of House Rule XLIII clause 4 to acceptance of necessary expenses paid by an organization in connection with a fact-finding event
- No. 9—Definition of an indirect gift for purposes of House Rule XLIII clause 4
- No. 10—Who has a direct interest in legislation before Congress
- No. 11—Acceptance of proceeds from an independently sponsored fundraising event for a Member’s unrestricted personal use
- No. 12—Application and interpretation of House Rule XLIV (financial disclosure)
- No. 13—Interpretation of House Rule XLVII (outside earned income).

The Standards Committee also publishes the *House Ethics Manual*, 102–2, April 1992. Advisory opinions issued by the committee may be found in this publication. Advisory opinions Nos. 1–4 are published in Deschler Ch 12, Appendix. See also Historical Summary of Conduct Cases in the House of Representatives (Committee on Standards of Official Conduct, April 1992).

In accordance with the Ethics Reform Act of 1989, the committee has established an Office of Advice and Education, whose primary responsibility is to provide information and guidance to Members, officers, and employees regarding all standards of conduct which apply to them. § 803.

§ 5. Initiating an Investigation; Complaints

Generally

In addition to investigations directed by House resolution, called up as a question of the privileges of the House, an investigation of particular conduct also may be initiated by the Standards Committee, if approved by a majority vote of the members of that committee. An investigation may also be initiated pursuant to a complaint filed with the committee by a Member, or, where at least three Members have declined in writing to transmit a complaint, by an individual not a Member. Rule X clause 4(e)(2). *Manual* § 698. An investigation of particular conduct may also be initiated pursuant to House adoption of a resolution reported from the Committee on Rules (see, e.g., H. Res. 608, Mar. 27, 1980, ABSCAM investigation). In 1988, a Mem-

ber introduced a resolution directing the Standards Committee to investigate a possible unauthorized disclosure of classified information by the Speaker in violation of House rules, which was referred to the Committee on Rules. 100–2, Sept. 30, 1988, p 27329.

Complaint Formalities; Unfounded Charges

Complaints filed with the committee must comply with the requirements of Rule X clause 4(e)(2)(B) and must be in writing and under oath. *Manual* § 698. 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. See, for example, H. Rept. No. 99–1019.

A Member who has 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; Debate

The rules require a vote of the Standards Committee to authorize the public disclosure of the content of a complaint or the fact of its filing. Rule X clause 4(e)(2)(F). 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 XIV clause 1. The mere fact that a complaint has been filed does not open up its allegations to debate on the floor. Members should refrain from references in debate to the ethical conduct of other Members where such conduct is not under consideration in the House by way of a report of the committee or a question of the privilege of the House. 100–2, July 6, 1988, p 16630; 101–2, July 24, 1990, p ____; 102–2, Mar. 19, 1992, p ____; 104–1, May 25, 1995, p _____. Members should also refrain from references in debate to the motivations of Members who file complaints before the Standards Committee. Debate may not include critical characterizations of members of the committee. 102–2, Apr. 1, 1992, p ____; 104–1, Mar. 3, 1995, p _____. In 1988, where several Members had improperly engaged in personalities during debate by references to the Speaker and to a Member who had filed a complaint regarding the Speaker’s official conduct, the Chair announced to the House that Members should not engage in such debate. 100–2, June 15, 1988, p 14623.

§ 6. Persons Subject to Disciplinary Procedures

The investigative authority that is given under the rules to the Committee on Standards of Official Conduct over alleged violations extends to any “Member, officer, or employee” of the House. Rule X clause 4(e)(1). *Manual* § 698. Even the Speaker is subject to the investigative authority of this committee. Report of the Special Outside Counsel in the Matter of Speaker James C. Wright, Jr., Committee on Standards of Official Conduct, Feb. 21, 1989. A Delegate is as subject to censure for misconduct as any Member. 2 Hinds § 1305. With respect to violations by House officers or employees, the rules of the Standards Committee authorize it to recommend to the House dismissal from employment, fine, or any other sanction determined by the committee to be appropriate. Rule 20, Rules of Procedure, Committee on Standards of Official Conduct, 1993.

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. The House considered it necessary to enlarge the subpoena authority of the committee to carry out this investigation. H. Res. 1042, H. Res. 1054, 94th Cong. Private citizens have been censured or reprimanded by the Speaker at the bar of the House for attempting to bribe a Member (2 Hinds § 1606) or for assaulting a Member (2 Hinds §§ 1616–1619, 1625; 6 Cannon § 333).

B. Basis for Imposing Sanctions

§ 7. In General; The Code of Official Conduct

Generally

Prior to the 90th Congress, there was no House rule setting forth a formal code of conduct for Representatives. However, in 1968, the rules of the House were amended to establish, as new Rule XLIII, a Code of Official Conduct for Members and employees of the House. The code contains provisions governing the receipt of compensation, gifts, and honorariums, as well as the use of campaign funds; it proscribes discrimination in employment and bars certain “non-House” uses of House stationery. Rule XLIII, which was extensively amended by the Ethics Reform Act of 1989 and most recently by rules adopted in the 104th Congress (H. Res. 6, 104–1, Jan. 4, 1995, p ____). *Manual* § 939.

Conduct Reflecting Discredit on the House

Disciplinary measures may be invoked against a Member, officer, or employee on the ground that he has violated clause 1 of the Code of Official Conduct (Rule XLIII). It requires that they conduct themselves “at all times” in a manner that reflects “creditably” on the House. *Manual* § 939. In the 95th Congress, in connection with the Korean influence investigation, the Standards Committee recommended that disciplinary measures be taken against three Members for conduct that violated clause 1 of the Code. Included among the alleged statutory violations cited as a basis for invoking clause 1 were failure to report campaign contributions (H. Rept. No. 95–1742) and perjury (H. Rept. No. 95–1743). These three Members were officially reprimanded by the House in 1978. 95–2, Oct. 13, 1978, pp 36976, 37005, 37009.

Two years later, this general standard of clause 1 was again used as a basis for invoking several disciplinary proceedings. A Member of the 96th Congress was expelled by the House for his conviction by a jury on bribery charges. 96–2, Oct. 2, 1980, pp 28953 *et seq.* This action was based on the finding that he “took money in return for promising to use [his] influence” and that he thereby “acted corruptly,” in violation of law and clauses 1 through 3 of House Rule XLIII. H. Rept. No. 96–1387, *In re* Myers. See also H. Rept. No. 96–1537 (*In re* Jenrette). This was the first exercise of the power to expel in over a century.

A Member of the House was censured in the 96th Congress by a unanimous vote and was required to make restitution of monies in the amount which he had personally benefited in his misuse of the congressional clerk-hire allowance. 96–1, July 31, 1979, pp 21584 *et seq.* This was the first censure of a Member in over 50 years. The Standards Committee in recommending such discipline noted that the Member had admitted to misusing the clerk-hire allowance to his own unjust enrichment in violation of a House rule, and that such conduct reflected discredit on the House in violation of clause 1 of House Rule XLIII. In recommending censure, the Committee considered the Member’s admission of guilt, his apology to the House, and his agreement to make restitution. H. Rept. No. 96–351, *In re* Diggs. See also H. Rept. No. 96–856, *In re* Flood; this case terminated with the Member’s resignation.

In the 98th Congress, two Members were found to have engaged in sexual relationships with pages employed by the House. Again citing Rule XLIII clause 1, the committee recommended that both Members be reprimanded. H. Rept. No. 98–295, *In re* Studds; H. Rept. No. 98–296, *In re*

Crane. The House voted to censure, rather than reprimand, both Members. 98-1, July 20, 1983, pp 20030-37.

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. Rule XLIII. *Manual* § 939. 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. See Advisory Opinion No. 4, Apr. 6, 1977, of the Select Committee on Ethics, 95th Cong. In 1988, the Standards Committee concluded that a Member’s acceptance of an illegal gratuity on three occasions constituted actions which discredited the House as an institution in violation of House Rule XLIII clause 1, and, having violated the “spirit” of clause 1, he also violated House Rule XLIII clause 2. H. Rept. No. 100-506 (*In re Biaggi*). While purposeful violation of any rule of the House could potentially be considered an infraction under this clause of Rule XLIII, the Standards Committee has issued advisory opinions touching on some of the rules which specifically pertain to Members’ conduct. In addition to the restrictions contained in the Code of Conduct, Rules XLIV (Financial Disclosure), XLV (Prohibition on Unofficial Office Accounts), XLVI (Limitations on Use of the Frank), XLVII (Limitations of Outside Employment and Earned Income) have been addressed by the committee in its Ethics Manual.

§ 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. 72 Stat. pt. 2, B12, July 11, 1958. H. Con. Res. 175, 85-2. 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 which “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, which 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 Standards Committee has indicated that the Code of Ethics is an expression of traditional standards of conduct which continues to be applicable, even though the code was enacted merely in the form of a concurrent

resolution. The Committee has pointed out that although the resolution may have expired with the adjournment of the Congress in which it was adopted, the principles of conduct for government officials expressed therein did not. H. Rept. No. 94–1364 (*In re Sikes*).

The ethical standards of this code have provided the basis for disciplinary proceedings against Members. See H. Rept. No. 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. H. Rept. No. 94–1364 (*In re Sikes*). These charges resulted in a reprimand of the Member. 94–2, July 29, 1976, p 24380.

§ 9. Violations of Statutes

Generally

The Members of Congress, unless immunized by the Speech or Debate Clause of the Constitution (*Manual* § 93), are subject to the same penalties under the criminal laws as are all citizens. Deschler Ch 12 § 3. Indeed, the Members are specifically or impliedly referred to in a number of statutes which impose criminal or civil penalties for particular forms of misconduct, and the violation of such a statute may be considered by the Standards Committee in recommending disciplinary actions to the House. Thus, in 1988, a Member's conviction under 18 USC § 201g of accepting an illegal gratuity was cited as one of the grounds for the committee's recommendation that the Member be expelled. H. Rept. No. 100–506 (*In re Biaggi*).

Any disciplinary measure which the House invokes against a Member for violation of such a statute is separate and distinct from sanctions which 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 *U.S. v Diggs*, 613 F2d 788 (D.C. Cir. 1979), and 96–1, July 31, 1979, pp 21584–92. In this regard, the House rules authorize the Committee on Standards of Official Conduct to report to the appropriate federal or state authorities, with the approval of the House, any substantial evidence of a violation of an applicable law by a Member, officer, or employee of the House, which may have been disclosed in a committee investigation. Rule X clause 4(e)(1). *Manual* § 698.

Conviction as Basis for Committee Action

A rule of the Standards Committee provides that if a Member, officer, or employee is convicted of a criminal offense for which a sentence of at least one year may be imposed, the committee must conduct a preliminary inquiry to review the evidence of such offense and to determine whether it constitutes a violation over which the committee is given jurisdiction. If the committee determines that an offense was committed over which it has jurisdiction, the committee must hold a disciplinary hearing for the sole purpose of determining what action to recommend to the House respecting such offense. Comm. Rule 16, adopted in 1993.

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. No. 100-506 (*In re Biaggi*).

In 1980, charges involving alleged bribes of Members of Congress (ABSCAM) led to investigations by both the Standards Committee and the Department of Justice. 96-2, Feb. 4, 1980, p 1611. 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 Department, and to participate, by special counsel, in any judicial proceeding concerning or relating to the inquiry. 96-2, Mar. 27, 1980, pp 6995-6998 [H. Res. 608]. For a similar resolution on the same subject, see H. Res. 67, Mar. 4, 1981.

The ensuing disciplinary actions were based on bribery convictions or findings as to the receipt of money by a Member for exercising his influence in the House. These actions resulted in the expulsion of one Member (see H. Rept. No. 96-1387, *In re Myers*) and the initiation of disciplinary proceedings against other Members which were mooted because of their resignations. (See H. Rept. No. 96-856, *In re Flood*; H. Rept. No. 96-1537, *In re Jenrette*; H. Rept. No. 97-110, *In re Lederer*.)

In 1988, a Member's conviction under 18 USC § 201 of accepting an illegal gratuity, the Member having interceded to further the interests of a company doing business with the U.S. Navy, was cited as one of the grounds for the committee's recommendation that the Member be expelled. H. Rept. No. 100-506 (*In re Biaggi*).

§ 10. Misuse of Hiring Allowance; False Claims

The House rules prohibit a Member from retaining anyone under his payroll authority who does not perform duties commensurate with the compensation he receives. Rule XLIII clause 8, as amended by the Ethics Reform Act of 1989, § 802. Closely related to this rule is the False Claims

Act (31 USC § 3729) which imposes liability on persons making claims against the government knowing such claims to be false or fraudulent. See also 18 USC § 287 (criminal penalties for false claims). 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 *U.S. v Diggs*, 613 F2d 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. *U.S. v Eilberg*, 507 F Supp 267 (E.D.Pa. 1980).

§ 11. Discrimination in Employment

Clause 9 of the Code of Official Conduct contains 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. Rule XLIII. *Manual* § 939. The Standards Committee has concluded that sexual harassment is a form of discrimination in employment that is prohibited by clause 9, and in one case it issued a letter of reproof to a Member for his conduct in interacting with two female employees on his staff. H. Rept. No. 101-293, 1989 (*In re Bates*).

In 1993, the House adopted Rule LI, reiterating the prohibition in clause 9 against discrimination in employment practices and establishing grievance procedures for consideration of alleged violations. Such procedures include (1) counseling and mediation; (2) formal complaint, hearing, and review by an Office of Fair Employment Practices; and (3) final review by a Review Panel. *Manual* § 946a.

§ 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 *et seq.* Under this statute, the Federal Election Commission has been established as an independent regulatory agency with jurisdiction over federal campaign finance practices. 2 USC §§ 437c-438.

The House rules require that Members use campaign funds solely for campaign purposes, and specifically prohibit the use of campaign funds for personal use. The rules also provide that any proceeds from testimonials or other fund-raising events are to be treated by Members as campaign contributions. Members must keep campaign funds separate from personal funds and they 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. Rule XLIII clauses 6, 7. While campaign funds may be invested, when a candidate borrows money from his own campaign a presumption is raised that he is receiving a personal benefit—*i.e.*, the use of the money. The committee has taken the position that any use of campaign funds which personally benefits the Member rather than exclusively and solely benefiting the campaign is not a “bona fide campaign purpose.” H. Rept. No. 99–933; H. Rept. No. 100–526.

On several occasions in the 1980’s, the Committee on Standards of Official Conduct investigated Members for transferring campaign funds to personal accounts or borrowing from their campaign funds. The committee found violations of Rule XLIII clause 6 in each case, and issued separate reports condemning the practice. See for example H. Rept. No. 96–930, 96th Cong. 2d Sess. (1980); H. Rept. No. 99–933, 99th Cong. 2d Sess. (1986).

In the 95th Congress, the House adopted a report (H. Rept. No. 95–1742) of the Standards Committee recommending the reprimand of a Member for his failure to report a campaign contribution. 95–2, Oct. 13, 1978, p 37005 (McFall). Another Member was reprimanded in the same Congress on the basis of a report of the committee (H. Rept. No. 95–1743) finding that he had (1) received a campaign contribution and failed to report it as required by law, (2) converted a campaign contribution to personal use, and (3) testified falsely to the committee under oath. 95–2, Oct. 13, 1978, p 37009 (Roybal).

§ 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 as well as 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. No. 96–422. Since the statute by its terms is directed at protecting “employees” it does not prevent one Member from soliciting another Member. See 6 Can-

non § 401 (in which the House adopted a resolution construing the predecessor statute).

In 1985, the Standards Committee 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”—and 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. No. 99–177. 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. See also H. Rept. No. 99–1019.

§ 14. Limitations on Earned Income; Honoraria

A House rule places restrictions upon the amount of outside-earned income a Member or officer or employee may receive. This provision limits the amount of aggregate outside-earned income in a calendar year to a certain percentage of one’s yearly congressional salary. Rule XLVII clause 1. Excluded from this limitation is income from certain sources, such as royalties from established publishers. Clause 3(e). 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, and not how such monies are characterized. Advisory Opinion No. 13, House Select Committee on Ethics, 95th Cong.

A restriction against honoraria is imposed by Rule XLIII clause 5 and Rule XLVII 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. Report of the Special Outside Counsel in the Matter of Speaker James C. Wright, Jr., Committee on Standards of Official Conduct, Feb. 21, 1989, p 3. In 1995, Rule XLVII was amended by adding a new clause 3 to restrict advance payment on copyright royalties and requiring advance Standards Committee approval of usual and customary contractual terms (H. Res. 299, Dec. 22, 1995).

§ 15. Acceptance of Gifts

The House rules have included a gift ban since 1968. In 1995, the House adopted new Rule LII, which bars the acceptance of all gifts except those expressly permitted by the rule. (See H. Res. 250, Nov. 16, 1995, p

____.) The House Standards Committee in the 96th Congress recommended that the House censure a Member for misconduct which included the acceptance of gifts of money from a person with a “direct interest in legislation” before Congress. The committee determined that certain checks which had been marked “loans” were not in fact true loans. H. Rept. No. 96–930, *In re Wilson*. 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. 96–2, June 10, 1980, pp 13801–20. 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 Rule XLIII clause 4. H. Rept. No. 100–506 (*In re Biaggi*).

In 1977, the Standards Committee was empowered to investigate the alleged receipt by Members of “things of value” from the Korean government. 95–1, Feb. 9, 1977, pp 3966–68. Subsequently, the House adopted a committee report (H. Rept. No. 95–1741), 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. 95–2, Oct. 13, 1978, p 36976 [H. Res. 1414, *In re Wilson*].

§ 16. Financial Disclosure

Title I of the Ethics in Government Act of 1978 (EIGA) requires Members, officers, and certain employees of the House to file an annual Financial Disclosure Statement. 5 USC App 6 §§ 101–111. This law, which is incorporated into House Rule XLIV (*Manual* § 940), was intended to regulate and monitor possible conflicts of interest due to outside financial holdings. H. Doc. No. 95–73 (1977), Commission on Administrative Review, pp 9 *et seq.*

The House has had a disclosure rule since 1968. In the 94th Congress, the House reprimanded a Member for certain conduct occurring during prior Congresses which included failure to make proper financial disclosures. 94–2, July 29, 1976, p 34380 (Sikes). In 1988, the House Standards Committee concluded that a Member had accepted certain gifts that were subject to mandatory disclosure under EIGA. H. Rept. No. 100–506 (*In re Biaggi*).

§ 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 gov-

ernment. 18 USC § 205. See also House Rule XLVII clause 2. Under this rule, Members, officers, and certain senior employees may not:

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

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

The Ethics Reform Act of 1989 amended Rule X clause 4(e)(2)(C) to establish a general time limitation on investigations by the Standards Committee. The committee may not, under this Act, investigate allegations of ethics violations occurring before the third previous Congress unless it determines that such matters are directly related to an alleged violation which occurred in a more recent Congress. See *Manual* § 698. This provision took effect Jan. 1, 1990.

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 of 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 Standards Committee recommended that a Member be reprimanded for certain conduct occurring during prior Congresses which involved financial irregularities, but declined to recommend punishment for prior conflict-of-interest conduct which had occurred in 1961, where such conduct had apparently been known to a constituency which had continually reelected him. H. Rept. No. 94–1364. This report was subsequently adopted by the House. 94–2, July 29, 1976, p 24380.

The House has jurisdiction under art. I § 5 of the Constitution to inquire into the misconduct of a Member occurring prior to his last election and to impose at least those sanctions falling short of expulsion. H. Rept. No. 96–351 (*In re Diggs*). (Compare 2 Hinds § 1283.) Expulsion, on the other hand, 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 prior to their election. Deschler Ch 12 § 13. A resolution calling for the expulsion of a Member was reported adversely by the Standards Committee, where the Member had been convicted of bribery under California law for acts occur-

ring while he served as a county tax assessor and before his election to the House; the committee found that although the conviction related to the Member's moral turpitude, it did not relate to his official conduct while a Member of Congress. H. Rept. No. 94-1478, *In re Hinshaw*.

If a Member's term of office expires before a pending resolution of expulsion against him can be agreed to, 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, 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 20, Committee on Standards of Official Conduct, Rules of Procedure (1993).

Generally, the type of disciplinary measure invoked will depend on the nature of the offense charged. Where there are mitigating circumstances, the Standards Committee sometimes issues a public "letter of reproof." See, for example, H. Rept. No. 100-526 (*In re Rose*). This letter may include a direction to the Member that he apologize. See H. Rept. No. 101-293 (*In re Bates*). The House itself may exact an apology from the offending Member. 2 Hinds §§ 1650, 1657.

Effect of Court Conviction or Pendency of Judicial Proceedings

Under the 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 Congress—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. Rept. No. 96-351 (*In re Diggs*). While a court 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. No. 100-506 (*In re Biaggi*).

The House rules provide that a Member who is convicted of a crime for which sentence could be two or more years imprisonment 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. Rule XLIII clause 10.

Resolutions and Reports

A resolution proposing disciplinary action against a Member may be called up in the House as a question of high privilege. 2 Hinds § 1254; 3 Hinds §§ 2648–2651; 96–1, Mar. 1, 1979, pp 3746–53. Where the Standards Committee after investigation recommends that disciplinary action be taken against a Member, it normally files a privileged report with the resolution proposing the action. But where the committee dismisses the charges or issues a lesser sanction such as a letter of reproof, the committee files its report, for the information of the House, without an accompanying resolution. 95–2, Oct. 6, 1978, p 34145.

Under amendments to Rule X clause 4 by the Ethics Reform Act of 1989, any letter of reproof or other administrative action of the committee 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. See *Manual* § 698.

A resolution adopting the committee report may be offered:

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

The Ethics Reform Act of 1989 amended Rule XXXII clause 1 to permit 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* § 919.

Debate on a disciplinary resolution is permitted under the hour rule. 94–2, July 29, 1976, p 24382. Under the rules adopted in the 103d Congress, debate on questions of privilege (including disciplinary resolutions) offered from the floor is equally divided between the proponent and a party leader, as determined by the Speaker (Rule IX clause 2). While a wide range of discussion is permitted during the debate on the resolution as to the Member's alleged misconduct, language which is personally abusive is not permitted (96–1, July 31, 1979, p 21584), and may not extend to the conduct or criminal convictions of other Members or former Members. 95–2, Oct. 13, 1978, p 36976. Debate is confined in scope to the conduct of the accused. 100–1, Dec. 18, 1987, p 36271.

Since 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. 96–2, May 29, 1980, pp 12661, 12662.

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. 100–1, Nov. 17, 1987, p 32153.

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. But 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 clause 2. 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 US 661, 669 (1897). Indeed, 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. No. 56–85 (1899); see also 1 Hinds § 476. In 1976, an expulsion resolution was reported adversely where a Member had been convicted of bribery under state law for acts occurring before his election to the House, since the conviction did not relate to his official conduct while a Member of Congress. Deschler Ch 12 § 13.1.

The purpose of expulsion is not merely to provide punishment, but 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 US 661, 669 (1897).

The House has considered proposals to expel on many occasions. Expulsion was used during the Civil War against Members charged with being

in rebellion against the United States or with having taken up arms against it. 2 Hinds §§ 1261, 1262. In a more recent instance, 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. Rept. No. 96–1387). 96–2, Oct. 2, 1980, pp 28953–78. And in 1988 the Standards Committee recommended the expulsion of a Member who had accepted an illegal gratuity, engaged in illegal trafficking, obstructed justice, brought discredit on the House, accepted impermissible gifts from a person or organization with an interest in legislation, failed to disclose gifts of \$250 or more in a calendar year on annual financial disclosure statements, and accepted favors or benefits under circumstances which might be construed as influencing the performance of governmental duties. H. Rept. No. 100–506 (*In re Biaggi*). The case terminated with the Member's resignation.

There have been many instances in which an expulsion proposal being 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. 1 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 appointing 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 (the Credit Mobilier case).
- Assaulting another Member for words spoken in debate. 2 Hinds § 1656.
- Using offensive language on the floor and deceiving the Speaker when the latter had attempted to control the debate. 2 Hinds § 1251.

In a case in the House in 1981, arising from the ABSCAM investigation, the Standards Committee recommended to the House that a Member be expelled after he had been found guilty on all counts of an indictment charging bribery, conspiracy, and accepting an illegal gratuity under Title 18, U.S. Code. The committee also found violations of House Rule XLIII clauses 1, 2, and 3. H. Rept. No. 97–110 (Lederer). The Member resigned from the House within a week of the vote of the committee.

Expulsion proceedings against Senators have been initiated in the Senate pursuant to recommendations of the Senate Committee on Ethics. See S. Rept. No. 97–187 (1981). See also 104–2, Sept. 7, 1995, p _____. In both instances, the Senator resigned prior to a vote of the full Senate.

§ 21. — Procedure; Resolutions of Expulsion

Generally; Form

Expulsion proceedings may be initiated by the introduction of a resolution containing explicit charges (2 Hinds §§ 1254, 1261, 1262), 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 this House.

Under more recent practice allegations of misconduct have not been included in the resolution as reported from the Standards Committee (H. Res. 794, 96th Cong.):

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.

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 is normally 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. 94–2, Oct. 1, 1976, p 35111.

A resolution to expel a Member presents a question of the privileges of the House (96–1, July 30, 1979, pp 21297, 21298), and may be called up by any Member as privileged under the Constitution and under Rule IX whether or not it has been reported favorably or adversely from committee. 94–2, Oct. 1, 1976, p 35111. Being privileged, the proposition supersedes the regular order of business. 2 Hinds § 2648.

As already noted, the resolution of expulsion must be agreed to by a two-thirds vote under the Constitution. 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. In this regard, it was held in 1921 that a motion to censure was not germane to the motion to expel. The amendment proposing censure rather than expulsion having been ruled out as not germane, the House then rejected the motion to expel, not mustering the required two-thirds majority. The proposition to censure was then offered as a question of privilege from the floor and was agreed to. 6 Canon § 236. Compare 5 Hinds § 5923.

Debate; Right of Member To Be Heard

Floor debate on a resolution of expulsion is under the hour rule. 8 Canon § 2448. In one recent instance, during debate on an expulsion resolution, the Member charged was yielded one-half of the hour in which to speak or yield in his behalf. 96–2, Oct. 2, 1980, pp 28953–78 (Myers). A Member whose expulsion is proposed may be permitted to present a written defense. 2 Hinds § 1273.

§ 22. Censure; Reprimand**Generally**

Censure and reprimand are two forms of discipline that may be administered pursuant to that provision of the Constitution (art. I § 5 clause 2) empowering 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 has on occasion made a distinction between censure and reprimand, the latter being a somewhat lesser punitive measure than censure. A censure is administered by the Speaker to the Member at the bar of the House, perhaps in a manner specified in the resolution, as by the reading of the censure resolution (96–1, July 31, 1979, p 21592; 96–2, June 10, 1980, p 13820), whereas a reprimand is administered to the Member “standing in his place” or merely by the adoption of a committee report. Deschler Ch 12 § 16.

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 §§ 1251, 1656; 6 Cannon § 236. In rare instances, the House has reconsidered a vote of censure (2 Hinds § 1653) or expunged a censure from the Journals of a preceding Congress (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 which brings the House into disrepute. Deschler Ch 12 § 16.

Many early cases of censure involved the use of unparliamentary language, assaults on a Member, or insults to the House by the introduction of offensive resolutions. See 2 Hinds §§ 1246–1249, 1251, 1256, 1305, 1621, 1656. 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; 6 Cannon § 239.

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 improper use of government funds. H. Rept. No. 90–27; Deschler Ch 12 § 16.1 (Powell). Censure recommendation rejected in favor of other penalties. § 1, *supra*.
- Failing to report certain financial holdings in violation of Rule XLIII, the Code of Official Conduct, and for investing in stock in a bank, the establishment of which he was promoting, in violation of the Code of Ethics for Government Service. H. Rept. No. 94–1364; recommendation of reprimand approved, 94–2, July 29, 1976, pp 24379–82 (Sikes).
- Receiving a campaign contribution and failing to report it as required by law. H. Rept. No. 95–1742; Member reprimanded, 95–2, Oct. 13, 1978, p 37005 (McFall).
- Receiving a campaign contribution and failing to report it, converting a campaign contribution to personal use, and testifying falsely to the committee under oath. H. Rept. No. 95–1743; Member reprimanded, 95–2, Oct. 13, 1978, p 37009 (Roybal).
- Unjust enrichment through increasing an office employee’s salary. H. Rept. No. 96–351; censure approved, 96–1, July 31, 1979, pp 21584–92 (Diggs).
- Receiving money from a person with direct interest in legislation in violation of clause 4, Rule XLIII, and for transferring campaign funds into office and personal accounts. H. Rept. No. 96–930; censure approved, 96–2, June 10, 1980, p 13820 (Wilson).
- Sexual misconduct with a page. H. Rept. No. 98–295 (*In re Studds*); H. Rept. No. 98–296 (*In re Crane*); Members censured, 98–1, July 20, 1983, pp 20020, 20030.
- Filing false financial disclosure statements under the Ethics in Government Act. H. Rept. No. 98–891 (*In re Hansen*); reprimand approved, 98–2, July 31, 1984, pp 21650, 21652.
- “Ghost voting,” improperly diverting government resources, and maintaining a “ghost employee” on his staff. H. Rept. No. 100–485 (*In re Murphy*). Member reprimanded, 100–1, Dec. 18, 1987, p 36266.
- Seeking improper dismissal of parking tickets and for misstatements of fact in a memorandum relating to an associate’s criminal probation record. H. Rept. No. 101–610 (*In re Frank*). Member reprimanded, 101–2, July 26, 1990, p ____.

The power of censure has also been invoked in the Senate. Deschler Ch 12 § 16. In recent years, the Senate has censured or denounced one of its Members for:

- Noncooperation with and abuse of certain Senate committees during an investigation of his conduct. 83–2, Dec. 2, 1954, p 16392 (Joseph McCarthy). See also Deschler Ch 12 § 16.2.
- Exercising the power and influence of his office to obtain and use for his personal benefit funds from the public raised through political testimonials. 90–1, June 23, 1967, p 17005–20 (Dodd). See also Deschler Ch 12 § 16.3.
- Acts and omissions regarding unsigned vouchers for the use of Senate funds, inaccurate financial disclosure statements, and unreported campaign funds and receipts. 96–1, Oct. 11, 1979, p 27767 (Talmadge).

§ 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 (from 2 Hinds § 1259):

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.

The resolution may call for direct and immediate action by the House. Deschler Ch 12 § 16. Such a resolution should be drafted so as 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) and may be entertained as privileged (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. The House may amend a resolution of censure to provide for other action to be taken against the Member and then adopt the resolution as amended. Deschler Ch 12 § 16.1. A resolution reported from committee may be adopted with an amendment converting the resolution from one of censure to one of reprimand. 95–2, Oct. 13, 1978, p 37009.

Debate

Floor debate on a resolution of censure is under the hour rule. 94–2, July 29, 1976, p 24382; 96–1, July 31, 1979, pp 21584–92. In the 103d

Congress, Rule IX was amended to equally divide debate on any question of privilege offered from the floor between the proponent and a party leader as determined by the Speaker. Rule IX clause 2.

A Member controlling debate under the hour rule may yield time to the Member being charged. 94–2, July 29, 1976, p 24382. That Member may, after declining to speak, yield all of his time to another Member. 96–1, July 31, 1979, pp 21584–92. It has been held, however, that if the previous question is moved on the proposition to censure, the effect may be to prevent him from making an explanation or defense (5 Hinds § 5459) and once the House has voted to censure, it is then too late for the Member to be heard. 2 Hinds § 1259.

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), or, if the House has already 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 (U.S. Const. art. I § 5 clause 2), the House may levy a fine as a disciplinary measure against a Member for certain misconduct. Deschler Ch 12 § 17. The fine may be coupled with certain other disciplinary measures deemed appropriate by the House. Thus, in one instance, the House disciplined a Member (for improper expenditure of House funds for private purposes) by imposing a fine of \$25,000, to be deducted on a monthly basis from his salary. 91–1, Jan. 3, 1969, pp 29, 34. In another instance, in the 96th Congress, a Member was required to make restitution of monies in the amount which he had personally benefited in his misuse of the congressional clerk-hire allowance. 96–1, July 31, 1979, pp 21584–92. 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

Deprivation of seniority status is a form of disciplinary action that may be invoked by the House against a Member under the U.S. Constitution (art. I § 5 clause 2). Thus, among the sanctions imposed by the House against a Member (Adam Clayton Powell) was a reduction in seniority to that of

a first-term Congressman. Deschler Ch 12 § 18.2. A Member also may be reduced in committee seniority as a result of party discipline enforced through the machinery of his party caucus. Deschler Ch 12 § 18.1.

The chairman of a committee of the House may be subjected to a variety of disciplinary measures for misconduct in his capacity as chairman, including removal from office. In one instance, a party caucus removed a Member from his office as chairman of a committee based on a report disclosing certain improprieties concerning his travel expenses and in clerk-hiring practices. Deschler Ch 12 § 9.2. Where consistent with the House rules, the members of a committee may take action against its chairman by restricting his authority to appoint special subcommittees (Deschler Ch 12 § 12.4) or transfer authority from the chairman to the membership and the subcommittee chairmen (Deschler Ch 12 § 12.3). 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.

Step-aside Rules

The party caucus or conference rules may require that the chairman or ranking minority member step aside from those positions upon indictment or on conviction of a felony. In the 104th Congress, for example, Rule 50 of the Democratic Caucus rules specified that if the senior Democratic member on a committee is indicted for a felony punishable by confinement for two or more years, he must step aside in favor of the next ranking member. In the same Congress, Rules 25, 26 and 27 of the Republican Conference also addressed similar situations.