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# Altering House Ethics Committee Sanction Recommendations on the Floor: Past Precedent and Options for Action

**name redacted**

Analyst on the Congress

**name redacted**

Specialist on Congress and the Legislative Process

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## Summary

The Constitution provides Congress with the power to punish and discipline its Members. Since the House Committee on Ethics was created during the 90<sup>th</sup> Congress, it has been authorized to investigate allegations of misconduct against Members and staff, and if necessary, recommend sanctions that are then considered by the whole House. This report examines instances when the House Ethics Committee has recommended a sanction, and amendments or alternatives have been considered on the House floor. Since the committee's creation, the House has attempted to amend sanction recommendations only a handful of times. These instances, however, are instructive of the overall approach to discipline and the relationship between the Ethics Committee and the House floor.

When a sanction recommendation—expulsion, censure, or reprimand—is brought to the floor, three options have been used to attempt to offer an alternative to that sanction. These are (1) offering a motion to recommit with amendatory instructions, (2) offering an amendment to the sanctions resolution, or (3) offering a separate resolution.

Since the House Ethics Committee was created (as the Committee on Standards of Official Conduct) in 1967, 16 ethics cases have been brought to the House floor to impose a sanction. Of these 16 cases, seven (43%) have included attempts to alter the sanction recommendation, and three (42% of the seven cases and 18% of all cases) have been successful. While not a majority of cases, the offering (and sometimes adoption) of an alternate sanction illustrates that altering a sanction recommendation, although a difficult process, can be done.

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## Introduction

The United States Constitution vests Congress with broad authority to discipline its Members. Article I, Section 5, clause 2, provides Congress with the power to “...determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.”<sup>1</sup> Initially, interpretation and implementation of this clause was reconstituted on a case-by-case basis. When the need arose, both the House of Representatives and the Senate conducted investigations and issued punishments on an ad-hoc basis. As a result, institutional self-discipline was generally inconsistent and sporadic, with neither chamber having systematic definitions of disorderly behavior or codes of conduct to guide disciplinary action.

In the Federalist Papers, James Madison discussed concerns over self-discipline. “No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time....”<sup>2</sup> While Madison addressed the potential for conflicts of interest to be raised in a legislative environment, the lesson can also be applied to the judgment of ethics-related issues and the trust necessary for effective government.<sup>3</sup>

Prior to the creation of the ethics committees in the 1960s, Congress historically was hesitant to use its power to conduct ethics investigations—except for the most grievous offenses.<sup>4</sup> Instead, Congress traditionally relied on “either criminal prosecution or voter rejection at the polls to punish misbehavior by Members.”<sup>5</sup> Overall, this was seen as an effective strategy.

Until 1957, when Congress adopted the first government-wide code of ethics for government service, the lack of a formal ethics process resulted in Congress following general society’s norms of decency and applying sanctions in only the most egregious cases.<sup>6</sup> Former Senate historian Richard Baker observed, “[f]or nearly two centuries, a simple and informal code of behavior existed. Prevailing norms of general decency served as the chief determinants of proper legislative conduct.”<sup>7</sup> As a result, 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.’”<sup>8</sup>

Additionally, there were no ethics cases brought to the floor between the 69<sup>th</sup> Congress (1925-1927) and the 89<sup>th</sup> Congress (1965-1966). This caused some scholars and interest groups to call for reform of the ethics enforcement process.<sup>9</sup> This led to the creation of the Committee on

<sup>1</sup> U.S. Congress, House of Representatives, “Article I, Section 5, clause 2,” *The Constitution of the United States*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Doc. 108-96 (Washington: GPO, 2003), p. 4.

<sup>2</sup> James Madison, “Federalist #10,” *The Federalist Papers*, at <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-10>.

<sup>3</sup> Andrew Tucker, “The Role of Reflexive Trust in Modernizing Public Administration,” *Public Performance & Management Review*, vol. 28, no. 1 (2004), pp. 53-74.

<sup>4</sup> Mark W Lawrence, “Legislative Ethics: Improper Influence by a Lawmaker on an Administrative Agency,” *Maine Law Review*, vol. 42 (1990), p 433.

<sup>5</sup> Ann McBride, “Ethics in Congress: Agenda and Action,” *George Washington Law Review*, vol. 58 (1990), p. 478.

<sup>6</sup> Stephen C. Roberts, “Do Congressional Ethics Committees Matter?” *Public Integrity*, vol. 6 (2003), p. 26.

<sup>7</sup> Richard Baker, “The History of Congressional Ethics,” in *Representation and Responsibility: Exploring Legislative Ethics*, ed. Bruce Jennings and Daniel Callahan (New York: Springer, 1985), p. 4.

<sup>8</sup> *Ibid.*, p. 3.

<sup>9</sup> For example, see Robert M. Rhodes, “Enforcement of Legislative Ethics: Conflict Within the Conflict of Interest (continued...)”

Standards of Official Conduct (now the Committee on Ethics) in 1967. The investigation of disciplinary cases—and the recommendation of sanctions, if necessary—have since been under the committee’s exclusive jurisdiction.

In the majority of instances, once the Ethics Committee has reported a sanction recommendation, it has been ultimately adopted by the House in that form. In some circumstances, however, floor amendments or legislative alternatives have been offered to the committee’s recommendation—either to increase or lessen the sanction. The House, however, has never failed to adopt a sanction—either the recommended action or an alternative—following a committee recommendation. Since 1967, the committee has taken action to recommend that the House sanction a Member 16 times. Of these 16 cases, seven (43%) have included attempts to alter the sanction recommendation, and three (42% of the seven cases and 18% of all cases) have been successful. While not a majority of cases, the offering (and sometimes adoption) of an alternate sanction illustrates that altering a sanction recommendation is possible.

## Creating an Ethics Framework

Between 1789 and 1957, the House dealt with relatively few ethics cases. As standards of acceptable behavior has shifted from one era to the next, House ethics enforcement has evolved.<sup>10</sup> For example, historical ethics cases have included charges of disorderly behavior for spitting or hitting on the House floor,<sup>11</sup> insulting the Speaker of the House,<sup>12</sup> and taking up arms against the United States.<sup>13</sup> Because a standing ethics committee did not exist in the House until 1967, the House investigated these cases by referring them to existing standing committees, creating ad-hoc investigatory committees, or dealing with the case directly on the House floor.

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Laws,” *Harvard Journal on Legislation*, vol. 10 (1972), pp. 373-406; Eric J. Murdock “Finally, Government Ethics as if People Mattered: Some Thoughts on the Ethics Reform Act of 1989,” *George Washington Law Review*, vol. 58 (1990), pp. 502-525; David C. Frederick, “Reforming Congressional Ethics Procedures: Lessons from the Attorney Disciplinary Process,” *Administrative Law Review*, vol. 48, no. 1 (Winter 1996), pp. 69-107; and Theresa A. Gabaldon, “The Self-Regulation of Congressional Ethics: Substance and Structure,” *Administrative Law Review*, vol. 48, no. 1 (Winter 1996), pp. 39-68.

<sup>10</sup> Dennis F. Thompson, *Ethics in Congress: From Individual to Institutional Corruption*, (Washington, DC: Brookings Institution Press, 1995), p. 2.

<sup>11</sup> For example, in 1798, Representative Matthew Lyon (Vermont) was charged with spitting on Representative Roger Griswold (Connecticut). Shortly thereafter, Representative Griswold retaliated by swinging fireplace tongs at Representative Lyon. The House ordered that the Committee on Privileges investigate the case. The committee considered both cases simultaneously and initially recommended that Representative Lyon be expelled. Prior to floor consideration, the committee changed its recommendation to censure for both Representatives. When the House considered the sanction recommendations, the motion to censure was not adopted. Instead, Representative Lyon had to issue a letter of apology and both Members had to promise they would behave better in the future. See, *Annals of Congress*, 1798, “Breach of Privilege,” vol. 7, January 30 to February 13: 955-1029; and *Annals of Congress*, 1798, “Fracas in the House,” vol. 7, February 15-16: 1034-1044. Also, see Hinds, Asher C., 1907, *Hinds’ Precedents of the United States House of Representatives*, Washington: GPO, vol. 2, Ch. LII, §§1642-1643, pp. 1114-1116 (hereinafter cited as *Hinds’ Precedents*).

<sup>12</sup> For example, in 1832, Representative William Stanberry (Ohio) was censured for insulting the Speaker during a floor debate. For more information, see *Hinds’ Precedents*, vol. 2, Ch. XLII, §1248, pp. 799-801.

<sup>13</sup> For example, in 1861, two representatives, John W. Reid (Missouri) and W. McKee Dunn (Indiana) were expelled for taking up arms against the government of the United States. For more information, see *Hinds’ Precedents*, vol. 2, ch. XLII, §1261.

## Standing Committee Creation

The effort to create a formal code of conduct began in the Senate in the late 1940s and early 1950s.<sup>14</sup> In the 85<sup>th</sup> Congress (1957-1958), Congress adopted a general Code of Ethics for Government Service to oversee officials and employees in all three branches of government.<sup>15</sup> The standards included in the Code of Ethics for Government Service were the first government-wide ethics provisions and are still recognized as the foundation of the House's and Senate's continuing ethics guidance. The Code of Ethics for Government Service, however, was not legally binding because the code was adopted by congressional resolution, not by public law.<sup>16</sup>

Even with the adoption of the Code of Ethics for Government Service, Congress continued to rely on unwritten norms of conduct and the existence of a “club spirit.”<sup>17</sup> Pursuant to investigations of the alleged misconduct of a Senate staff member and of Representative Adam Clayton Powell in the 1960s, attention was drawn to the perceived absence of standards for congressional conduct and the ad-hoc approach to congressional self-discipline.<sup>18</sup> In response, in 1964, the Senate created the Select Committee on Standards and Conduct,<sup>19</sup> and in 1967, the House established the Committee on Standards of Official Conduct.<sup>20</sup>

In the House, the committee was given the authority to investigate allegations of wrongdoing by Members, officers, and employees in its chamber; to adjudicate evidence of misconduct; to recommend penalties, when appropriate; and to provide advice on actions permissible under congressional rules and law.<sup>21</sup> Additionally, the Ethics Committee has formal jurisdiction over the Code of Official Conduct and Member financial disclosure.<sup>22</sup>

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<sup>14</sup> Wayne Morse, “Reports by Senators on Sources of Outside Income,” remarks in the House, *Congressional Record*, vol. 92, part 8 (July 23, 1946), p. 9741.

<sup>15</sup> 72 Stat. B12. Also see, “Code of Ethics for Government Service,” *Congressional Record*, vol. 103, part 12 (August 28, 1957), p. 16297; and “Code of Ethics For Government Service,” *Congressional Record*, vol. 104, part 10 (July 11, 1958), p. 13556.

<sup>16</sup> The Code of Ethics for Government Service continues to be cited by many House and Senate investigations. For example, see U.S. Congress, House Committee on Standards of Official Conduct, 2004, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-722, Washington: GPO, p. 38.

<sup>17</sup> Robert S. Getz, *Congressional Ethics: The Conflict of Interest Issue*, (Princeton, N.J.: Van Nostrand & Co., 1966), p. 113.

<sup>18</sup> “Ethics and Criminal Prosecutions,” in *Guide to Congress*, 5<sup>th</sup> ed., vol. 2 (Washington, DC: CQ Press, 2000). For more on the history and development of congressional ethics issues see CRS Report 98-15, *House Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by (name redacted) CRS Report RL30650, *Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*; and CRS Report RL30764, *Enforcement of Congressional Rules of Conduct: A Historical Overview*, by (name redacted)

<sup>19</sup> “Proposed Amendment to 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 “Committee System Reorganization,” *Congressional Record*, vol. 123, part 3 (February 1, 1977), pp. 3660-3699.

<sup>20</sup> “Committee on Standards of Official Conduct,” *Congressional Record*, vol. 113, part 7 (April 13, 1967), pp. 9426-9448. In the 112<sup>th</sup> Congress (2011-2012), the name of the committee was changed to the House Committee on Ethics, see H.Res. 5 (112<sup>th</sup> Congress), agreed to January 5, 2011.

<sup>21</sup> House Rule XI, clause 3. For commentary by the Office of the Parliamentarian, see U.S. Congress, House of Representatives, *Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States, One Hundred Fourteenth Congress*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Doc. 113-181 (Washington: GPO, 2015), §806, pp. 578-608 (hereinafter cited as *House Manual*).

<sup>22</sup> U.S. Congress, Committee on House Administration, *History of the United States House of Representatives, 1789-1994*, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., H.Doc. 103-224 (Washington: GPO, 1994), p. 298. The committee is also charged with (continued...)

The creation of a House ethics committee was “intended by Speaker John McCormack to be noncontroversial.”<sup>23</sup> To further this intent, the committee’s membership is divided equally between majority and minority, and its investigation and sanction recommendation process is designed to be as bipartisan and objective as possible.<sup>24</sup> To reach this point, however, the committee needed to overcome early concerns about the difficulty of distancing themselves from partisan interests. Serving that purpose, several high-profile investigations were undertaken in the committee’s early years against Members of both parties. These included “Abscam,” “Koreagate,” “Pagegate,” “Iraqgate,” the House Post Office “check bouncing” scandal, and the House bank scandal.<sup>25</sup>

## House Ethics Process

When the need to investigate a House Member, officer, or staffer arises, the Ethics Committee operates pursuant to authorities found in House Rule X, clause 5(a)(4)(A) and (B), and House Rule XI, clause 3. Once the committee decides that an investigation is necessary, a two-step process begins. First, the committee determines whether the allegations have merit. If they do, the committee formally opens an investigation by empaneling an investigatory subcommittee. If the committee determines that the allegations are without merit, the investigation is discontinued.<sup>26</sup>

Second, if the investigation concludes that wrongdoing occurred, a Statement of Alleged Violations (formal charges) is sent to the full committee, and an adjudicatory subcommittee is appointed. The adjudicatory subcommittee evaluates the Statement of Alleged Violations and after holding a hearing, recommends sanctions, if warranted. The adjudicatory process ensures

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conducting investigations against alleged violations of the Code of Official Conduct or House Rules, reporting violations of the law by Members, officers, and employees to state and federal authorities, and publishing advisory opinions to guide Member, officer, and staff behavior. With the adoption of H.Res. 168 (105<sup>th</sup> Congress) on September 18, 1997, the House voted to permit an affirmative vote of two-thirds of the full Standards Committee or the approval of the House for the referral of evidence of violations of law to the appropriate law enforcement authorities.

<sup>23</sup> Roger H. Davidson and (name redacted), *Congress Against Itself*, (Bloomington, IN: Indiana University Press, 1977), p. 148.

<sup>24</sup> House Rule X, clause 3(a).

<sup>25</sup> Norman J. Ornstein, “Doing Congress’s Dirty Work,” *Georgetown University Law Review*, vol. 86, no. 6 (July 1988), p. 2180.

<sup>26</sup> The Ethics Committee can initiate an investigation either through their own investigative powers under Committee Rule 18, or through a complaint alleging misconduct or a House rules violation by House Members or staff must be filed with the committee. Historically, complaints could only be filed by a Member of the House. In recent Congresses, however, two alternative complaint filing mechanisms have been established. First, complaints can be filed by a person who is not a Member, but the complaint 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.” Prior to 1997, members of the public (under certain conditions) were permitted to 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. For more information, see “House Rule XI, cl. 3 (b)(2),” *House Manual*, §806, p. 581; and “Implementing the Recommendations of the Bipartisan Ethics Task Force,” *Congressional Record*, vol. 143, part 13 (September 18, 1997), pp. 19302-19340. Second, in the 110<sup>th</sup> Congress (2007-2008), the House created the Office of Congressional Ethics (OCE). OCE is managed by a board of six members and two alternates—appointed by the Speaker of the House and House minority leader—to collect information from non-Member and non-congressional sources on potential misconduct and House rules violations by Members, officers, and staff. The OCE’s primary responsibility is to conduct investigations in an independent, nonpartisan manner. Following an OCE investigation, the board reports its findings to the House Ethics Committee for further action. For Ethics Committee Rules, see U.S. Congress, House, Committee on Ethics, *Rules*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 12, 2015, at <http://ethics.house.gov/sites/ethics.house.gov/files/Committee%20Rules%20for%20114th%20Congress—FINAL.pdf>. For more information about the Office of Congressional Ethics (OCE) and its procedures, see H.Res. 895 (110<sup>th</sup> Congress), §1(c)(2)(C).

that facts are reviewed by the committee and that a “...Statement of Alleged Violation has been proved by clear and convincing evidence.”<sup>27</sup>

Following the adjudicatory hearing, the subcommittee determines whether the actions specified in the Statement of Alleged Violations warrant further action by the full committee or the House, such as sanctioning the Member.<sup>28</sup> If it is determined that further action is warranted, the subcommittee forwards the findings to the full committee with a recommendation for discipline. The full committee may then vote to approve, disapprove, or alter the subcommittee’s recommendation, and report a sanction resolution to the House as appropriate.

## Punishment Options

Historically, the committee has recommended several punishments. These have included expulsion, censure, reprimand, and “Letters of Reproval” or “Letters of Admonition.”<sup>29</sup> Since the Ethics Committee was created in 1967, numerous Members have left the House after court convictions, after inquiries were initiated, or after charges were brought by the committee before completion of House action.<sup>30</sup> Regardless of the potential offense, a Member’s departure from the House ends a case, as the committee does not have jurisdiction over former Members.

A resolution recommending expulsion, censure, or reprimand of a Member presents a question of privilege.<sup>31</sup> If reported by the Ethics Committee pursuant to its duties as listed in House Rule XI, clause 3(q), the resolution may be called up at any time for consideration by the House. The House can then agree to the resolution and accept the recommendation, it may attempt to alter the recommendation, or defeat the resolution and reject the sanction.<sup>32</sup>

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<sup>27</sup> U.S. Congress, House, Committee on Standards of Official Conduct, “Appendix C: Adjudicatory Subcommittee Hearing,” *In the Matter of Representative Charles B. Rangel*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 111-661, book 1 of 3 (November 29, 2010), p. 260.

<sup>28</sup> In addition to jurisdiction over the conduct of House Members, the Ethics Committee has jurisdiction over conduct of officers and staff. Since the Committee’s creation in 1967, however, no cases have been brought to the floor to sanction an officer or staff member. In at least one case, the Committee found an instance of improper activity by a staff member, who was dismissed from House employment. For more information, see U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Alleged Improper Alterations of House Documents*, report pursuant to H.Res. 254, 98<sup>th</sup> Cong., 1<sup>st</sup> sess., November 14, 1983, H.Rept. 98-544 (Washington: GPO, 1983).

<sup>29</sup> In some cases, either before or after Ethics Committee or House action, the Member’s political party has imposed sanctions. These sanctions have included deprivation of seniority status, exclusion from committee participation, and removal as committee chair or ranking member. See Brown, Wm. Holmes, Johnson, Charles W., and Sullivan, John V., 2011. *House Practice*. Washington: GPO, Ch. 25, §26, pp. 528-529 (hereinafter cited as *House Practice*). These cases are separate from action by the House or a committee. For more information on legislative discipline in the House of Representatives, see CRS Report RL31382, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, by (name redacted)

<sup>30</sup> These Members resigned from the House, chose not to run for reelection, or were defeated.

<sup>31</sup> *House Manual*, §63. Because such resolutions are within the House’s constitutional prerogative to punish Members, they may be eligible to be considered under the procedures for questions of privilege outlined in House Rule IX, although in modern practice, the House generally waits to act until the Committee on Ethics has made a recommendation. For more on questions of privilege, see CRS Report R44005, *Questions of the Privileges of the House: An Analysis*, by (name redacted)

<sup>32</sup> The term “privileged business,” as distinct from a question of privilege, relates to the order or priority of business before the House and is defined in House rules and precedents as business that has precedence over the regular order of business and so may supersede or interrupt other matters that might be called up or pending before the House.



## Expulsion

Expulsion is the only punishment specifically mentioned in Article I of the Constitution. Pursuant to the Article I, Section 5, clause 2, the House has the power to expel a Member, after the Member has taken the oath of office, by a two-thirds vote of those present and voting.<sup>33</sup> Historically, expulsion has been used sparingly. When used, Members have been expelled for offenses related to official conduct or being 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.”<sup>34</sup>

## Censure

Unlike expulsion, censure is not specifically mentioned in the Constitution. The House, however, derives its censure authority from the same clause in the Constitution because it clearly provides authority for an unspecified range of punishments. As defined by House precedent, 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 Member 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.<sup>35</sup> In general, the House’s “power to censure extends to any reprehensible conduct that brings the House into disrepute.”<sup>36</sup>

## Reprimand

A reprimand is often considered to be a lesser sanction than censure. Prior to the 1970s, the terms reprimand and censure were often considered to be synonymous and were commonly used together in resolutions. Unlike a censure resolution, which requires the sanctioned Member to stand in the well while the Speaker reads the resolution, a reprimand is adopted by a majority vote of the House with the Member “standing in his place,” or is merely implemented by the adoption of the committee’s report.<sup>37</sup>

## Letters of Reproval and Letters of Admonition

First used in 1987, a public Letter of Reproval was created by the Ethics Committee and can be imposed by a majority vote of the committee, but does not require action by the full House.<sup>38</sup> A Letter of Reproval 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. Unlike a Letter of

<sup>33</sup> *In re Chapman*, 166 U.S. 661, 669 (1897).

<sup>34</sup> *Hinds’ Precedents*, vol. 2, Ch. XLII, §1286, pp. 852-857; Deschler, Lewis, 1977. *Deschler’s Precedents of the United States House of Representatives*, vol. 3, Ch. 12, §13.1, p. 177 (hereinafter cited as *Deschler’s Precedents*); *House Practice*, Ch. 25, §20, pp. 522-523.

<sup>35</sup> *Deschler’s Precedents*, vol. 3, Ch. 12, §16, pp. 196-198; *House Practice*, Ch. 25, §22, pp. 524-525. The “well” of the House is the “sunken, level, open space between members’ seats and the podium at the front of each chamber. House members usually address their chamber from their party’s lectern in the well on its side of the aisle.” Walter Kravitz, *American Congressional Dictionary* (Washington, DC: CQ Press, 2001), p. 277.

<sup>36</sup> *House Practice*, Ch. 25, §23, 525.

<sup>37</sup> Cannon, Clarence, 1936. *Cannon’s Precedents of the United States House of Representatives*, Washington: GPO, vol. VI, Ch. CLXXV, §263 (hereinafter cited as *Cannon’s Precedents*); *Deschler’s Precedents*, vol. 3, Ch. 12, §16, p. 196.

<sup>38</sup> *House Practice*, Ch. 25, §27, p. 529.

Reproval, a Letter of Admonition is not specifically authorized under House rules. Such a letter was sent to a Member in 2004.<sup>39</sup>

## Restitution

On some occasions, either as a stand-alone punishment or as part of other sanctions, the House has fined Members or required that they pay restitution for their actions. The House's authority to levy fines is drawn from Article I, Section 5, clause 2 of the Constitution.<sup>40</sup> For example, in 1969, the House fined a Member \$25,000 "for improper expenditure of House funds for private purposes."<sup>41</sup> Similarly, in 1979, the House required a Member pay restitution "in the amount in which the Member personally benefited" from the "misuse of congressional clerk-hire."<sup>42</sup>

## Regular Process for Committee Sanction Recommendations

Historically, a resolution recommending expulsion, censure, or reprimand presents a question of privilege. Since the establishment of the Committee on Standards of Official Conduct, now the Committee on Ethics, it has been the practice of the House to take action on resolutions sanctioning Members or officers upon the recommendation of the committee. Once the committee has completed any investigation, it may choose to report a recommendation to the House in the form of a House resolution. Under House Rule XIII, clause 5(a)(5), the Ethics Committee has leave to report at any time on resolutions recommending action by the House relating to official conduct. Clause 5(b) further provides that such a report may be called up for consideration in the House as a privileged question by direction of the committee. As a privileged question, the resolution may be considered immediately, not subject to the layover requirement in Rule XIII, clause 4.<sup>43</sup>

When the resolution is scheduled for consideration, a Member from the committee designated as manager (usually the chair of the committee) is recognized by the Speaker to call it up for consideration. The resolution is then considered in the House under the "Hour Rule."<sup>44</sup> Pursuant to the Hour Rule, the manager is recognized for a period of one hour. The manager then generally yields time from this hour to other Members for the "purpose of debate only." Typically, the manager will divide the time equally—giving him- or herself control of one-third, the committee's ranking minority Member control of one-third, and the individual accused of the

<sup>39</sup> U.S. Congress, House, Committee on Standards of Official Conduct, *Summary of Activities One Hundred Eighth Congress*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-806 (Washington: GPO, 2005), pp. 62-68.

<sup>40</sup> *Deschler's Precedents*, vol. 3, ch. 12, §17, pp. 1753-1754; *House Practice*, ch. 25, §25, p. 527. Article I, Section 5, clause 2 states: "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member."

<sup>41</sup> *House Practice*, ch. 25, §25, p. 527; H.Res. 2 (91<sup>st</sup> Congress), "Resolution Providing for Administering the Oath of Office to Adam Clayton Powell," *Congressional Record*, vol. 115, part 1 (January 3, 1969), p. 29.

<sup>42</sup> *House Practice*, ch. 25, §25, p. 527; U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representative Charles C. Diggs, Jr.*, report to accompany H.Res. 378, 96<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 96-351, vol. I (Washington: GPO, 1979); and "In the Matter of Representatives Charles C. Diggs, Jr.," *Congressional Record*, vol. 125, part 17 (July 31, 1979), p. 21584.

<sup>43</sup> As a matter of practice, however, in almost every case the report of the committee was available for two or more days prior to action by the House.

<sup>44</sup> For more on the hour rule generally, see CRS Report 98-427, *Considering Measures in the House Under the One-Hour Rule*, by (name redacted) .

ethics violation control of one-third. For example, during debate over the first of three Koreagate investigations, the Committee on Standards of Official Conduct chair, Representative John Flynt, began the debate by announcing how his time would be divided.

Mr. Speaker, for purposes of debate only, I yield 20 minutes to the gentleman from South Carolina (MR. SPENCE). For purposes of debate only, I yield 20 minutes to the gentleman from California (MR. CHARLES H. WILSON). I reserve 20 minutes for myself, and I now yield myself 6 of those minutes.<sup>45</sup>

Debate on the resolution containing the committee sanction recommendation then proceeds in a manner similar to other debate in the House. Unless the manager were to yield time to another Member for the purposes of offering an amendment, those interested in altering the sanction recommendation may not do so at this time. The manager of the debate has the right to close debate, not the Member who is the subject of the resolution, and in cases where the time has been divided three ways, the presiding officer has announced that the order of closing speeches would be the minority manager, the subject of the resolution, and then the manager of the resolution.<sup>46</sup>

Once debate has concluded, a motion for the previous question is in order. If this motion is agreed to, debate on the resolution is ended allowing a vote on the committee's sanction recommendation to take place.<sup>47</sup> Before the House votes on the resolution embodying the committee's recommendations, however, a motion to recommit is in order.<sup>48</sup> Under Rule XIX, clause 2, preference is given to a Member from the minority who is opposed to the resolution to offer the motion. Because the motion may include amendatory instructions, it represents an opportunity to make changes in the sanctions recommended by the committee. Only one motion to recommit is in order. Rule XIX allows for 10 minutes of debate on the motion to recommit, but in most cases there is no further debate. Amendatory instructions are in the form of an instruction that the committee report the resolution back to the House forthwith with the amendatory language incorporated. If the motion is agreed to, the resolution does not actually leave the floor, and the House would immediately have the resolution and amendment before it with the opportunity to vote to adopt the amendment. If the House then agrees to the amendatory language, it supplants the original committee-recommended sanctions, and the final vote will be on the resolution as amended.

If the resolution is agreed to, the House takes the appropriate action based on the discipline imposed by the resolution. For example, in the event of a reprimand, the vote total is recorded in the *Journal*. If a Member is censured, the censure resolution is read while the Member stands in the "well" of the House. Finally, if a Member is expelled, the expulsion is reported by the Clerk of the House to the governor of the expelled Member's state. For example, following an

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<sup>45</sup> Rep. John Flynt, "In the Matter of Representative Charles H. Wilson of California," remarks in the House, *Congressional Record*, vol. 124, part 27 (October 13, 1978), p. 36976.

<sup>46</sup> "In the matter of Representative James A. Traficant, Jr.," *Congressional Record*, vol. 148, part 10 (July 24, 2002), p. 14314.

<sup>47</sup> If the motion for the previous question is not agreed to, debate would continue. Under this circumstance, the Speaker would recognize a Member opposing the previous question for an additional hour of debate. During this hour, the Member opposed would control the time and it would be in order for them to offer a germane amendment to the sanctions resolution without first having time yielded by the manager for that purpose.

<sup>48</sup> For more information on the motion to recommit, see CRS Report 98-383, *Motions to Recommit in the House*, by (name redacted); and CRS Report RL34757, *The Motion to Recommit in the House of Representatives: Effects and Recent Trends*, by (name redacted).

expulsion of a Member in 1980, the House ordered the Clerk to “notify the Governor of the Commonwealth of Pennsylvania of the action of the House.”<sup>49</sup>

## Options for Altering a Sanction Recommendation

Once the Ethics Committee has reported a sanction recommendation, several options exist to potentially change the recommendation on the House floor. These options include offering a motion to recommit, an amendment to the committee’s sanction resolution, and a separate resolution with the alternative desired punishment. This section provides an explanation and historical application of these options, followed by a discussion of the potential advantages and disadvantages of each.

### Motion to Recommit

The most common method used to attempt to change an Ethics Committee sanction recommendation is to offer a motion to recommit with amendatory instructions before the House votes on final passage. This procedure has been used at least four times, three times successfully, to alter a committee sanction recommendation. For example, in the 98<sup>th</sup> Congress (1983-1984), the Committee on Standards investigated allegations of improper sexual contact between Members and House officials and House pages.<sup>50</sup> The investigation found that two Members of the House had engaged in improper sexual conduct with House pages between 1973 and 1980, in violation of the House Rules and the Code of Conduct.<sup>51</sup> Subsequent to the investigation, the Committee on Standards of Official Conduct officially recommended the reprimand of the two Members.<sup>52</sup>

Debate on the reprimand resolutions for both Members occurred consecutively in the House. Overall, Members praised the work of the committee, but many felt that reprimand was not a severe enough punishment for violating the trust that the pages’ parents had placed in the House and the page program.<sup>53</sup> At the conclusion of the debate, separate motions to recommit with

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<sup>49</sup> “In the Matter of Representative Michael J. Myers,” *Congressional Record*, vol. 126, part 22 (October 2, 1980), p. 28978.

<sup>50</sup> U.S. Congress, House Committee on Standards of Official Conduct, *Investigation Pursuant to House Resolution 12 Concerning Alleged Improper or Illegal Sexual Conduct by Members, Officers, or Employees of the House*, 98<sup>th</sup> Cong., 1<sup>st</sup> sess., July 14, 1983, H.Rept. 98-297 (Washington: GPO, 1981), p. 1. The investigation was authorized after the media reports “...quoting former pages who said that pages had been the victims of sexual misconduct on the part of House members.” For more information, see “Two Members Censured,” *CQ Almanac*, vol. 39 (Washington, DC: CQ Press), pp. 580-583.

<sup>51</sup> *Ibid.*, p. 3; and “In the Matter of Representative Daniel B. Crane,” *Congressional Record*, vol. 129, part 15 (July 20, 1983), pp. 20020-20030. The investigation was conducted by special counsel James A. Califano, Jr. He found that in both cases, the pages were 16 or older—then the legal age of consent in the District of Columbia—and no specific laws were broken.

<sup>52</sup> U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representatives Gerry E. Studds*, 98<sup>th</sup> Cong., 1<sup>st</sup> sess., July 14, 1983, H.Rept. 98-295 (Washington: GPO, 1983); and U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representative Daniel B. Crane*, 98<sup>th</sup> Cong., 1<sup>st</sup> sess., July 14, 1983, H.Rept. 98-296 (Washington: GPO, 1983). In recommending a sanction, the committee believed that reprimand in combination of the public release of records associated with the punishment would place “...an indelible stain on the reputations of these Members.” For more information, see “In the Matter of Representative Daniel B. Crane,” *Congressional Record*, vol. 129, part 15 (July 20, 1983), p. 20023.

<sup>53</sup> Media reports focused on whether the proper punishment for what some Members perceived was a challenge to “the integrity of the institution....” Steven V. Roberts, “Ethics Panel Says 2 Congressmen Had Sexual Relations with Pages,” *The New York Times* (July 15, 1983), p. A1.

amendatory instructions—one for each resolution—changing the sanction recommendation from reprimand to censure for both Representatives were offered and agreed to by the House, and then the resolution, as amended, was agreed to.<sup>54</sup>

In another case, in the 101<sup>st</sup> Congress (1989-1990), the Committee on Standards opened an investigation after the media reported that a Member of Congress had hired a prostitute as a personal employee and that the employee had used the Member's Capitol Hill apartment to solicit other clients.<sup>55</sup> After an investigation into alleged impropriety, the committee recommended that the Member be reprimanded because he “brought discredit upon the House of Representatives....,” in violation of House Rules and that he had engaged in improper conduct by attempting to have a staff member's parking tickets dismissed.<sup>56</sup>

On July 26, 1990, a case was debated on the House floor consisting of two parts. First, a separate resolution recommending expulsion was debated and voted on by the House. This resolution was ultimately defeated.<sup>57</sup> Debate on the committee's reprimand resolution then commenced. Because of the nature of the charges, and though expulsion efforts had just failed, some Members continued to feel that reprimand was not a serious enough punishment.<sup>58</sup> Subsequently, a motion to recommit was offered to amend the resolution, increasing the punishment from reprimand to censure. The motion to recommit, however, was not agreed to and the House ultimately agreed to the resolution reprimanding the Member.<sup>59</sup>

There are limits, however, on the utility of the motion to recommit. For example, amendatory instructions, as with other amendments in the House, are required to be germane under House Rule XVI, clause 7. This means that the range of alternatives that may be considered may be limited. For example, a proposition to censure would not be germane to a proposition to expel.<sup>60</sup> In addition, because only one motion to recommit is in order, and a Member from the minority who is in opposition to the resolution would have priority to offer it, the opportunity to offer an alternative favored by a majority of Members may not be available in all circumstances. Finally,

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<sup>54</sup> “In the Matter of Representative Daniel B. Crane,” *Congressional Record*, vol. 129, part 15 (July 20, 1983), pp. 20028, 20036. For journalistic accounts of the proceedings, see Joyce Gemperlein, “House Stiffens Penalty, Censures Lawmakers for Affairs with Pages,” *Miami Herald* (July 21, 1983); and Stephen V. Roberts, “House Censures Crane and Studds for Sexual Relations with Pages,” *The New York Times* (July 21, 1983).

<sup>55</sup> U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representative Barney Frank*, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-610 (Washington: GPO, 1990), p. 2. For media reports, see Dan Beegan, “Congressman Admits Hiring Prostitute for Personal Staff,” *Associated Press* (August 25, 1989).

<sup>56</sup> U.S. Congress, House Committee on Standards of Official Conduct, *Summary of Activities One Hundred First Congress*, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-995 (Washington: GPO, 1990), p. 12.

<sup>57</sup> “Explanation of Agenda for Debate in the Matter of Representative Barney Frank,” *Congressional Record*, vol. 136, part 14 (July 26, 1990), pp. 19705-19717.

<sup>58</sup> Janet Hook, “House Reprimands Frank, Refuses to Censure Him,” *CQ Weekly*, vol. 48, no. 30 (July 29, 1990), p. 2379.

<sup>59</sup> “In the Matter of Representative Barney Frank,” *Congressional Record*, vol. 136, part 14 (July 26, 1990), pp. 19731-19732.

<sup>60</sup> *Cannon's Precedents*, vol. VI, Ch. CLXXV, §236. While the question of the germaneness of lesser sanctions to each other has not been established in House precedent, guidance offered by the presiding officer during House consideration of the impeachment resolution in the case of President Clinton is instructive. In ruling against the germaneness of an amendment that would have changed impeachment to censure, the chair noted that “a proposal to discipline a Member may admit as germane an amendment to increase or decrease the punishment (except expulsion ...), in significant part because the Constitution contemplates that the House may impose alternative punishments. But a resolution of impeachment, being a question of privileges of the House because it invokes an exclusive constitutional prerogative of the House, cannot admit as germane an amendment to convert the remedial sanction of potential removal to a punitive sanction of censure ...” *Congressional Record*, vol. 144, part 19 (December 19, 1998), p. 28108.

this procedure requires multiple votes so that a majority of Members must remain in support throughout the consideration of the alternative.

Although the Ethics Committee is tasked with responsibility for recommending sanctions, ultimately it is the House that must render a decision on the punishment of Members. The chief advantage of the motion to recommit is that it offers the House an opportunity to have a say on the severity of that punishment by allowing a majority of Members to vote on an alternative to the committee's recommendation.<sup>61</sup> The motion, therefore, has been a procedural device that allows the House to retain final control over the sanction regardless of the position of the committee. With other procedures, the support or opposition of the committee may have an impact on the ability of the House to consider the alternative.

## **Amendment**

Another option that has been used to attempt to alter an Ethics Committee sanction recommendation is to offer an amendment to the House Ethics Committee's sanction resolution. Since the resolution is privileged and is debated under the hour rule, in order to offer an amendment opponents of the committee's recommended sanction would need either to have the floor manager yield time to the amendment's sponsor directly for the purposes of offering an amendment, or to defeat the previous question and be recognized to control time for that purpose. Neither of these procedural paths has been in common use. In only one instance has a sanction resolution been altered through amendment. In 1979, the Committee on Standards of Official Conduct recommended that a Member be censured after it investigated allegations that a Member had "accepted cash gifts from an individual with a direct interest in legislation before Congress, placed the same individual on his congressional payroll and paid him more than his duties required, converted campaign funds to his personal use, and testified falsely under oath to a Standards Committee attorney."<sup>62</sup>

During the course of debate on the censure resolution, Representative Charles Bennett, chair of the Committee on Standards of Official Conduct, recognized Representative Tom Foley for an amendment to the sanction recommendation.<sup>63</sup> Representative Foley's amendment proposed the removal of a section of the censure resolution that would have stripped the Member of his committee chairmanship.<sup>64</sup> Time was yielded by the floor manager to allow the Foley amendment

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<sup>61</sup> Amendatory instructions have been used not only to increase the severity of the recommended sanction, but to lessen it as well. In 1978, the recommended sanction was changed from censure to reprimand. For more information, see "In the Matter of Representative Edward R. Roybal," *Congressional Record*, vol. 124, part 27 (October 13, 1978), pp. 37009-37017.

<sup>62</sup> H.Res. 660 (96<sup>th</sup> Congress), agreed to as amended, June 10, 1980. For more information on the debate over the amendment, see "California's Wilson Charged," *CQ Almanac*, vol. 35 (Washington, DC: CQ Press, 1979), pp. 592-593; and "Rep. Charles H. Wilson," *CQ Almanac*, vol. 36 (Washington, DC: CQ Press, 1980), pp. 522-524.

<sup>63</sup> "In the Matter of Representative Charles H. Wilson," *Congressional Record*, vol. 126, part 11 (June 10, 1980), p. 13811.

<sup>64</sup> The text of the censure resolution, as reported by the Committee on Standards of Official Conduct, read: "Resolved, (1) That Representative Charles H. Wilson be censured; (2) That Representative Charles H. Wilson be denied the chair on any committee or subcommittee of the House of Representatives for the remainder of the Ninety-sixth Congress; (3) That upon adoption of this resolution, Representative Charles H. Wilson forthwith present himself in the well of the House of Representatives for the public reading of this resolution by the Speaker; and (4) That the House of Representatives adopt the report of the Committee on Standards of Official Conduct dated May 8, 1980, in the matter of Representatives Charles H. Wilson." U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson*, report to accompany H.Res. 660, 96<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 6, 1980, H.Rept. 96-930 (Washington: GPO, 1980), p. 12.

to be offered. The Democratic Caucus had previously adopted a rule that “automatically remove[s] any committee or committee chairman who is censured by a vote of the House or who is convicted of a felony,”<sup>65</sup> so that the Member would have already been subject to party sanction concerning his committee assignment.

The Foley amendment was agreed to by the House.<sup>66</sup> Following adoption of the Foley amendment, the House resumed debate on the censure resolution, as amended. A motion to recommit was offered with amendatory instructions that would have lessened the sanction from censure to reprimand, but the motion failed and the House subsequently voted for the resolution as amended providing for censure.<sup>67</sup>

Offering an amendment to alter an Ethics Committee sanction recommendation has potential advantages and disadvantages compared with a motion to recommit with amendatory instructions. Because of the way that the recommendation resolution is considered, in order to offer an amendment, it is likely that the floor manager would need to yield time to someone for that purpose.<sup>68</sup> Otherwise, Members are generally restricted to “debate only” and not permitted to offer an amendment. Therefore, in order to offer an amendment, the floor manager of the resolution from the Ethics Committee would likely need to be in favor of allowing the House to consider it in order to have the amendment offered on the floor.

While in the case outlined above the amendment process was used to strike a section other than the primary sanction recommendation, such a procedure might be used to change part or all of the committee’s recommendation. Such an amendment could be used to make changes to a single section of the Ethics Committee’s recommended sanction or to change the entire resolution. Offering an amendment also could avoid one of the drawbacks of a motion to recommit by having the amendment voted on directly within the context of the debate on the resolution, rather than after.

Although either an amendment or a motion to recommit forthwith might be used to adopt an alternative, there are differences in the scenarios in which they might be used. Unlike offering a motion to recommit, offering an amendment is not guaranteed under House rules. As described above, a motion to recommit forthwith does not require the cooperation of the committee. By contrast, offering an amendment would require the cooperation, if not the outright approval, of the floor manager from the committee.

## **Separate Resolution**

An alternate strategy to have an impact on, and possibly even change, a recommended Ethics Committee sanction would be to introduce a separate resolution with the desired alternative sanction. Because a resolution to expel, censure, or reprimand would qualify as a question of the privileges of the House, it could be considered by the House under the procedure provided in House Rule IX. Although in some cases, initiating consideration of a resolution in this way might

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<sup>65</sup> “In the Matter of Representative Charles H. Wilson,” *Congressional Record*, vol. 126, part 11 (June 10, 1980), p. 13812. For more information on Members who have been 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 (name redacted)

<sup>66</sup> “In the Matter of Representative Charles H. Wilson,” *Congressional Record*, vol. 126, part 11 (June 10, 1980), p. 13820.

<sup>67</sup> *Ibid.*

<sup>68</sup> It would also be possible for a Member from the minority to be recognized to offer an amendment if the motion for the previous question were defeated, but this has never been done in the context of a resolution recommending the sanctioning of a Member reported by the Ethics Committee.

be used in an attempt to spur, or even preempt, action based on the recommendation of the Ethics Committee, it may not necessarily result in a direct vote on the desired sanction or even in debate on the matter. For example, prior to the beginning of debate, expulsion resolutions have been subject to a motion to postpone to a date certain,<sup>69</sup> a motion to table, and a motion to refer to committee.

For example, in the 95<sup>th</sup> Congress (1977-1978), a Member was convicted on multiple counts of felony mail fraud and making false statements and was sentenced to three years imprisonment for each count, to be served concurrently.<sup>70</sup> After his sentencing, the Member was reelected to the 96<sup>th</sup> Congress (1979-1980), where he agreed to relinquish his committee chairmanship, while retaining a subcommittee chairmanship.<sup>71</sup> Concurrently, a group of Members publicly announced that they would move to expel the convicted Member, should he vote on the House floor—a move that would be in opposition to the House Code of Conduct, which suggests that Members convicted by a court refrain from voting on the House floor.<sup>72</sup> On February 28, 1979, the convicted Member voted on a public debt limit bill, and following that vote, H.Res. 142—an expulsion resolution—was introduced as a question of privilege.<sup>73</sup> A motion was made to refer the resolution to the Committee on Standards of Official Conduct, which took no further action on the resolution.<sup>74</sup>

Following an investigation into the Member's actions, the Committee on Standards recommended that the Member be censured.<sup>75</sup> After negotiations between the Member and the committees he admitted, in a letter to the committee, that he had violated House Rules and he agreed to be censured by the House for his activities.<sup>76</sup> On July 30, 1979, prior to the consideration of the censure resolution on the House floor, a second expulsion resolution was offered as a question of

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<sup>69</sup> This type of motion has been offered unsuccessfully on two separate occasions. See “In the Matter of Representative Michael J. Myers,” *Congressional Record*, vol. 122, part 22 (October 2, 1980), p. 28953 and “In the Matter of Representative James A. Traficant, Jr.,” *Congressional Record*, vol. 148, part 10 (July 24, 2002), p. 14300.

<sup>70</sup> U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representative Charles C. Diggs*, report to accompany H.Res. 378, 96<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 96-351, volume I (Washington: GPO, 1979), p. 1; and “The 95<sup>th</sup> Congress: No Sweeping Changes,” *CQ Almanac* vol. 34 (Washington, DC: CQ Press, 1979), p. 11.

<sup>71</sup> “Censure of Rep. Diggs,” *CQ Almanac*, vol. 35 (Washington, DC: CQ Press, 1979), p. 561.

<sup>72</sup> “The Vote in the House Today,” *Congressional Record*, vol. 125, part 3 (February 28, 1979), p. 3467. In the 94<sup>th</sup> Congress (1975-1976), the House adopted Rule 43, clause 10 suggesting that Members convicted of a crime refrain from voting in the House. In the 106<sup>th</sup> Congress (1999-2000), House rules were re-codified. This clause is now found in Rule XXIII, clause 10. The clause currently reads: “A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years’ imprisonment may be imposed should refrain from participation in the business of each committee of which such individual is a member, and a Member should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of the innocence of such Member or until the Member is reelected to the House after the date of such conviction.”

<sup>73</sup> “Expelling Congressman Diggs,” *Congressional Record*, vol. 125, part 3 (February 28, 1979), pp. 3495-3501.

<sup>74</sup> “Privileges of the House—Proceedings Against Charles C. Diggs, Jr.,” vol. 125, part 3 (March 1, 1979), pp. 3746-3754.

<sup>75</sup> U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representative Charles C. Diggs*, report to accompany H.Res. 378, 96<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 96-351, volume I (Washington: GPO, 1979), p. 5; and “Censure of Rep. Diggs,” *CQ Almanac*, vol. 35 (Washington, DC: CQ Press, 1979), p. 564. The committee alleged that the Member had misused his payroll to divert funds for his own personal use.

<sup>76</sup> U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representative Charles C. Diggs*, report to accompany H.Res. 378, 96<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 96-351, volume I (Washington: GPO, 1979), pp. 16-17; and “Censure of Rep. Diggs,” *CQ Almanac*, vol. 35 (Washington, DC: CQ Press, 1979), p. 564.



privilege (H.Res. 391).<sup>77</sup> H.Res. 391 was immediately tabled. The following day, July 31, the censure resolution was debated and agreed to unanimously by the House.<sup>78</sup>

Introducing a separate resolution to offer an alternative to an Ethics Committee sanction recommendation has potential advantages and disadvantages. Since opportunities to offer amendments to sanction resolutions are limited, offering a separate resolution could allow Members who would like a different punishment to publicly provide an alternative to the committee's recommendation. Unlike advocating for a different sanction during debate, the introduction of a separate resolution could allow for a fuller articulation of reasons for a different sanction. Additionally, even if the resolution is referred to committee or tabled, the possibility exists for the sponsor to make a statement on why an alternative to the recommended sanction should be approved that would appear in the *Congressional Record*.

While introducing a separate resolution to be considered as a privileged question might allow a high-profile disagreement with the committee's recommendation to be debated, because of actions available to respond, a separate resolution has a significant chance of being tabled or referred to the Ethics Committee rather than reaching a direct vote.

## Concluding Observations

An historical analysis of attempts to alter Ethics Committee sanction recommendations provides three main options for adjusting disciplinary decisions in the House of Representatives: the motion to recommit, amending Ethics Committee sanction resolutions, and the introduction of a separate resolution with an alternate sanction. Since the committee's creation in 1967, only 16 ethics cases have been brought to the House floor. Of these cases, attempts to alter the sanction recommendation have been made in seven and have been successful in three. The history of altering sanction recommendations shows that while altering a sanction recommendation is possible, it can be a difficult process.

Ultimately it is the House that must render a decision regarding whether a Member should be disciplined. The process through which the Ethics Committee investigates and reports disciplinary recommendations and how the floor considers recommended sanctions can illustrate the contextual differences between ethics and legislative products from other committees. These include: the unique relationship between the House and the Ethics Committee, the perceived benefits of Ethics Committee service, cooperation between the Ethics Committee and other House committees, and the way sanction recommendations are considered by the House.

First, the relationship between the House of Representatives and the Ethics Committee is unique. The Ethics Committee does not have a traditionally defined policy jurisdiction—although it does have jurisdiction over the House Code of Conduct and other ethics matters.<sup>79</sup> Instead, it is charged with investigating alleged ethics violations, and recommending sanctions when appropriate. According to a number of scholars, these responsibilities have caused some Members to not want

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<sup>77</sup> "Privileges of the House—In the Matter of Charles C. Diggs," *Congressional Record*, vol. 125, part 16 (July 30, 1979), p. 21297.

<sup>78</sup> "In the Matter of Representative Charles C. Diggs, Jr.," *Congressional Record*, vol. 125, part 17 (July 31, 1979), pp. 21584-21592; and Carol Steinbach, "On the Hill," *National Journal*, August 4, 1979, p. 1305.

<sup>79</sup> John N. Erlenborn, "A Ranking Member of a Committee of the U.S. Congress," in *Inside the House: Former Members Reveal How Congress Really Works*, ed. Lou Frey, Jr. and Michael T. Hayes (Lanham, MD: University Press of America, 2001), p. 180; and Harry A. Johnston, "Power in the U.S. House and the Florida State Senate," in *Inside the House: Former Members Reveal How Congress Really Works*, ed. Lou Frey, Jr. and Michael T. Hayes (Lanham, MD: University Press of America, 2001), pp. 184-189.

to serve on the committee.<sup>80</sup> They posit that Ethics Committee service often does not provide Members with “political advantages” normally associated with casework and committee service.<sup>81</sup> As a consequence, recruitment of Members from either the majority or minority party to serve on the Ethics Committee can be difficult.<sup>82</sup> This stands in contrast to policy committees, where studies suggest that Members often want to serve because they are interested in a particular area of policy or believe service will further their reelection chances.<sup>83</sup>

Second, the lack of perceived political benefits associated with Ethics Committee service is just one factor that sets the committee apart from policy committees. The Ethics Committee is also unique because its jurisdiction is completely internal; it only has jurisdiction over the actions and activities of currently serving Members of Congress, officers, and staff. For example, should a Member who is under investigation lose reelection or resign, the committee’s jurisdiction ends (although it is important to note that the then-former Member’s legal issues might not be resolved by a failure to be reelected or retirement).<sup>84</sup>

Third, although membership on committees generally provides an opportunity for Members to pursue their personal or policy goals,<sup>85</sup> this is not the case for the Ethics Committee. Because service on the Ethics Committee is often unrequested or even unwanted, Members often do not build true seniority and expertise regarding ethics related issues. Furthermore, because of the committee’s relatively narrow jurisdiction, Members are rarely afforded the kinds of opportunities to cooperate with other committees to develop policies, as typically comes with service on other policy-related legislative committees.<sup>86</sup>

Finally, as was discussed above under “Regular Process for Committee Sanction Recommendations,” the way that sanction recommendations are considered in the House reflects a process designed to promote bipartisan independence by insulating the work of the committee from the majority leadership-controlled institutional mechanisms that generally are used to control which measures are brought to the floor of the House for consideration and when. Instead of being considered under a special rule or suspension of the rules,<sup>87</sup> sanction recommendations

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<sup>80</sup> Christopher J. Deering and Steven S. Smith, *Committees in Congress*, 3<sup>rd</sup> edition, (Washington: CQ Press, 2007), p. 77.

<sup>81</sup> Ronald M. Levin, “Congressional Ethics and Constituent Advocacy in an Age of Mistrust,” *Michigan Law Review*, vol. 95, no. 1 (1996), pp. 21-24.

<sup>82</sup> Robert Williams, “Conduct Unbecoming: The Regulation of Legislative Ethics in Britain and the United States,” *Parliamentary Affairs*, vol. 55 (2002), p. 613.

<sup>83</sup> Richard F. Fenno, Jr., *Congressman in Committees* (Boston: Little, Brown, and Company, 1973); Richard F. Fenno, Jr., *Senators on the Campaign Trail: The Politics of Representation* (Norman, OK: University of Oklahoma Press, 1996); and David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974)..

<sup>84</sup> 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*, 5<sup>th</sup> ed., vol. II (Washington: CQ Press, 2000), p. 930.

<sup>85</sup> Fenno, 1973; Lynette P. Perkins, “Influence of Members’ Goals on Their Committee Behavior: The U.S. House Judiciary Committee,” *Legislative Studies Quarterly*, vol. 5, no. 3 (1980), pp. 373-392; Fenno, 1996; Randall G. Holcombe and Glenn R. Parker, “Committees in Legislatures: A Property Rights Perspective.” *Public Choice*, vol. 70, no. 1 (1991), pp. 11-20, and John Baughman, *Common Ground: Committee Politics in the U.S. House of Representatives*, (Palo Alto, CA: Stanford University Press, 2006).

<sup>86</sup> Christopher J. Deering and Steven S. Smith, *Committees in Congress*, 3<sup>rd</sup> edition, (Washington: CQ Press, 2007).

<sup>87</sup> For more information special rules, see (name redacted) and (name redacted), “Recent Innovations in Special Rules in the House of Representatives,” in U.S. Congress, Senate, Committee on Rules and Administration, *The Evolving Congress*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Prt. 113-30 (Washington: GPO, pp. 245-257; CRS Report 98-354, *How Special Rules Regulate Calling up Measures for Consideration in the House*, by (name redacted); and CRS Report 98-313, *House Rules Committee Hearings on Special Rules*, by (name redacted) . For more information on Suspension of the (continued...)

are considered as privileged matters under the “Hour Rule.”<sup>88</sup> As a consequence, the majority leadership does not need to play a direct role in raising or considering sanctions resolutions.

## **Author Contact Information**

(name redacted)  
Analyst on the Congress  
f[redacted]@crs.loc.gov, 7-....

(name redacted)  
Specialist on Congress and the Legislative Process  
f[redacted]@crs.loc.gov, 7-....

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(...continued)

Rules, see CRS Report 98-314, *Suspension of the Rules in the House: Principal Features*, by (name redacted) .

<sup>88</sup> For more information on the “Hour Rule,” see CRS Report 98-427, *Considering Measures in the House Under the One-Hour Rule*, by (name redacted) .

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