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Making the Congressional Ethics Process Work

Independent Panel Helps Ethics Committee Build a Track Record

Acknowledgments

This analysis was written by Craig Holman, Ph.D., government affairs lobbyist for Public Citizen. Earlier research by Common Cause on the “Decade of Inaction” provided some of the data upon which conclusions in this analysis are based.

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I. Introduction: Office of Congressional Ethics has Enhanced Ethics Accountability in the House

The Office of Congressional Ethics (OCE), established in March 2008 by the U.S. House of Representatives, is the first semi-independent office in history to oversee and complement implementation and enforcement of the congressional ethics process. OCE is a nonpartisan, fact-finding entity, with the primary purpose of investigating allegations of improper conduct by Members and congressional staff and making meritorious investigations a matter of public record. If the initial investigation warrants further action, the cases are then referred to the House Ethics Committee. The House Ethics Committee has exclusive authority to determine whether to adjudicate cases and offers recommendations to the full House concerning what actions, if any, should be taken as a result of the investigations.

In addition to providing a case record to supplement formal investigations of possible ethical misconduct, referrals made from OCE to the House Ethics Committee eventually become public record. This added transparency alone highlights the significance of OCE in the congressional ethics process and reaches to its core mission, which is to “give the public a ‘window’ into ethics enforcement in the United States House of Representatives.”¹

Previously, the ethics process in both chambers of Congress had been run entirely by Members of Congress themselves and the investigations and formal actions of the ethics committees generally remained out of the public domain – until such time as a news story was leaked or public reprimands were issued by Congress. This air of secrecy resulted in a widely perceived moribund ethics process that became alarmingly obvious in the wake of the Jack Abramoff scandals.

This analysis finds that the work of the Office of Congressional Ethics has had a dramatic impact on the activity and accountability of the House Ethics Committee. As shown below, the number of disciplinary actions taken by the House Ethics Committee – though certainly not large in overall numbers – increased by more than a third in the short four years that OCE has been operating as compared to the full previous decade of the Committee’s history. From 1997 through 2005, the House Ethics Committee issued only five recorded disciplinary actions against Members or staff of the House. From 2006 through 2008, the three years highlighted by the Abramoff scandal that resulted in nearly two dozen

¹ Office of Congressional Ethics blog, “Welcome to the New Online OCE,” (June 1, 2010), available at: <http://oce.house.gov/2010/03/welcome-to-the-oces-new-site.html>

convictions or guilty pleas by the Department of Justice,² the House Ethics Committee again issued only five disciplinary actions. **But from 2009 through 2012, assisted by the investigations and transparency of the newly-created OCE, the House Ethics Committee so far has issued 16 disciplinary actions.** [See Appendix A, “Congressional Ethics Enforcement: From Decade of Inaction to OCE Period of Accountability.”]

While the increase in public disciplinary actions shows a more active and accountable House Ethics Committee, there is little indication that the Committee is becoming overzealous in its ethics monitoring and enforcement. The number of disciplinary actions is not high, and within each of those 16 cases, the Committee usually moved slowly and considered and ruled upon a preponderance of evidence.

The Office of Congressional Ethics is also demonstrating the same prudence in approaching its work. Of the 101 cases that received preliminary reviews, almost 59 cases were dismissed; 33 of those cases were promptly terminated by OCE as having no merit whatsoever. [See Appendix A, “Congressional Ethics Enforcement: From Decade of Inaction to OCE Period of Accountability.”]

II. History and Operations of the Office of Congressional Ethics

Neither the House Ethics Committee nor the Senate Ethics Committee inspire much confidence with the public. Both committees are run exclusively by Members and managed by their own staff. The ethics committees are evenly divided by Republican and Democratic members, which lessens the fear of partisanship enforcement actions but also heightens the reality of bipartisan inactivity. In addition, the pledge of confidentiality among all committee Members and staff is sometimes taken to such extremes that the public may never know when, or if, allegations of unethical behavior have been addressed.

Simply put, having current Members police themselves and their colleagues contains an inherent conflict. The ethics committees are condemned as partisan and opportunistic if they are aggressive, and condemned as covering up problems if they are passive.³ The latter is clearly what the public believed when they read about scandal after scandal on Capitol Hill and yet saw very few disciplinary actions pursued by the ethics committees.

That set in motion a campaign for congressional and lobbying ethics reforms, culminating in the Honest Leadership and Open Government Act, as well as a drive to change the

² Dan Froomkin, “Jack Abramoff, In New Book, Decries Endemic Corruption,” *Huffington Post* (Oct. 28, 2011), available at: http://www.huffingtonpost.com/2011/10/28/jack-abramoff-new-book-corruption-in-washington_n_1064602.html

³ Norm Ornstein, “The Senate Is Unable to Police Itself Adequately,” *Roll Call* (March 8, 2006).

congressional ethics enforcement process. An independent panel to oversee the work of the Senate Ethics Committee, known as the Office of Public Integrity, was proposed by Sens. Susan Collins (R-Maine) and Joseph Lieberman (D-Conn.) in 2006, but was rejected by the Senate Homeland Security and Government Affairs Committee. Meanwhile, former Speaker Nancy Pelosi (D-Cal.) formed a task force to study and propose a similar independent ethics panel for the House. The task force, chaired by Rep. Michael Capuano (D-Mass.), proposed the Office of Congressional Ethics as a complement to work of the House Ethics Committee. The proposal was approved in 2008 as a rule governing the procedures of the House as H.Res. 895.

H.Res. 895 established the OCE as a non-partisan and semi-independent agency, run by an eight-person Board of Governors (six active board members and two alternates). Members of the OCE Board cannot serve as Members of Congress, work for the federal government, or be registered lobbyists. Four Board members each are appointed by the Speaker of the House subject to the concurrence of the Minority leader, and four Board members are appointed by the Minority Leader subject to the concurrence of the Speaker.

OCE may receive complaints from any source or initiate investigations on its own. However, the agency lacks subpoena power. In order to open a preliminary review lasting no more than 30 days, two Board members (one appointed by the Speaker, one by the Minority leader) must find reasonable evidence to proceed. To authorize a second-phase investigation lasting no longer than 59 days, three Board members must find probable cause. For OCE to make a referral to the House Ethics Committee for further review, four Board members must find substantial reason to believe a violation occurred. OCE's report to the Ethics Committee may not make any determination of guilt or recommendation for penalties.

Reports from OCE to the Committee shall be made public within 45 calendar days (subject to extension by the Committee for another 45 days), or at the conclusion of any investigation by the Committee, whichever comes later. The Committee may delay disclosure of the report if requested to do so by a law enforcement agency, though it must notify the public annually that it is deferring taking action pending the request.

As a congressional rule rather than a statute, OCE must be re-authorized each congressional session. It has a staff of nine with an operating budget of about \$1.5 million. At the beginning of the 113th Congress, OCE will have to be re-authorized, and the terms of four members of OCE's Board will expire, leaving just the two chairmen – Porter Goss and David Skaggs – as sitting Board members. The Speaker and Minority Leader will have to agree upon and appoint Board members for the expired four positions. Two of the current alternate members of the Board – Bill Frenzel and Abner Mikva – may be appointed as regular Board members; and any of the currently expiring Board members may be appointed to the two alternate positions. Otherwise there is a wide selection of other

qualified persons, many of whom have had previous congressional experience, who may be interested in appointment to the Board as well.

III. Conclusion: OCE Is a Critical Companion to the House Ethics Process

The Office of Congressional Ethics has played a key role in enhancing the work of the House Ethics Committee, proving to be a crucial adjunct to the Committee without supplanting Congress as the final arbiter on ethics. At times the relationship between OCE and the Ethics Committee has been testy. That should come as no surprise, given the newness of the independent panel and the sometimes overlapping nature of their responsibilities. But cooperation between OCE and the Committee has clearly improved over the course of the 112th Congress, as evidenced by the fact that the Committee has acted on every referral from OCE and even publishes these referral reports on its web site. OCE in turn designates a staff person as the point of contact with the Committee on each referral in order to provide clarification or supplemental information more efficiently.

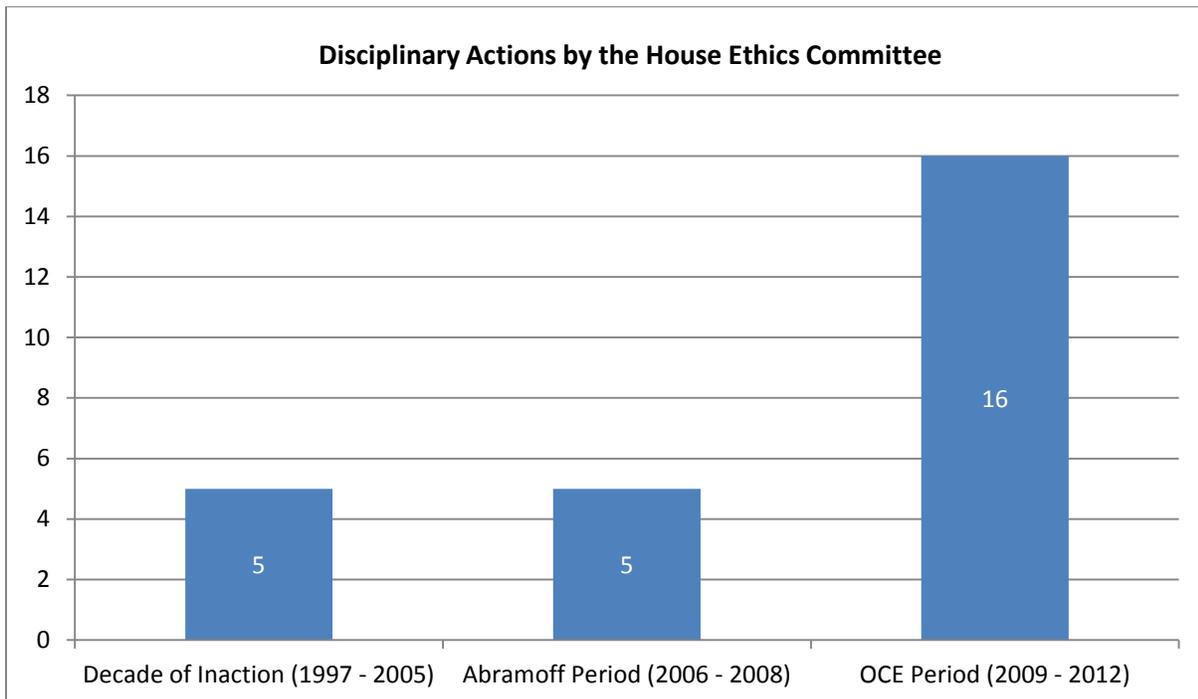
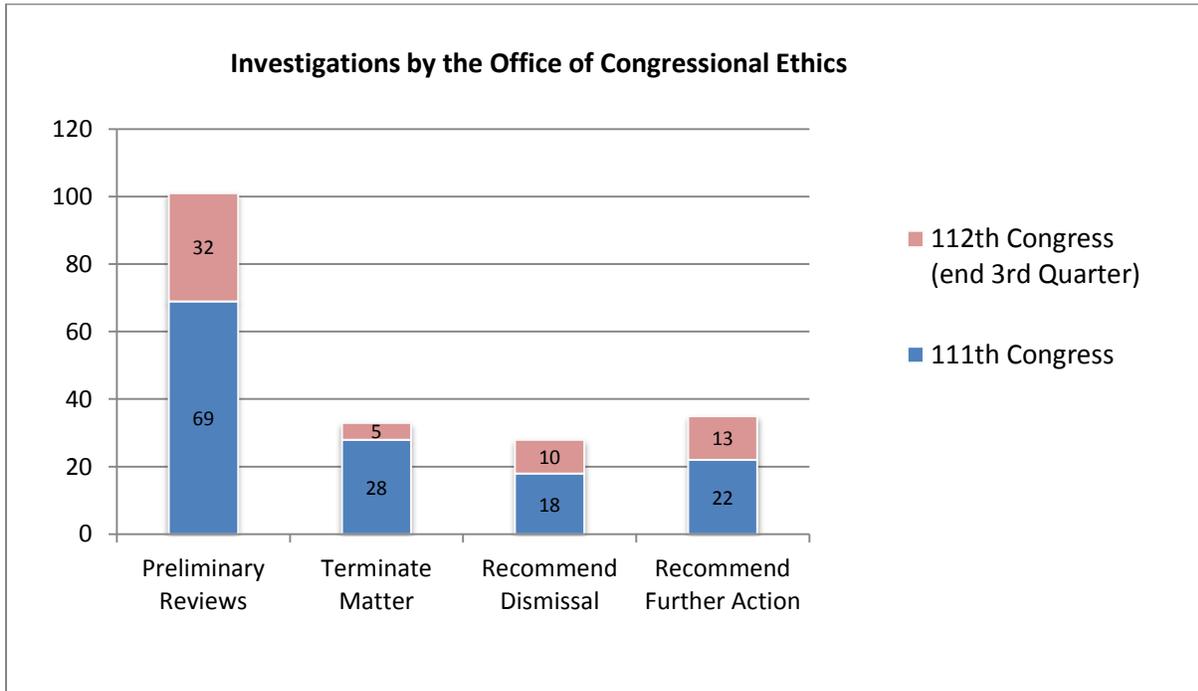
The supplemental investigative work and additional transparency offered by OCE unquestionably has helped boost the case record of the Ethics Committee, which is drawing praise from many quarters, including Public Citizen. Yet, this boost in ethics accountability does not appear to be overwhelming and is being handled prudently and reasonably by the House Ethics Committee.

It is time to recognize that the Office of Congressional Ethics and House Ethics Committee have evolved as responsible partners in the congressional ethics process. OCE must be re-authorized and appropriate Board members with due insights of the inner workings of Congress appointed in a timely fashion to avoid unnecessary interruptions in ethics monitoring and enforcement.

It is also time for the U.S. Senate to consider taking similar steps toward a more accountable ethics process.

Appendix A.

Congressional Ethics Enforcement: From Decade of Inaction to OCE Period of Accountability



Appendix A: Notes

“Disciplinary actions” include formal penalties issued by the House Ethics Committee as well as informal agreements made with the Committee to correct misconduct, such as reimbursement for improper travel expenses, even with no actual finding of guilt.

From 1997 through 2008, prior to creation of the Office of Congressional Ethics (OCE), most matters before the House Ethics Committee were kept confidential, making estimates of disciplinary actions difficult to ascertain other than through news stories. The OCE period not only supplemented ethics enforcement with the work of a semi-independent agency, it also established unprecedented transparency of ethics cases.

The disciplinary actions documented during the “Decade of Inaction” includes actions against: Reps. Jay Kim (R-Cal.), James Traflicant (D-Ohio), Earl Hillard (D-Ala.), Bob Shuster (R-Pa.), and Newt Gingrich (R-Ga.).

The “Abramoff Period” includes actions against: Reps. Tom DeLay (R-Texas), Nick Smith (R-Mich.), Candice Miller (R-Mich.), Curt Weldon (R-Pa.) and Tom Feeney (R-Fla.).

The “OCE Period” includes actions against: Reps. Bennie Thompson (D-Miss.), Yvette Clarke (D-NY), Donald Payne (D-NJ), Carolyn Kirkpatrick (D-Mich.), Donna Christensen (D-MD), Charlie Rangel (D-NY), Rangel (second finding), congressional staff Dawn Kelly Mobley, Carib News Foundation employees Karl Rodney, Faye Rodney and Patricia Lewis, Reps. Robert Andrews (D-NJ), Michael Collins (R-Ga.), Laura Richardson (D-Cal.), Jean Schmidt (R-Ohio) (no violation found but required to reimburse illicit gift), and Maxine Waters’ (D-Cal.) chief of staff Mikhail Moore.

Sources: Public Citizen (2012); and “Decade of Inaction” compiled by Common Cause (2006).