

March 1, 2005

Dear Colleague:

As you are aware, the 109th Congress Rules Package, which was adopted in January on a strictly party-line vote, included major changes in the rules governing consideration of and action on ethics complaints by the Committee on Standards of Official Conduct.

As the Committee's Ranking Minority Member, I am deeply concerned that those provisions, if allowed to stand, will seriously undermine the Committee's ability to act on complaints in a thorough, efficient and non-partisan manner. I am introducing a resolution that would amend or repeal those provisions, and I ask your co-sponsorship of that resolution.

Specifically, the Rules Package made essentially three changes in the rules governing complaints. The first is the addition of an "automatic dismissal" provision, which requires the Committee to consider and act on any complaint within a period as short as 45 days, or else the complaint will be automatically dismissed. Because Committee rules provide respondents with 30 days to file an answer to a complaint, this means that the Committee would be left with as few as 15 days to consider the complaint and answer, which is clearly unreasonable. This provision would serve to promote deadlock on the Committee and partisanship among Committee members - particularly on the controversial complaints that most test the Committee's credibility - and so the resolution I am proposing would repeal this provision.

The second change made by the Rules Package concerns instances in which the Committee proposes to conclude a matter by publishing a letter or other document that refers to the conduct of a particular Member, and it provides a number of "due process" rights to such a Member. The practical effect of one of those rights - the right to demand an immediate trial before an adjudicatory subcommittee on the conduct in question - is to deny the Committee the ability to resolve a complaint by means of a letter that is issued in lieu of a formal investigation. In other words, under this provision, the Committee would be forced to choose between two alternatives: send the complaint to a formal investigation, or dismiss it. The Committee's hands should not be tied in this way, and so my resolution makes an appropriate change in this provision, while leaving the other, more reasonable "due process" provisions intact.

The third change concerns the matter of a single attorney representing more than one respondent or witness in a case before the Committee, and it prohibits the Committee from requiring that a respondent or witness retain an attorney who does not represent someone else in the case. This change was made, even though two separate

investigative subcommittees of the Ethics Committee had recommended adoption of a rule or policy providing exactly the opposite. Both of those investigative subcommittees were concerned that multiple representation undermines the fact-finding process by facilitating coordination of testimony among the respondent and witnesses. Yet the Rules Package brushed aside those concerns and included a provision that will make it far more likely that in the future, respondents and witnesses in cases before the Committee will be represented by the same attorney.

Approval of the resolution I am introducing will un-do the harm done by these provisions of the Rules Package. Approval of this resolution will also provide a clear and desperately needed signal to our constituents that the House is firmly committed to protecting its reputation and integrity, and that the House does intent to have a fair and effective process for considering and acting upon credible allegations of wrongdoing. Finally, approval of this resolution will vindicate the principle, which the House has faithfully observed until this year, that the ethics process must be a bipartisan one in all respects, and no major changes may be made in the ethics rules or procedures other than on an entirely open, bipartisan basis.

To co-sponsor this resolution, please call [name] at extension 5-4172 not later than the close of business on [date].

Sincerely,

Alan B. Mollohan  
Member of Congress