

## REP. DOC HASTINGS

Rep. Doc Hastings (R-WA) is a seventh-term member of Congress, representing the 4<sup>th</sup> district of Washington. His ethics issues stem from his improper contact with a Washington U.S. attorney.

### Contacting U.S. Attorney

The former U.S. Attorney in Seattle, Washington, John McKay, testified before the United States Senate that, in 2004, during a series of vote recounts in which a Democrat was narrowly elected governor of Washington, Rep. Hastings' then-Chief of Staff Ed Cassidy called, informing him that "the purpose of the call was to inquire on behalf of Congressman Hastings" about the status of any ongoing investigation into voter fraud.<sup>1</sup> Mr. McKay was "concerned and dismayed by the call," believing the conversation might constitute obstruction of justice.<sup>2</sup>

Rep. Hastings has claimed that Mr. Cassidy's call to Mr. McKay was "entirely appropriate," and that the call was "a simple inquiry and nothing more."<sup>3</sup> Mr. Cassidy claimed that his conversation with Mr. McKay "was a routine effort to determine whether allegations of voter fraud in the 2004 gubernatorial election were, or were not, being investigated by federal authorities."<sup>4</sup>

### House Rules

Although House ethics rules do not specifically discuss the issue of a member contacting a sitting U.S. Attorney, the rules do anticipate members contacting agency officials and judges. Chapter 7 of the House ethics manual prohibits ex parte communications, directed to executive or independent agency officials, on the merits of matters under their formal consideration. The ethics committee has also stated that such contacts should not be based on political considerations and that the direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is an unwarranted abuse of a member's role.<sup>5</sup>

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<sup>1</sup> David Bowermaster and Alicia Mundy, At Senate Hearing, McKay Vigorously Defends His Work, *The Seattle Times*, March 7, 2007 (Exhibit 1).

<sup>2</sup> Richard A. Serrano, Fired U.S. Attorneys Testify Before Congress, *Los Angeles Times*, March 7, 2007 (Exhibit 2).

<sup>3</sup> Bowermaster and Mundy, *The Seattle Times*, Mar. 7, 2007.

<sup>4</sup> Id.

<sup>5</sup> House Ethics Manual, ch. 7.

Similarly, the ethics committee has stated that when a member believes it necessary to attempt to affect the outcome in a pending case, he or she has several options:

A Member who has relevant information could provide it to a party's counsel, who could then file it with the court and notify all parties. Alternatively, the Member could seek to file an amicus curiae, or friend of the court brief. Yet another option, in an appropriate case, might be to seek to intervene as a formal party to the proceeding. A Member could also make a speech on the House floor or place a statement in the Congressional Record as to the legislative intent behind the law. A Member should refrain, however, from making an off-the-record communication to the presiding judge, as it could cause the judge to recuse him- or herself from further consideration of the case.<sup>6</sup>

The claim that a member was merely requesting “background information” or a “status report” is not a defense to a violation of the prohibition on ex parte communications. The House has recognized “the possibility that a request for background information or a status report ‘may in effect be an indirect or subtle effort to influence the substantive outcome of the proceedings.’”<sup>7</sup> To protect the decision-making process, the House has prohibited such ex parte communications.

By having a staff member contact Mr. McKay to discuss an ongoing investigative matter for the impermissible political purpose of harming Democrats in the November elections, Rep. Hastings appears to have violated House Rules.

#### *Conduct Not Reflecting Creditably on the House*

In addition, Rule XXIII of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”<sup>8</sup> This ethics standard is considered to be “the most comprehensive provision of the code.”<sup>9</sup> When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.<sup>10</sup> This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Rule XXIII, clause 1.

<sup>9</sup> House Comm. on Standards of Official Conduct, House Ethics Manual.

<sup>10</sup> House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

unethical conduct including: the failure to report campaign contributions,<sup>11</sup> making false statements to the Committee,<sup>12</sup> criminal convictions for bribery,<sup>13</sup> or accepting illegal gratuities,<sup>14</sup> and accepting gifts from persons with interest in legislation in violation of the gift rule.<sup>15</sup>

By having a staff member contact Mr. McKay to discuss an ongoing investigative matter for the impermissible political purpose of harming Democrats in the November elections, Rep. Hastings engaged in conduct that does not reflect creditably on the House.

In addition, the House has held that the Code of Ethics for Government Service applies to members of the House, requiring members, like all others in government service, to “uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.”<sup>16</sup> The House Committee on Standards of Official Conduct has held that this provision:

may be implicated if a House Member were to request that an executive branch employee engage in an activity having an impermissible political purpose . . . Such conduct by a Member may also implicate the fundamental requirement of the House Code of Official Conduct that a Member, officer, or employee ‘shall

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<sup>11</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

<sup>12</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

<sup>13</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

<sup>14</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

<sup>15</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

<sup>16</sup> Code of Ethics for Government Service, ¶ 2.

conduct himself at all times in a manner that shall reflect creditably on the House.’<sup>17</sup>

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<sup>17</sup> Memorandum from Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan, Recommendations for disposition of the complaint filed against Representative DeLay (108<sup>th</sup> Cong. Oct. 7, 2004); House Rule 23, cl. 1.