

REP. HEATHER WILSON

Rep. Heather Wilson (R-NM) is a sixth-term member of Congress, representing the first district of New Mexico. Her ethical issues stem from improperly contacting a sitting U.S. Attorney.

Contacting U.S. Attorney

The former U.S. Attorney in Albuquerque, New Mexico, David Iglesias, stated that, in mid-October 2006, two members of Congress from New Mexico pressured him about an ongoing corruption probe of state Democrats.¹ Apparently, Rep. Wilson first called Mr. Iglesias and Sen. Pete V. Domenici (R-NM) called a week later.² After Sen. Domenici admitted that he called Mr. Iglesias, Rep. Wilson finally admitted that she too had called the U.S. Attorney.³

Rep. Wilson stated that she contacted Mr. Iglesias to complain about the pace of his public corruption investigation.⁴ She claimed, “I did not ask about the timing of any indictments and I did not tell Mr. Iglesias what course of action I thought he should take or pressure him in any way. The conversation was brief and professional.”⁵

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.⁶

¹ Dan Eggen, Domenici Says He Contacted Prosecutor, *The Washington Post*, March 5, 2007 (Exhibit 1).

² Id.

³ Paul Kane and Dan Eggen, Second Lawmaker Contacted Prosecutor, *The Washington Post*, March 6, 2007 (Exhibit 2).

⁴ Id.

⁵ Id.

⁶ 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.⁷

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.’”⁸ To protect the decision-making process, the House has prohibited such ex parte communications.

By contacting Mr. Iglesias about an ongoing investigation, whether to pressure him -- as he believed -- or merely to request a status report, Rep. Wilson violated House rules.

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.”⁹ 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 conduct himself at all times in a manner that shall reflect creditably on the House.’¹⁰

⁷ Id.

⁸ Id.

⁹ Code of Ethics for Government Service, ¶ 2.

¹⁰ Memorandum from Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan, Recommendations for disposition of the complaint filed against Representative DeLay (108th Cong. Oct. 7, 2004); House Rule 23, cl. 1.

By contacting Mr. Iglesias to discuss an ongoing investigative matter for the impermissible political purpose of harming Democrats in the November elections, Rep. Wilson's conduct does not reflect creditably on the House.