A Question of Ethics
How Do House Ethics Trials Work?

September 7, 2010

Q: I have a question regarding the upcoming ethics trials of Reps. Charlie Rangel (D-N.Y.) and Maxine Waters (D-Calif.). The prospect of two legislators being on trial for unethical conduct fascinates me. Yet, I really have no idea what to expect. What is a House ethics trial and how does it work?

A: Your unfamiliarity with House ethics trials is not surprising. They are rare. The last trial was in July 2002, when Rep. Jim Traficant (D-Ohio) faced the House ethics committee after being convicted of several federal crimes. That was more than eight years ago, so you are likely not the only one who could use a refresher on ethics trial procedure. In fact, for most of the Members and staffers conducting the trials, these will be their first.

So, how do the trials work? For starters, they are not really “trials” at all. But before getting to that, it may be helpful to put the proceeding in context.

The House disciplinary process plays out in several stages. At the outset, action by the Committee on Standards of Official Conduct can be triggered in any of a number of ways, including a complaint by a Member, a House resolution, a referral by the Office of Congressional Ethics or on initiation by the committee itself. A referral by the Office of Congressional Ethics triggered the case against Waters. Rangel’s began after he requested that the ethics committee investigate his conduct.

Regardless of what initiates the ethics panel’s review, the first substantive step is an inquiry by an investigative subcommittee. The decision whether to form a subcommittee is made jointly by the chairman and ranking member of the ethics committee, currently Reps. Zoe Lofgren (D-Calif.) and Jo Bonner (R-Ala.), respectively.

Once formed, the investigative subcommittee can gather evidence in several ways. It may review documents, conduct interviews and take sworn testimony. By a majority vote of its members, it may also issue subpoenas to compel testimony and production of documents. The Member under investigation may also participate by making a sworn statement regarding the facts under review.

When it has completed its inquiry, the subcommittee has several alternatives. Most significantly, to proceed to the next stage, it can issue a Statement of Alleged Violation. It may do so, however, only if a majority of its members conclude that there is “substantial reason to believe” there has been an ethics violation. The Statement of Alleged Violation must set forth a concise statement of each alleged violation as well as a reference to the rules or laws the Member allegedly violated. In Waters’ case, three violations are alleged. In Rangel’s, there are 13.

Once the statement has been issued, the Member has an opportunity to respond and can also move to have the Statement of Alleged Violation dismissed. But a Member’s motion to dismiss is ruled on by the same investigative subcommittee that issued the statement. Both Rangel and Waters moved to dismiss the allegations against them. Given that the same body that brought the allegations is also the one that will hear them, you can guess how that went.

This brings us to the stage that Waters and Rangel have reached: the adjudicatory hearing. During such a hearing, which is typically public, counsel for the ethics committee and the Member may present evidence. Interviews and sworn statements previously taken by the investigative subcommittee may also be accepted into the hearing record.

Procedural rules govern the admissibility of evidence and provide Members opportunities to challenge evidence offered against them and cross-examine witnesses. The hearing is presided over by an adjudicatory subcommittee, which cannot include any member of the investigatory subcommittee. At the conclusion of the hearing, the adjudicatory subcommittee must determine by majority vote whether any alleged violation has been proved by “clear and convincing evidence.” If it does, the next stage is a sanctions hearing before the entire ethics committee. But even at this stage, the ethics committee lacks the power to issue sanctions. Like other House committees, the ethics committee’s ultimate role is to recommend action by the House.

You can see then that while ethics proceedings bear some similarities to judicial trials, they are not really trials at all. Even after an inquiry by an investigative committee, a hearing by an adjudicatory committee and a sanctions hearing by the ethics committee, the strongest action the committee can take is to make a recommendation. Then, it is up to House to decide whether to follow the recommendation or take some other action altogether.

So while it is significant that proceedings against Waters and Rangel have reached the adjudicatory hearing stage, there is still a long way to go. If Rangel and Waters decide to keep fighting, there will be no sanctions any time soon, if at all.

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