

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515

July 26, 2006

The Honorable Tom Davis, Chairman
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Colleague:

This responds to your letter of July 14, 2006 requesting an advisory opinion concerning the application of House rules to employment that your wife, Jeanne Marie Devolites, has with ICG Government ("ICG"). Based on your letter and Committee counsel's conversation with your staff, the background in this matter is as follows.

ICG provides consulting services to technology companies seeking to do business with the federal and state governments. The principal of ICG, Donald Upson, is a personal friend of yours whom you have known for 20 years. He is not a registered lobbyist. Your wife's responsibilities with ICG include identifying government contracting opportunities for the firm's clients. Specifically with regard to the federal government, "her job primarily involves seeking appropriate executive branch officials, usually Chief Information Officers, to participate in conferences and seminars attended by private firms regarding contracting opportunities with the federal government." She is not a registered lobbyist, and her employment with ICG predates your marriage. We also understand that your wife is a Member of the Virginia Senate.

During your tenure as Chairman of the Committee on Government Reform, you have attended approximately 70 federal technology policy and government contracting conferences, including three that were sponsored by ICG. While your attendance at ICG-sponsored conferences predates your marriage, since your marriage you have attended several other conferences sponsored by ICG clients. Your wife, however, did not request that you attend these conferences, and we understand, based on Committee counsel's conversation with your staff, that your attendance at ICG-related conferences does not affect her employment status or compensation.

In addition, the Government Reform Committee has contacted Mr. Upson regarding the appearance of two of his clients at committee hearings. Your letter states that "[i]n once instance, [Mr. Upson] suggested a particular client testify. In another, we

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asked him to assist us in securing the appearance of one of his clients. On other occasions, I have declined Mr. Upson's requests for particular witnesses to testify."

Your letter also asks three questions, which are set forth below with the Committee's responses.

(1) Does the employment of my wife by a firm that consults with companies seeking and doing business with the federal government violate any rule of the House or standard of conduct when her job involves helping firms identify contracting opportunities in the executive branch?

Generally, the answer is "no." The Committee's basic guidance in this area is that the spouse of a Member is free to seek any employment and accept any business opportunities the spouse desires. However, general ethical standards require that any benefits received by a Member from a private source, and the Member's performance of congressional duties, be examined to determine if any impropriety exists. Such an examination is necessary with regard to spousal employment because the income received by a Member's spouse usually accrues to the Member's interest.

The rules and standards applicable to Ms. Devolites' business interests and their relationship to your position as a Member of Congress include the prohibition that Members not use their position with the House for personal gain. In this regard, one provision of the House Code of Official Conduct provides that a Member "may not receive compensation and may not permit compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in Congress."¹ In addition, under the Code of Ethics for Government Service, a federal official, including a Member of the House, is prohibited from

- "discriminat[ing] unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not" (§ 5),
- "accept[ing] for himself or his *family*, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties" (*id.*) (emphasis added), or
- "us[ing] any information coming to him confidentially in the performance of governmental duties as a means for making private profit" (§ 8).

¹ House Rule 23, cl. 3.

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Moreover, another provision of the Code of Official Conduct requires Members to adhere to the spirit as well as the letter of the House rules,² and this Committee routinely advises Members to avoid situations in which even an inference might be drawn suggesting improper conduct. These provisions usually are not triggered by a spouse's employment, unless the Member has improperly exerted influence or performed official acts in order to obtain a financial benefit for, or as a result of a financial benefit conferred upon, his or her spouse.

In view of these provisions, Ms. Devolites should avoid discussing her relationship to you as a Member of Congress when soliciting either clients for ICG or participants for ICG-sponsored conferences. One or more of the provisions outlined above may be implicated if she were to invoke your name or position in Congress when soliciting clients or conducting other activities on behalf of the firm, whether or not the client was previously known to you or your wife. Thus, as a general matter, Ms. Devolites should not use her relationship to you in connection with any activity in which she is involved on behalf of her business interests, so as to avoid a claim that you are allowing your official title to be used for private gain.

More generally, none of the provisions discussed above would be triggered absent the existence of concrete circumstances indicating that a benefit received by a Member resulted from an improper exertion of influence by the Member, or that official acts have resulted from the prospect of private compensation to the Member's spouse and, thus, indirectly to the Member. Nevertheless, you do need to bear in mind that these provisions may well be implicated with regard to any efforts that you consider undertaking that may benefit your wife's business interests.

Because of your position as Chairman of the Government Reform Committee, we also note that with respect to your sponsoring legislation or taking other official action that may possibly affect your financial interests, the Committee's guidance is that such actions are subject to the same standards that apply to voting on legislation on the House floor. The rule governing voting on legislation on the House floor provides that a Member has a duty to "vote on each question put, unless he has a *direct personal or pecuniary interest* in the event of such question."³ Longstanding House precedents provide that "where legislation affected a class as distinct from individuals, a Member might vote."⁴ As explained in the *House Ethics Manual*, this provision has been

² House Rule 23, cl. 2.

³ House Rule 3, cl. 1 (emphasis added).

⁴ *House Ethics Manual*, 102d Cong., 2d Sess., at 120 (1992) ("*House Ethics Manual*"), quoting 5 Asher C. Hinds, *Hinds' Precedents of the House of Representatives* § 5952, at 504 (1907). See also John V. Sullivan (Parliamentarian), *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, 109th Congress, H. Doc. No. 108-241, 108th Cong., 2d Sess., § 673, at 374 (2005).

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interpreted to require a Member to abstain from voting only on a matter that would affect the Member in a direct and distinct manner, rather than merely as a member of a class.⁵

(2) Does my appearance at any conference organized by a firm or a client of a firm where my wife is employed violate any rule of the House or standard of conduct when my appearance was not solicited by my wife?

Generally, the answer is "no." However, based on the circumstances, one or more of the standards discussed above may be implicated if your attendance at a conference sponsored by ICG, or one of its clients, would result in compensation or some other benefit being conferred to your wife and, therefore, indirectly to you. Accordingly, it will be necessary for you to bear these standards in mind when deciding to appear at, or lend your name in support of, a conference or other undertaking associated with ICG. We also recommend that you contact the Committee for particular guidance in connection with requests you may receive to appear at such conferences.

(3) Does the appearance at a Committee hearing of a qualified witness who is an ICG client whom we requested through Mr. Upson or whom Mr. Upson requested violate any rule of the House or standard of conduct?

Generally, the answer is "no." Although it would appear to be a remote possibility that scheduling a client of ICG to appear before the Government Reform Committee would result in a benefit being conferred to the client, we recommend that you bear in mind the general ethical considerations discussed in this letter in your interactions with Mr. Upson and clients or potential clients of his firm. Any of the standards discussed above may be implicated by your activities or the actions of the committee that would be deemed by this Committee as constituting an impermissible "special favor" to Mr. Upson or your wife, ICG, or one of the firm's clients.


* * *

If you have any further questions, please contact the Committee's Office of Advice and Education at extension 5-7103.

Sincerely,



Doc Hastings
Chairman



Howard L. Berman
Ranking Minority Member

DH/HLB:jcs

⁵ See *House Ethics Manual*, at 120-23.