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House Ethics Committee Structure and Procedural Issues

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The following items come up from time to time as questions from members of the committee.

Committee jurisdiction: Under the state constitution, the House has the power to punish its members for disorderly conduct. Courts around the country (there are no Minnesota cases) that have had to interpret this phrase find the power is very broad and largely within the body's discretion to define. House Rule 6.10 gives the Ethics Committee jurisdiction over complaints "about conduct by a member that violates a rule or administrative policy of the House, that violates accepted norms of House behavior, that betrays the public trust, or that tends to bring the House into dishonor or disrepute."

Since 1973, complaints have been brought for violations of House rules, statutes, and for conduct that did not violate a rule or statute but that complainants apparently believed violated accepted norms of House behavior, betrayed the public trust, or tended to bring the house into dishonor or disrepute, to paraphrase the rule. In short, members have had to answer to the Ethics Committee for the same conduct that also brought them before the criminal court courts or before an executive agency like the Campaign Board.

Traditionally, the committee has not been thought to have jurisdiction to hear election contests, but there is no formal precedent on this. There have been no election contests in the House since the standing Ethics Committee was created in 1989.

Committee composition: Since at least the 1986 select committee was established, the House select and standing ethics committees have always had an equal number of members from both parties. The committee size has ranged from four to ten. For many years there have been four members with an alternate from each party.

During the 1997-98 biennium the Speaker appointed one member of each party to serve as co-chair of the committee. At all other times, a member of the majority party has chaired the committee. In recent years, the Speaker has appointed a minority party member as vice-chair.

Attorney General role: The question has been raised whether the Attorney General could have a role in investigating legislative ethics complaints or advising the committee on them. Minn. Stat. § 8.03 allows a standing legislative committee to ask the Attorney General for a written opinion on any question of law. In the case of legislative ethics proceedings, that statute is probably superseded by the constitutional provision that gives each body authority over the misconduct of its members. Minn. Const., art. IV, s 7.

Complaint procedures: House Rule 6.10 requires the Ethics Committee to establish procedures for handling complaints. These procedures exist in the form of committee rules that must be adopted by the committee every biennium. The rules have been amended several times since they were first developed in 1989.

Due process: House Rule 6.10 and the committee's rules provide for traditional due process protections: notice of the complaint and the hearings, right to call and cross-examine witnesses and produce evidence, etc. Two aspects not addressed in the rules have raised questions more than once:

- Committee members have so far refused to allow complainants to examine the member complained about;
- On one occasion the chair indicated that nothing in the House rule or committee rule authorizes the committee to require either side to provide materials to the committee or the other side in advance. Parties have voluntarily made material available in advance on some occasions.

Counsel for the committee, complainants, and member complained of: Under the committee's rule, House Research is counsel to the committee and not to either party to the complaint. House Rule 6.10 allows the committee, with the Speaker's permission, to hire outside counsel. The committee had outside counsel for complaints in 1990 and 1996.

As of the 2003 session, all complaints have been presented by members without the help of outside counsel. Most members complained of have had counsel. House Rule 6.10 does not address hiring counsel for either party to a complaint. To date, the House has not paid attorney fees for a party to an ethics complaint.

Communication between members and third parties: After the rules were revised in 1996 to make nearly all information about complaints public at all times, committee members faced the possibility of being questioned by the press or other House members while a complaint was pending. They asked staff whether it was ethical for them to discuss a complaint outside of committee sessions. They considered the analogy to judicial practice, where judges (1) do not meet with one party unless the other is present or has the opportunity to be there and (2) rarely talk to the press about a pending case. Some members decided they would not answer questions or make comments about a pending complaint outside of committee meetings, in order to assure fairness to the member complained about. The issue is not covered in the House rule or committee rule.

Confidentiality; executive sessions: Since a 1996 revision of the rules, the existence and contents of a complaint have been public from the time of filing. However, confidentiality still applies to executive session if the committee votes to have one on the issue of probable cause, to protect a third party's privacy, or to examine member medical records. By committee rule, anything covered in executive session remains confidential unless the committee later decides to include it in the public record of its proceedings. A

member who breaches the confidentiality of executive session is subject to an ethics complaint. Staff who violate confidentiality are subject to employee discipline measures.

Subpoenas: The complainants and member complained about have the right to subpoena witnesses and documents. The committee also has this right, though it has not so far exercised it on behalf of itself. Instead, following procedures for legislative subpoena under Minn. Stat. s3.153, the committee has directed the Chief Clerk of the House to issue subpoenas at the request of either complaints or the member complained of.

A party wishing subpoenas must request that the committee authorize them. A written request is good for the committee records.

Pursuant to Minn. Stat. §3.153, the committee must vote by two-thirds to issue subpoenas. If the witnesses or documents are requested for a hearing to be held in less than seven days, a majority of the committee must vote separately for the shorter time period. Witnesses subpoenaed by the legislature are entitled to the same fee that is provided by statute for witnesses in court.

Subpoenas have only been issued twice in connection with a complaint. If the committee approves subpoenas, the chair sends a letter to the Chief Clerk requesting that subpoenas be issued. In 1996, when subpoenas were issued in two matters, blank forms were signed for witnesses being requested to appear. (i.e., the committee did not get involved in deciding which individuals were requested to appear, though they did ask for a list of witnesses from both sides in the Bertram case). In one of the 1996 cases, where documents were requested from a third party, the subpoena form signed by the Chief Clerk described the documents being requested.

The parties apparently served the subpoenas and accompanying forms in 1996, though there was some discussion of having the sergeant's office staff do it.

In the 2003 complaint, the representative's attorney announced at a press conference that he intended to subpoena the complainants and only the complainants (he did not indicate why he thought he needed to subpoena them). At a meeting on March 31, 2003, the committee by a tie vote refused to authorize the subpoenas.

Announcing no probable cause finding: If the committee finds there is probable cause to support a complaint and recommends that the House take some action, it makes a report to the floor. Members have asked how to proceed if there is no finding of probable cause, since the rules do not address this issue. On one occasion, the committee simply voted "no probable cause" in a public session and adjourned. On another occasion it issued a brief statement as part of its finding.

Discipline options: The Ethics Committee has very limited power to impose consequences on members complained about. For the most part the committee is limited to making recommendations for action by the full House. The committee's rules provide several options for responding to a complaint on a continuum from finding the complaint

frivolous and reprimanding the complaints to recommending that the House expel a member. These options are laid out on the flow chart of the complaint process.

Code of conduct: In 1995 the House Rules Committee adopted House Rule 9.01 calling for a code of ethics to be adopted by the Rules Committee on recommendation of the Ethics Committee. The Ethics Committee and Rules Committee adopted the 1995 code without change every subsequent biennium through 2001. In 2003 the Ethics Committee reviewed the existing code but did not act on it. Members noted that the code applies to members and staff and that some of the provisions do not logically apply to employees as opposed to members. They expressed an interest in further study of the issue before taking action.