

## History of House Ethics Committee Complaint Procedures

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I have been the House Research Department staff for ethics complaints since the 1986 select committee was created and continuing from establishment of the standing committee to the present. This afternoon I will briefly review for you the history of the standing and select committees with emphasis on the grounds of complaints, how they were handled, and the outcomes of the complaints.

Authority for ethics actions against members is found in the Minnesota Constitution, article IV, section 7:

Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member; but no member shall be expelled a second time for the same offense.

Experience in Minnesota and other states, as well as under the parallel federal provision that governs Congress, shows this provision to be very broad in the conduct it reaches.

The standing committee on ethics was created in 1989. Before that time select committees handled at least three ethics investigations of members. Since the standing committee was created there have been three complaints against members that resulted in a probable cause finding by the committee.

Procedures in the standing committee are based on the House rule 6.10 and on committee procedures developed to implement that rule. The procedures in the time of the select committees in the 1980's and under the standing committee were generally the same, except that executive sessions were first implemented under the standing committee pursuant to House Rule 6.10.

Before I mention specific complaints that have been handled by the committee, I want to mention a jurisdictional issue and touch on three major procedural points: due process, counsel for the committee, and executive sessions.

### Election Contests Distinguished

Between 1957 and 1979 four House members were removed from office for conduct arising out of their election campaigns. These matters originated as election contests based on false misrepresentations of their opponents' positions. This kind of conduct has been viewed as separate from matters that come before the Ethics Committee or its predecessor select ethics

committees. Historically, this conduct has been under the jurisdiction of the committee that handles elections bills.

This is not to say that future practice must continue the same way, but just to advise you of past custom and usage.

**Due process:** In the matter of Ethics Committee procedures, I want to start with the issue of due process. There is a constitutional aspect to this issue. Even though the state and federal constitutions enable legislative bodies to impose discipline on members, the courts require due process in carrying out this power. What due process means has never been an issue in the Minnesota select or standing committees. Both have always notified the subject of the complaint of all committee proceedings and allowed the subject to be present with counsel, to provide testimony, witnesses, or other evidence, and to cross examine witnesses called by the complainants or the committee itself.

**Counsel for the committee:** So far House Research in the person of myself has served as counsel to the select and standing ethics committees in every case since the 1980's. In addition, the first time that a probable cause determination was made after creation of the standing committee, the committee determined that outside counsel should be hired to handle the public hearing. Because the need for a public hearing in that case was eliminated by the member's decision to resign, outside counsel was not in fact used other than for initial discussions about how to handle a public hearing.

Outside counsel was next hired in 1996 to assist with both complaints that were acted on that year. Rule 6.10 was amended in the 1997-98 biennium to specify that the Ethics Committee, with the Speaker's approval, may hire a retired judge or other nonpartisan legal advisor to assist it.

**Executive sessions:** The select committees in the 1980's were responding to matters of public record where legal proceedings had occurred against a member. Under House rule 6.10, it is possible for two members to bring an ethics complaint about facts that are not a matter of public record and where no independent body or court has made findings. This distinction may have influenced the provision for executive sessions and confidentiality under the original version of the rule.

The original version of House Rule 6.10 required the members who brought a complaint, the Speaker, and house staff to keep the complaint confidential until a public hearing (if any) was scheduled on the complaint (i.e. because there had been a finding of probable cause).

Experience with two ethics complaints during the 1996 session led to considerable discussion of the confidentiality provision. In the 1997-98 biennium the house rule was revised to provide that the existence and substance of a complaint, all supporting materials, and all meetings of the Ethics Committee are public *except* that by a majority vote of the whole committee, members may meet in executive session for any of the following reasons: to consider whether there is probable cause to recommend discipline, to review a member's medical records, or to protect the privacy of a victim or third party.

### Select Committee of 1973

Although it was before my time, I want to mention to you the select committee of 1973. The House Journal includes a report from a select ethics committee during the 1973 session. The committee acted on a complaint that Representative Walter Klaus failed to file a statement of economic interest required under a house rule (this was prior to enactment of chapter 10A, the ethics in government act). The committee held a hearing at which the member indicated his belief that the rule was an unconstitutional violation of his privacy. The committee also received a House Research memo on case law supporting the validity of the rule. The committee concluded "that subject to whatever legal or constitutional right he may have to the contrary, Representative Klaus willfully violated House Rule 70 by failing to file the required statement of economic interest." (House Journal, March 11, 1974, page 5866). The committee recommended that its report, the House Research memo, and a letter from the representative be placed in the journal.

### Select Committee of 1986

The current standing committee on ethics in the House was preceded by a select committee appointed January 24, 1986, to investigate allegations against Representative Randy Staten. A week before the committee was appointed, the representative had entered a plea of guilty to felony theft. In November, 1985, the Ethical Practices Board had referred to the House Rules Committee its findings of repeated incomplete campaign finance report filings by the Staten Volunteer Committee. The Speaker charged the select committee with investigating each of these matters as to whether action should be taken under the House's constitutional power to determine its members' eligibility to serve or its power to discipline members.

The chair of the 1986 committee was Terry Dempsey. The other members were John Brandl, Sidney Pauley, and Kathleen Vellenga.

The committee decided to limit its inquiry to the official record of the Ethical Practices Board and the district court in the two matters before it, as well as whatever additional information Representative Staten might supply. The hearings were held in the same manner as other legislative hearings: they were public and there was advance notice. Representative Staten chose to have counsel, and he and his attorney were invited to be present and to offer any evidence or witnesses they would like.

Confidentiality or the possibility of executive sessions of the committee was never discussed in the 1986 hearings. Perhaps this was not an issue because the select committee was created for the purpose of addressing allegations against a specific member that were already part of the public record (i.e the district court plea and the Ethical Practices Board findings and report to the Rules Committee).

When the hearings were completed, the committee staff prepared a report summarizing the factual findings of the committee and its recommendations. The committee concluded that the conduct before it fell below the standard required of House members and recommended expulsion. The report was re-referred to the Rules Committee and the Rules Committee report

## Select Committee of 1988

This committee faced two issues: a specific incident involving a member and the general issues of (1) adopting complaint procedures and (2) whether to adopt a code of conduct and to issue advisory opinions under it.

In February, 1988, the Rules Committee requested the Speaker to appoint a select committee on ethics for the purpose of developing procedures to deal with misconduct by a House member and determining the extent of member conduct subject to discipline.

The committee was chaired by Dee Long. Other members were Bob Anderson, David Bishop, Sidney Pauley, Leo Reding, and Loren Solberg.

The committee concluded that fairness required formal procedures for disciplining members but it did not have time to develop procedures during the short 1988 session.

The committee also discussed what kinds of conduct should be subject to ethics complaints but did not reach a conclusion. There were concerns that any attempt to make a specific list might be either over- or under-inclusive.

A related issue was whether to develop a code of conduct for members and issue advisory opinions under it. The committee declined to recommend that an ethics committee be able to do either of these things. However, I recall at least two occasions on which individual members requested and received the committee's guidance on whether personal business interests created a conflict of interest with their legislative duties. This would have happened between 1988 and 1990. The requests and advice were done orally and I have no written records of these instances.

### 1988: Representative Kludt Matter

The select committee chosen to set ethics complaint procedures in 1988 also determined through its own discussions and through correspondence with the Speaker that it was within the committee's jurisdiction to investigate and make recommendations regarding the December 14, 1987, conviction of Representative Ken Kludt for soliciting an act of prostitution. There was no discussion of the possibility of holding a preliminary hearing in executive session in this matter.

The committee adopted a motion that it would hold a public hearing on the matter and allow the representative to appear before it. The representative was notified, both in person by two committee members and in writing, of the committee date and the invitation to appear.

At the hearing the committee established its findings of fact by questioning Representative Kludt and a prosecuting attorney from the office that handled his conviction. The committee report to the Rules Committee recommended that Representative Kludt be required to submit a written apology to the House. Ultimately, the member did submit an apology that was included in the House Journal.

### **1989 Session**

In 1989 the House adopted a permanent rule establishing a committee on ethics. In March of that year the Ethics Committee members adopted procedures for handling a complaint. These procedures were later revised to reflect changes in House Rule 6.10 adopted in the 1997-98 biennium.

The first members of the standing committee on ethics were the same individuals who had served on the 1988 select committee, except that Representative Long was replaced by Representative Solberg, who served as chair.

### **1990: Representative Conway Matter**

In the 1990 session, operating for the first time under House Rule 6.10 and the committee procedures finalized in 1989, the Ethics Committee received a complaint from two members concerning a member who had been indicted for felony level criminal securities law violations. The committee met in executive session under the rule to determine how to proceed and whether there was probable cause for a public hearing. It is my recollection that at least one complaining member was present for part of the executive sessions on the basis of the committee's need to consult a complainant. I do not recall anyone else's being in attendance.

The committee's executive session deliberations were focused on familiarizing themselves with the counts of the lengthy indictment and what was the proper response to the indictment. The committee determined that there was probable cause to support the complaint and decided to engage outside counsel of a respected stature to represent the committee in a public hearing. I do not recall any discussion of why they wanted outside counsel this time as opposed to the practice of not having it in the earlier matters. If I were to speculate, I would think that it made some difference that in this instance there was an indictment rather than a conviction, so there was arguably more of a factual case to be made and an experienced litigator could be helpful. In my opinion, not hiring outside counsel would place in-House staff counsel in a very difficult, conflict situation (serving as a kind of prosecutor of a member). Committee members have this role as well, but their burden is imposed by the state constitution.

When the committee informed Representative Conway that a public hearing would be held he immediately tendered his resignation from office, eliminating the need for the hearing. The representative was subsequently convicted and incarcerated for the offenses that had been before the committee.

### **1996: Representative Robert Johnson Matter**

A complaint was brought against Representative R. Johnson alleging multiple guilty pleas for driving while intoxicated and threats of legislative reprisals against the department of public safety if the commissioner did not allow a highway patrol member to drive the representative to the funeral of former Governor Perpich, in view of the representative's suspended driver license. The committee was able to work from court records of the guilty plea. The representative apologized for an "unfortunate misunderstanding" with the commissioner of public safety, and no investigation was done or testimony taken on that matter. The Ethics Committee recommended to the Rules Committee that the member be censured and that he resign. The House also ultimately voted to censure the member and urge him to resign.

### **1996: Representative Bertram Matter**

A complaint was filed that essentially alleged that the member had engaged in a pattern of threats and intimidation in connection with seeking campaign contributions and seeking to discourage witnesses against his brother, a state senator, in a shoplifting case. This complaint is the only one so far that has required the committee to do extensive fact finding, which it did by hearing the witnesses who alleged they had been intimidated and by hearing the member's response. The committee recommended censure to the Rules Committee. The House ultimately voted for censure and required the member to admit the allegations against him on the house floor.

### **1996 Task Force to Revamp House Ethics**

Following the 1996 session the Speaker appointed a task force of retired judges and former legislators to review the procedures used by the Ethics Committee. The task force made the following list of recommendations, all of which were incorporated in House Rule 6.10 and as necessary into the Ethics Committee's own procedures:

- The committee size would be reduced to four members, with two alternates. (under prior rule the committee had an equal number of members from each party but was not limited in size).
- The rule would state the grounds for a complaint in the same language as the Minnesota Senate ethics rule: "conduct that violates accepted norms of House behavior, that betrays the public trust, or that tends to bring the House into dishonor or disrepute".
- The complainants would be required to provide a copy of the complaint to the accused member before submitting the complaint to the Speaker.
- The existence and substance of a complaint and all proceedings would be public at all times, except that a majority of the whole committee could vote to hold an executive session at the probable cause stage. (In addition, the House rule allows for executive session to review a member's medical records to protect a victim or third party's

privacy )

- The authorization to hire a legal adviser originally found in the committee rule will be moved to the House rule
- A recommendation for discipline must be supported by clear and convincing evidence.
- A discipline recommendation would go directly to the floor rather than first to the Rules Committee.