

**Minnesota House of Representatives Committee on Ethics  
Complaint Against Rep. Arlon Lindner  
2003 Legislative Session**

**Motion to Focus Proceedings**

**I. Motion**

The primary purpose of the House of Representatives Committee on Ethics is to address ethics complaints brought against members of the House. As part of this process, the Committee members are required to determine probable cause relative to the charges made in the complaint and to determine the course of the case accordingly. The activities undertaken by the Ethics Committee, are therefore, serious in nature and should not be manipulated to address other matters or grievances outside the complaint.

Nevertheless, the Defendant's attorney has indicated in press conferences that he wishes to subpoena the Prosecutors of this case to have a wide-ranging discussion on the Prosecutors' religious beliefs and motivations behind the complaint. He has also indicated that he desires to use this forum to have a committee hearing on HF 341. None of these issues is relevant to the charges set forth in the Complaint. Any other testimony given by the Prosecutors would be needlessly cumulative and lengthen the proceedings. The Defendant does not have a due process right to bring forward irrelevant or needlessly cumulative evidence.

Moreover, allowing such testimony and discussion into the Committee hearing would corrupt the integrity of the Ethics hearing process and turn it into a three-ring circus. Granting Defendant's request to subpoena the Prosecutors would open the floodgates to a wide-ranging ethics hearing, straying well beyond the scope of this

process and the House Rules. It would cause the Prosecutors to bring in additional witnesses and would substantially lengthen the Ethics hearing. Most importantly, it would distract the Committee members from the merits of the complaint.

The Prosecutors of this case, therefore, respectfully request that the Committee focus the evidence presented in the probable cause hearing to the charges set forth in the complaint. The Prosecutors should not be called as witnesses and there should be no discussion regarding the merits of HF 341.

## **II. Testimony Regarding Prosecutors' Motives Should be Excluded Because it is Irrelevant**

### **A. To Be Relevant, Evidence Must Relate to the Complaint**

The Rules of Procedure for the House Committee on Ethics indicate that evidence offered should only be for the purpose of proving or disproving the matters alleged in the complaint. First, Rule 1 states that the Committee on Ethics has jurisdiction to review and dispose of ethics *complaints* against members. It does not have jurisdiction to investigate allegations made in any other form. Furthermore, Rule 4, entitled Due Process, states that the Prosecutors must be given notice of their opportunity to offer evidence of the matters "alleged in the complaint" and that the member named in the complaint has the right to respond "to all charges." Rule 6 states that the Committee must hold a meeting within 21 days to determine whether there is probable cause "to support the complaint." Finally, Rule 7 clearly indicates the determination of probable cause is an undertaking limited to the allegations made in the complaint. It states: "If a majority of the whole Committee finds, *based upon the complaint and supporting and rebutting evidence* ..., sufficient factual evidence to believe that *the allegations contained*

*in the complaint* are more probably true than not ...,” then the Committee should proceed to a public hearing under Rule 10.

The Minnesota Rules of Evidence also requires that evidence offered relate to the complaint. Rule 401 of the Minnesota Rules of Evidence defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. Thus, to be relevant, the offered evidence must be *of consequence to the determination of the litigation*. According to the Comments to the Minnesota Rules of Evidence, what is of consequence to the litigation “depends upon the scope of the pleadings, the theory of recovery and the substantive law.” Minn. R. Evid. 401, Committee Comment. (1977). Moreover, there is a presumption that evidence is offered and received with reference to the issues framed by the pleadings. See Folk v. Home Mutual Insurance Co., 336 N.W.2d 265, 267 (Minn. 1983); Harry N. Ray, Ltd. v. First National Bank of Pine City v. Nascene, 410 N.W.2d 850 (Minn. App. 1987)(same). If evidence that is offered does not relate to the complaint, it is irrelevant and should be excluded. See State v. NMN Marchbanks, 632 N.W.2d 725 (Minn. App. 2001)(stating that if state had dropped the controlled substance charge from the complaint, evidence relating thereto was irrelevant and must be excluded).

**B. Testimony of Prosecutors’ Motives or Religious Beliefs Does Not Relate to the Complaint and Should Therefore Be Excluded**

The scope of the complaint against Rep. Arlon Lindner now before the Ethics Committee is narrow. The complaint alleges that Rep. Lindner made several statements denying that gays were persecuted by the Nazis and that Rep. Lindner made a statement declaring his hope that America would not become “another African continent.” As a

result of his statements, the complaint charges that Rep. Lindner violated the norms of House behavior and brought the House into dishonor or disrepute.

Testimony of the Prosecutors regarding motive behind the complaint or regarding their religious beliefs would not relate to the complaint and would not be of any consequence to the determination of these four claims. Any statements on intent, motive, or reasons would not prove or disprove that the statements were, in fact, made. Nor would such statements prove or show that Rep. Lindner's statements violated the norms of House behavior or that Rep. Lindner's statements brought the House of Representatives into dishonor or disrepute. The testimony of the Prosecutors regarding motive or religion is therefore irrelevant and must be excluded. See State v. McLaren, 402 N.W.2d 535 (Minn. 1987)(stating that the motive of the attorney general in bringing the lawsuit (which the plaintiff claimed was political) had no relevance to the disputed claim).

### **III. Testimony by Prosecutors Regarding Factual Matters Would Be a Needless Presentation of Cumulative Evidence**

Under the Minnesota Rules of Evidence, evidence that is relevant may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. See Minn. R. Evid. 403. Minnesota trial judges have traditionally exercised the power to exclude evidence that is cumulative. Minnesota Practice § 403.01. See also Evans v. Getty, 1992 WL 160849 (Minn. App. 1992)(upholding exclusion of evidence as repetitive); State v. Rein, 477 N.W.2d 716 (Minn. App. 1991)(upholding exclusion of cumulative evidence).

Testimony by the Prosecutors regarding relevant matters, such as whether the alleged statements were made by Rep. Lindner or whether the statements, if made, tended to violate the norms of House behavior or bring the House of Representatives into dishonor or disrepute, would be cumulative to other evidence presented before the Committee, such as video, audiotapes, transcripts, newspaper articles, emails and the testimony of other witnesses. The testimony of the Prosecutors regarding these matters is therefore unnecessary to Rep. Lindner to present his case and should be excluded. See McLaren, 402 N.W.2d at 541-42 (stating that the testimony of prosecutor was needless because it would not add to the facts, which could be proven by the use of other evidence such as minutes, transcripts, correspondence, memos, newspaper articles or through the testimony of other persons present at the various meetings or conferences).

#### **IV. Excluding the Testimony of Prosecutors Does Not Violate Due Process**

The Minnesota Supreme Court has stated that due process of law requires notice and opportunity for a hearing. See Juster Bros., Inc. v. Christgau, 7 N.W.2d 501 (Minn. 1943). This, among other things, means the defendant must have an opportunity to present any *relevant* contentions and evidence the party may have. Id. at 507 (emphasis added); State v. Svoboda, 331 N.W.2d 772, 775 (Minn. 1983). Accordingly, Minnesota courts have held the exclusion of evidence is compatible with due process when the evidence offered is irrelevant and repetitive. Evans v. Getty, 1992 WL 160849 (Minn. App. 1992)(holding that due process was not violated by the exclusion of testimony that would be repetitive and irrelevant); State v. Mathison, 1992 WL 189328 (Minn. App. 1992)(holding exclusion of testimony did not violate due process when the offered statement was collateral to any material issue); State v. Rein, 477 N.W.2d 716 (Minn.

App. 1991)(holding that the exclusion of cumulative testimony did not violate the defendant's right to due process).

Similarly, federal Courts of Appeals have stated that a defendant does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence. See Lannert v. Jones, 321 F.3d 747, 754 (8<sup>th</sup> Cir. 2003). Under this principle, the Eight Circuit Court of Appeals has upheld the exclusion of evidence under due process when the testimony in question was irrelevant or repetitive. See id. (holding that exclusion of testimony on battered spouse syndrome was not a violation of due process when there was no showing of relevance); State v. Yockel, 320 F.3d 818 (8<sup>th</sup> Cir. 2003)(holding that exclusion of evidence regarding intent to intimidate did not violate due process because such evidence was irrelevant to the charge).

## **V. Conclusion**

The Committee should exclude all testimony from the Prosecutors because the testimony is entirely irrelevant to the charges set forth in the Ethics complaint. To the extent that the opposing party seeks the testimony of the Prosecutors to prove or disprove the allegations set forth in the complaint, this testimony is needlessly cumulative to other, readily available sources of evidence, such as video, audiotapes, transcripts, newspaper articles, emails and the testimony of other witnesses. The Committee is charged by the House members to resolve ethics complaints. If Rep. Lindner wants to raise other issues, he should find other forums like his press conferences to air them.