House Ethics Committee Complaints History

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Introduction

This memo reviews the history of Minnesota select and standing committees since 1961. It covers individual complaints and the development of House Rule 6.10 and the Ethics Committee's procedural rules for handling 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.

Complaints before the Minnesota House have dealt with the following kinds of conduct:

- Failure to file economic interest disclosure
- Repeated failure to file campaign finance reports
- Conviction of theft by check
- Soliciting prostitution
- Securities law violations
- Driving while intoxicated
- Threats of legislative reprisals if representative did not receive a personal favor from a commissioner
- Threats and intimidation in requesting campaign contributions
- Discouraging witnesses from testifying against a member's brother in a shoplifting case
- Making derogatory remarks about the Jewish faith
- Recommending that members be excluded from participating in session after the House was called to order
- Criminal sexual conduct with a juvenile
- Conflict of interest involving charter school rent legislation carried by a member who leased property to a charter school
- Comments about homosexuals and the Holocaust, and about HIV in Africa

Election Contests Distinguished

Between 1957 and 1979 four House members were excluded from office for conduct arising out of their election campaigns. These matters originated as election contests based on false misrepresentations made during the campaigns about their opponents' positions on various issues. This kind of conduct has been viewed as separate from matters that come before the Ethics Committee or its predecessor select ethics committees. Historically, elections contests have been under the jurisdiction of the committee that handles elections bills because the conduct at issue is regulated by a different constitutional provision, article IV, section 6:

Each house shall be the judge of the election returns and eligibility of its own members.

The legal theory is that an individual guilty of a serious election law violation has invalidated the election and is not eligible to hold the office.

1961 Legislative Ethics Committee; 1971 House Ethics Code

In 1961 the legislature passed a statutory code of conduct that applied to all members. Laws 1961, chapter 59. No action was ever taken against any legislator under this code. In 1971 the House created a Special Ethics Committee, which held hearings and prepared a report that included a proposal for a detailed code of conduct for House members. That code was adopted by the House. 1971 Journal, page 1490. These early code efforts were replaced by Minn. Stat., Chapter 10A in 1974. Laws 1974, chapter 470. Because that statute deals with economic interest disclosure and conflict of interest, it was deemed to replace the need for conduct codes.

Select Committee of 1973: Representative Klaus Matter – Failure to File Economic Disclosure

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, which by statute requires economic interest statements). 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 House Journal.

Select Committee of 1986: Representative Staten Matter – Theft by Check; Incomplete Campaign Reports

A select committee was 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 by check. 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 Pauly, 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.

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 referred to the Rules Committee. The Rules Committee report was acted on by the entire House, which adopted the following requirements:

- censure;
- withhold 18 percent of the member's salary from April to December, 1986, and donate it to a chemical dependency treatment program of the member's choice;
- require the member to donate 100 hours of work to a community service program on chemical dependency understanding;
- continue in chemical dependency treatment; and
- return all 1986 public financing if the board finds that reporting laws were violated.

Select Committee of 1988 – Complaint Procedures; Code of Conduct; Advisory Opinions

This committee faced two issues: a specific incident involving a member and the general issues of:

- adopting complaint procedures, and
- 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 (1) developing procedures to deal with misconduct by a House member and (2) determining the extent of member conduct subject to discipline.

The committee was chaired by Dee Long. Other members were Bob Anderson, David Bishop, Sidney Pauly, 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, on at least two occasions between 1988 and 1990, individual members requested and received the committee's guidance on whether personal business interests created a conflict of interest with their legislative duties. The requests and advice were done orally; no written records of these instances were created.

No member has requested an advisory opinion from the committee since 1990.

1988: Representative Kludt Matter – Soliciting Prostitution

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.

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: Standing Committee Established

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 have been revised over the years to reflect subsequent changes in law and house rules.

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 – Felony Securities Law Violations

During 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. The complaint concerned Representative Jeff Conway, who had been indicted for felony 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. One complaining member was present for part of the executive sessions on the basis of the committee's need to consult a complainant.

The committee's executive session deliberations were focused on familiarizing members 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. It decided to engage outside counsel of a respected stature (a retired Supreme Court Justice) to represent the committee in a public hearing.

When the committee informed Representative Conway that a public hearing would be held, he resigned from office. This eliminated the need for the hearing. The representative was subsequently convicted and incarcerated for the offenses that had been before the committee.

1996: Representative Johnson Matter – DWI and Threatened Legislative Reprisals

A complaint was brought against Representative Robert 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 representative apologized for an "unfortunate misunderstanding" with the Commissioner of Public Safety, and no investigation was done or testimony taken on the alleged threats. The Ethics Committee recommended to the Rules Committee that the member be censured for the DWI convictions and that he resign. The House also ultimately voted to censure the member and urge him to resign. The member did not resign, but he did not run again.

An attorney was hired as outside counsel to the committee at the Ethics Committee stage for this complaint. The attorney met with members and attended the hearing but did not question witnesses.

1996: Representative Bertram Matter – Intimidation in Seeking Contributions; Discouraging Court Witnesses

A complaint was filed alleging that the member had engaged in a pattern of threats and intimidation in connection with (1) seeking campaign contributions, and (2) seeking to discourage witnesses from testifying against his brother, a state senator, in a shoplifting case. This complaint was the first one that 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. Retired Chief Justice Popovich served as a legal advisor to the committee. 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

While the 1996 complaints were being processed, the executive session requirement became controversial. Confidentiality was breached by one of the committee members. In part to respond to that issue, 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 recommendations, all of which were incorporated in House Rule 6.10 in the permanent rules adopted for the 1997-98 biennium, and as necessary into the Ethics Committee's own procedures:

- The committee size would be four members, two from each caucus with an alternate from each caucus (under prior rule the committee had an equal number of members from each party but its size had varied).

- 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 to determine probable cause.

- The authorization to hire a legal adviser originally found in the committee rule was 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.

1997 Working Group

In the early months of the 1997 session, a bipartisan Working Group of House members examined and reworked the 1996 task force recommendations. Both the House Rule (as adopted on March 24, 1997) and the Committee Rule (as adopted on May 13, 1997) were products of this Working Group. Besides items already mentioned in connection with the 1996 task force, the Working Group proposed the following:

- allow for executive session to review a member's medical records or to protect a victim or third party's privacy

- state the evidentiary basis for a probable cause finding by the Committee (more probably true than not, and if true tend to support disciplinary action)

- put the burden of proof on the complainants, not on the committee

- list and define in a general way the disciplinary actions that the Committee could recommend: expulsion, censure, and reprimand; with financial restitution, remedial or other action by the member, and other discipline being subsets of censure and reprimand

- provide or refine procedures for handling frivolous complaints, withdrawing complaints, and dealing with minor violations

- add House Rule 9.30, relating to the compensation of a member who is incarcerated

2000: Representative Lindner Matter – Remarks about Religion

In the 2000 regular session a complaint was filed against Representative Arlon Lindner alleging that he violated House Rule 6.10 by making "derogatory remarks about the Jewish faith" on the House floor that involved calling Jewish people "irreligious and impugning the sincerity of their religious beliefs." In an amendment, the complaint further alleged that comments by the representative "indicat[ed] that members of this House should be excluded from participation in the business of the House after the House has been called to order."

The committee met in public session on three occasions to address the complaint. After two public sessions, it voted to hold an executive session to consider the issue of probable cause, then met in a final public session to announce its decision. The complainants and the responding member were present at the public sessions. Representative Lindner had counsel; neither the complainants nor the committee had outside counsel. The committee concluded that "Representative Arlon Linder's remarks were very regrettable," and further that "discipline is inappropriate and no further action will be taken." In a separate letter the committee requested the Speaker to authorize it to study current House rules on speech in debate for possible revision.

2000: Representative Rostberg Matter – Criminal Sexual Conduct with a Minor

During the 2000 regular session Representative Jim Rostberg was charged with criminal sexual conduct involving a juvenile victim. An ethics complaint was filed against him. The committee, with the concurrence of the bipartisan complainants, used its authority to defer action on the complaint until criminal proceedings in the matter were completed. Representative Rostberg did not seek re-election. Following adjournment *sine die* his case was completed in juvenile court in the interests of the victim. Because the legislature was not in session between the conclusion of the court matter and the end of the representative's term, no action could be taken on the ethics complaint.

Study of House Rules on Speech in Debate: 2000 Interim

The Ethics Committee met during the 2000 interim to discuss issues that had been raised about the clarity and consistency of House rules on speech in debate and to review similar rules from other states, in order to make suggestions to the Rules Committee. No rules changes resulted from that study.

2001: Representative Abeler Matter – Conflict of Interest

During the 2001 regular session, Representative Jim Abeler was the subject of a complaint. The complaint stated he had a conflict of interest, which he failed to disclose, with regard to actions he took on a bill providing rental payments for property leased to charter schools. The committee met in public session once to address the complaint. It voted to meet in executive session (which recessed and met on multiple occasions) to consider the issue of probable cause. At a subsequent public hearing the committee announced that it did not find probable cause.

Representative Abeler was represented by counsel. The complaint was presented by legislators without counsel. The committee also did not have outside counsel on this matter.

2003: Representative Lindner Matter

During the 2003 session, Representative Arlon Lindner was the subject of a complaint. The compliant alleged that the member's statements about homosexuals in the Holocaust and about the AIDS epidemic in Africa violated accepted norms of House behavior. The committee held all its meetings in public sessions. Representative Lindner had counsel. The committee and complainants did not have outside counsel. The committee did not find probable cause in this matter.