

**Tom Emmer**  
State Representative

District 19B  
Wright County



# Minnesota House of Representatives

**COMMITTEES:** CIVIL LAW AND ELECTIONS  
HEALTH POLICY AND FINANCE  
REGULATED INDUSTRIES  
ETHICS

June 1, 2009

Representative Mary Murphy, Chair  
Ethics Committee  
State Office Building, Room 343  
St. Paul, MN 55155

Dear Chair Murphy:

Please accept this as our submission for the probable cause hearing on the referenced Complaint. We understand the hearing will take place tomorrow morning beginning at 9:45 AM – Room 5 State Office Building.

In reviewing your communications about the upcoming hearing, we did initially question why, if there are three parties involved, would two parties get 15 minutes each to present while the third party would get 30 minutes. Shouldn't all parties be afforded the same time? On further consideration, however, we believe the matter can be handled expeditiously.

In order to assist you and the other committee members, enclosed please find the following:

1. May 8, 2009, Complaint and attachment;
2. May 13, 2009, e-mail from Rep. Gardner;
3. May 14, 2009, e-mail from Rep. Emmer; and
4. May 15, 2009, letter to Speaker Kelliher.

According to the rules of the Committee, the purpose of the probable cause hearing is twofold. As a threshold issue, the Committee must determine if "the allegations contained in the complaint are more probably true than not . . ." Rule 7. In this case, there is no question that the allegations are true. In fact, Rep. Gardner has admitted the allegations are true.

Once the allegations have been established as true, the Committee must determine whether the actions " . . . support disciplinary action. Rule 7. Again, in this case the Speaker of the House has already recognized the severity of the offense. Further, she



Page 2 – June 1, 2009

already recommended discipline (outside of your Committee) in an attempt to allow Representative Gardner to avoid the more formal and public Ethics Committee process.

The Speaker effectively recommended (and Rep. Gardner initially agreed to) a private reprimand with "other discipline [she deemed] appropriate, i.e. public apology to the members of the House. See Rule 12 (f). Representative Gardner refused the Speaker's recommendation and the matter is now before you and your Committee.

Respectfully, we ask your Committee affirm the truth of the allegations based on Representative Gardner's admissions and, further that you find that discipline is warranted. We would also request that we be provided copies of any materials submitted by Representative Gardner.

Thank you for your consideration.

Tom Emmer  
State Representative (District 19B)

Mark Buesgens  
State Representative (District 35B)

cc: Representative Holberg  
Representative Smith  
Representative Simon  
Representative Liebling  
Representative Shimanski

Representative Kelliher  
Representative Gardner  
Representative Seifert  
Mike Charboneau

# **ATTACHMENT**

**1**

# ETHICS COMPLAINT

Representative Paul Gardner

May 8, 2009

On Friday, May 8, 2009, the Honorable Paul Gardner, State Representative for Minnesota House District 53A, sent an electronic communication during floor debate on HF885 that violates the spirit and letter of Rule 6.10 of the Permanent House Rules. Rule 6.10 provides in pertinent part:

A complaint may be brought 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.

During a spirited debate on whether or not to raise taxes in the State of Minnesota by almost a billion dollars, the Honorable Mark Buesgens, House District 35B, and the Honorable Tom Emmer, House District 19B, strongly debated for the Minority Party in opposition to the massive tax increases proposed by the Majority Party. Several members from the Majority Party similarly debated aggressively in support of the massive tax increase. Representative Gardner did not participate in the debate.

During the spirited debate by both parties, Representative Gardner was "twitting" on Twitter.com. Twitter is a form of instant electronic messaging. In his messaging contemporaneous with the debate, Representative Gardner suggested (in writing) that Representative Emmer was "belittling female colleagues" with "rage" and "sarcasm." Representative Gardner's "twitting" dishonestly suggested that his legislative colleague is harassing female colleagues.

During the spirited debate by both parties, Representative Gardner was "twitting" that Representative Buesgens was wearing sunglasses. Representative Gardner was clearly suggesting that Representative Buesgens had been involved in a violent physical confrontation.

Representative Gardner's communications were clearly designed to suggest that his colleagues are physically violent and prone to harassment of female members of the House of Representatives. Representative Gardner knew or, at the very least, should have known that his written comments were false and injurious to his ALL of his legislative colleagues.

Representative Gardner's communications violate the spirit and letter of the ethical rules of the Minnesota House of Representatives including but not necessarily limited to:

A State Representative \* \* \* shall:

*Respect the principles of representative democracy, by exemplifying good citizenship and High personal integrity, and by observing the letter and spirit of laws, and House Rules.*

*Promote the health of democracy - by fostering openness in government, full public understanding of government actions, and public participation in governmental processes.*

*Treat everyone with respect, fairness, and courtesy.*

*Exercise sound judgment.*

*Be respectful of the House of Representatives as a fundamental institution of civil government.*

Use the power and facilities of the House of Representatives only to advance the common good.

Respect and maintain confidential information obtained as a public official or an officer or employee.

By knowingly publishing false and defamatory information about his legislative colleagues, Representative Gardner violated his ethical obligation to “[r]espect the principles of representative democracy” by failing to exemplify good citizenship and high personal integrity. More importantly, his false innuendo flies in the face of the letter and spirit of our laws regarding defamation and libel. One need not be a licensed lawyer to understand the damage that can be caused by knowingly making false statements directly impacting another’s reputation in the community.

By publishing false and defamatory statements into the public square contemporaneous with an ongoing debate on a high profile and contentious issue, Representative Gardner failed to “[p]romote the health of democracy.” His actions were intentionally designed to cast his legislative colleagues in a less than favorable light and to chill their participation in the debate. Certainly, when members are falsely being accused of sexual harassment and assault, they might refrain from voicing their opinions for fear of having to defend against false information and attacks on their character leveled in the Public Square during the debate.

There can be NO dispute that Representative Gardner’s actions violate his ethical obligation to treat his legislative colleagues with “respect” and “fairness.” Nor can he be said to have exercised “sound judgment” by publishing false statements to the public from the House floor.

For these reasons and others, Petitioners respectfully request Representative Gardner be properly reprimanded and disciplined.

Subscribed and sworn to before me  
This 8<sup>th</sup> day of May 2008.

\_\_\_\_\_  
Honorable Tom Emmer, Dist. 19B

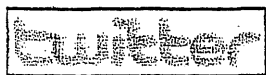
\_\_\_\_\_  
Notary Public  
(Stamp and/or Seal)

Subscribed and sworn to before me  
This 8<sup>th</sup> day of May 2009.

\_\_\_\_\_  
Honorable Mark Buesgens, Dist. 35B

\_\_\_\_\_  
Notary Public  
(Stamp and/or Seal)

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**Gardner53A**

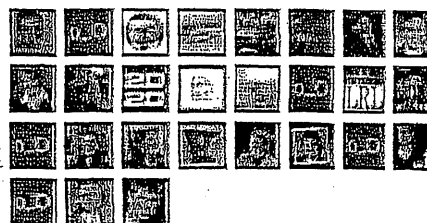
• Name Paul Gardner

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1. Emmer seems to belittle his female colleagues (rage, sarcasm) on the floor more than the men? Great face to the GOP? [about 1 hour ago from TweetDeck](#)
2. Four \$1B options: borrowing, gaming, taxes, or cuts to schools, hospitals, nursing homes in addition to our cuts > than Guv [about 1 hour ago from TweetDeck](#)
3. Why is Buesgens wearing sunglasses? Black eye? [about 3 hours ago from TweetDeck](#)
4. I'm sure everyone is thinking that legislators get per diem according to number of words uttered on the floor... [about 5 hours ago from TweetDeck](#)
5. Buesgens or Woody Allen? I object.. This trial is a

## Following



travesty..of a mockery of a sham of a mockery of a  
travesty of two mockeries of a sham.about 22 hours ago  
from TweetDeck

6. Bad night to ask school kids if they ever want to run for office.about 22 hours ago from TweetDeck
7. How long does it take to vote no on messages from the Senate?about 22 hours ago from TweetDeck
8. re: Emmer amdmnt see <http://www.bethdin.org/> for U.S. rabinnical courts and <http://tinyurl.com/62wyh7> for article about UK Sharia courts11:31 AM May 6th from web
9. shameful Emmer amdmnt-Just sent leg colleagues 08 Sndy Times article about UK Sharia courts & link to Jewish rabinnical courts in US11:28 AM May 6th from web
10. House Republicans: "Let's be like France!" On nuclear anyway1:15 PM Apr 30th from web
11. I'm protecting my computer against swine flu with new anti-viral software...11:35 AM Apr 29th from web
12. Speaker thoughtful to suggest reconsideration of amendments. But GOP would be taken more seriously if they mnge time and membership better1:20 PM Apr 28th from web
13. watching debate on House floor--good to see what hppns now rather than at end of session. Begs for better time mgmt by GOP on amendments.12:57 PM Apr 28th from web
14. is de-bunking misinformation about my home heating fuel sales tax legislation in the House tax bill at <http://paulgardner53a.blogs...>5:25 PM Apr 27th from web
15. I gotta get a good fish photo like the Speaker and Rep. Kalin4:54 PM Apr 27th from web

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RSS feed of Gardner53A's updates

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# **ATTACHMENT**

**2**



**From:** Paul Gardner  
**To:** All DFL Representatives; All GOP Representatives  
**Date:** 5/13/2009 11:10 AM  
**Subject:** Colleagues: How not to communicate with each other  
**Attachments:** gardner letter.docx

Dear colleagues,

At this time in the session, the pressure builds, the deadlines loom, and the differences among us start to magnify. We're tired and a little cranky. That said, we still need to maintain high standards in our communications to each other, either with the opposite caucus or within our own.

I recently failed to maintain those high standards in some electronic communications regarding two of our members. I have attached a letter that I shared with Rep. Emmer and Rep. Buesgens.

Members, this is one of the strangest workplaces that you can be in. We are co-equals rather than members of a top-down hierarchy. We pledge to do our best for the state and to work together. And yet, it is our mission when we are not in this building to bring upon the demise of our colleagues from across the aisle! Somehow we usually keep it together, but I hope that we can renew and maintain high standards and then focus on differences in policy and not in personality, particularly in this difficult week to come. Perhaps in the interim, we can take heed of the words of former Rep. Ozment, who said in his retirement speech last year that we need to get to know each other better, so that we can do the people's work in a mature and thoughtful way. I regret that after two years I do not know many of you well, and I hope to rectify this in the months to come.

It is a pleasure and honor to serve with all of you. Have a great day.

Rep. Paul Gardner  
Minnesota House of Representatives District 53A  
(651) 296-2907  
[rep.paul.gardner@house.mn](mailto:rep.paul.gardner@house.mn)  
<http://www.house.leg.state.mn.us/members/members.asp?district=53A>  
[blog: www.paulgardner53a.blogspot.com](http://www.paulgardner53a.blogspot.com)  
Home phone cell line: (612) 227-4582

# **ATTACHMENT**

**3**

**From:** Tom Emmer  
**To:** All DFL Representatives; All GOP Representatives; Carlos Mariani; Pau...  
**Date:** 5/14/2009 11:27 AM  
**Subject:** Re: Colleagues: How not to communicate with each other

Carlos:

Thank you for your e-mail. I appreciate your thoughts and wisdom. You are right on point.

We are all political. We can and do disagree on many different subjects. The debate can and does spill out of the Capitol and into the public square. When it comes to our differences in political philosophy and solutions to the challenges confronting the citizens of our great state and our country, anything is fair game. By contrast, knowingly publishing false and defamatory statements is not excusable under any circumstance. That is especially the case when the false and defamatory statement is directed to someone's reputation in the community and involves a subtle attempt to silence through intimidation. No one should accept such deceitful behavior.

I acknowledge Rep. Gardner's public statement and I accept his need for absolution and forgiveness. I must say, however, that I was quite surprised that he chose to make this matter public before the leadership and the members involved had reached agreement on how to resolve the pending ethics complaint.

I accept Representative Gardner's apology but I don't think he recognizes this issue or the gravity of his actions. This is NOT an issue of how to communicate WITH your colleagues. This is an issue involving the knowing publication of false and defamatory statements about the character and reputation of two members that are doing nothing more than representing their constituents. Again, while it is always fair game to attack the philosophy or idea - it is not acceptable nor excusable to purposely defame the character of fellow members into a public arena where your false statements can never be fully withdrawn or remedied.

I expect that despite your colleague's public acknowledgment, we will have further discussion about the issue that is personal to myself and Representative Buesgens and I also expect that the members of this body will become acutely aware of the ramifications and consequences of our actions - again, feel free to criticize the philosophy, the votes, the approach, the demeanor, the volume of our debate . . . but no one (on either side of the aisle) should ever knowingly publish false and defamatory statements for no purpose other than to damage another member's reputation in the community and to attempt to silence through public intimidation. More importantly, the false statements Representative Gardner published have an impact on my family and potentially on my ability to provide for my family. Again, this is not an issue of how we communicate with each other - this is an issue of public defamation that goes well beyond the confines of this chamber.

>>> Carlos Mariani 5/13/2009 9:59 PM >>>

Thanks Paul - we often learn best from our mis-steps.

The honor of this institution is paramount - it belongs to the people - and so your frank and open apology is a fitting acknowledgment of your respect of that principle. Thank you.

By the way, we don't work to bring the demise of our colleagues in elections - we work to further the ideas we represent by encouraging one another's voters to vote for those ideas in our candidates. We unfortunately often attack one another's personhood in elections but, I believe we do not make our society a better place for doing so. Our ideas should stand up under their own weight.

We are all only passing through this institution, and as we move through we should leave it a healthy, humanistic place the people can always count on to make the tough decisions that keep us together as a people.

Rep Carlos Mariani

>>> Paul Gardner 5/13/2009 11:12 AM >>>

Dear colleagues,

At this time in the session, the pressure builds, the deadlines loom, and the differences among us start to magnify. We're tired and a little cranky. That said, we still need to maintain high standards in our communications to each other, either with the opposite caucus or within our own.

I recently failed to maintain those high standards in some electronic communications regarding two of our members. I have attached a letter that I shared with Rep. Emmer and Rep. Buesgens.

Members, this is one of the strangest workplaces that you can be in. We are co-equals rather than members of a top-down hierarchy. We pledge to do our best for the state and to work together. And yet, it is our mission when we are not in this building to bring upon the demise of our colleagues from across the aisle! Somehow we usually keep it together, but I hope that we can renew and maintain high standards and then focus on differences in policy and not in personality, particularly in this difficult week to come. Perhaps in the interim, we can take heed of the words of former Rep. Ozment, who said in his retirement speech last year that we need to get to know each other better, so that we can do the people's work in a mature and thoughtful way. I regret that after two years I do not know many of you well, and I hope to rectify this in the

months to come.

It is a pleasure and honor to serve with all of you. Have a great day.

Rep. Paul Gardner

Minnesota House of Representatives District 53A

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# **ATTACHMENT**

**4**

May 15, 2009

HAND DELIVERED

Honorable Margaret Anderson Kelliher  
Minnesota House of Representatives  
State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

RE: Gardner Ethics Complaint

Madam Speaker:

On Friday, May 8, 2009, Representative Mark Buesgens and I presented you with an ethics complaint. The Complaint addressed false and defamatory statements published by Representative Paul Gardner. After receiving the Complaint, Representative Gardner did provide us with a letter of apology.

On Tuesday, May 12, 2009, you met with us and Representative Gardner, Representative Seifert and Michael Charboneau to discuss a possible resolution of the Complaint. During the meeting, Representative Gardner acknowledged his actions and expressed remorse. We discussed the indelible realities of the internet and real and potential ramifications of publishing false statements on "Twitter" and "Facebook." You referred to the existing House policy addressing electronic communication(s) and you suggested that members probably needed reminding of the policy. You also discussed the possibility of Representative Gardner publishing his written apology on the internet and that he would make a public apology on the House floor if Representative Buesgens and I agreed to withdraw our Complaint. At the conclusion of our meeting, it was agreed that Representative Seifert would discuss the matter with his Executive Board and that we would reconvene to confirm whether we would agree to withdraw our Complaint if Representative Gardner followed through on the proposed publication of his written apology and a public apology on the House floor.

On Wednesday, May 13, 2009, without a conclusion to our meeting (and without warning) Representative Gardner published his written apology to all members by e-mail during a House floor session. Unfortunately, Representative Gardner's e-mail led unaware members to believe that he was apologizing for a mistake he made in his communications with a couple of fellow members. On Thursday, May 14<sup>th</sup>, in response to an e-mail from Representative Mariani, I attempted to clarify for members that Representative Gardner's conduct went well beyond an excusable mistake in how he communicated with colleagues. Later that evening, the members received an e-mail from you reminding of written policy relating to electronic communication. I responded directly by thanking you for sending the reminder.

Yesterday, in the morning, Representative Buesgens and I met with Mr.



Charboneau at his request. I understood Mr. Charboneau was following up on our earlier meeting. Neither Representative Buesgens, nor I ever received a follow up from Representative Seifert with any direction from House GOP leadership.

During our meeting with Mr. Charboneau, we expressed our concerns with Representative Gardner's publication of the matter without explanation to the members before the parties to our meeting on the 12<sup>th</sup> had agreed how the matter would best be handled. Despite our concerns, we advised Mr. Charboneau that if Representative Gardner followed through on the public apology (so members understand the gravity of his actions and to eliminate any misunderstanding) we would agree to withdraw our Complaint as you requested. At the conclusion of this meeting, we understood the matter would be resolved before the end of the day Friday.

At approximately 9 pm on Friday night, Representative Buesgens and I were called to a meeting in the Clerk's Office with Mr. Charboneau. At that meeting, Mr. Charboneau advised that Representative Gardner felt he had generally complied with the intent of the proposal for resolution that you had negotiated and that he was not inclined to follow through with his public apology. Considering our discussions and your prompt and good faith handling of this serious matter, I was - to say the least - surprised and disappointed by Representative Gardner's sudden change of heart.

As I explained to Representative Mariani, I accept Representative Gardner's apology but I think it is clear that he fails to recognize the real issue. This is NOT an issue of how to communicate WITH your colleagues. This is an issue involving the knowing publication of false and defamatory statements about the character and reputation of two members that are doing nothing more than representing their constituents. No one will dispute that it is always fair game to attack a philosophy or legislative proposal. Similarly, no one can disagree that it is not acceptable nor excusable to purposely defame the character of fellow members into a public arena where the false statements can never be fully withdrawn or remedied.

I understood your suggested resolution was sincere. I think it extremely unfortunate for the institution and everyone involved that Representative Gardner was unwilling to follow through and now that the matter must move forward. I do hope this is not a foreboding of future dealings between members involved in these matters. Again, we should never hesitate to publically and vigorously criticize the philosophy, the votes, the approach, the demeanor, and the volume of each other's debate . . . but no one (on either side of the aisle) should ever knowingly publish false and defamatory statements for no purpose other than to damage another member's reputation in the community and to attempt to silence a member through public intimidation. When false statements are published that have an impact on any member's family and potentially on a member's ability to provide for his/her family, there must be consequences.

Again, this is not an issue of how we communicate with each other.- this is an issue of public defamation that goes well beyond the confines of this chamber.

Respectfully submitted,

Representative Tom Emmer  
District 19B

May 11, 2009

The Honorable Tom Emmer  
301 State Office Building  
St. Paul, MN 55155

The Honorable Mark Buesgens  
307 State Office Building  
St. Paul, MN 55155

Dear Representatives Emmer and Buesgens:

As the legislative session winds down, tensions often run high. As members of the majority and the minority do their best to stand up for their principles and see the session to a timely and successful conclusion, there will be friction between the caucuses and among individual members. Despite these pressures, it is the responsibility of all members of the Minnesota House of Representatives to conduct themselves with the highest level of professionalism and decorum, and to focus on differences of policy and not on personalities.

On Friday, May 8<sup>th</sup>, I failed in that responsibility. Using a new social networking framework – Twitter – I sent out two messages that were disparaging of you and Representative Buesgens personally. I apologize for this transgression. We often get emotional during important debate, and tempers can flare, but that can be no excuse. Late Friday, I deleted the offending “tweets” so that they are no longer on the system.

Having reflected on this event for several days, I pledge to do my utmost to comply not just with the letter but the spirit of our House rules and standards of decorum. My hope is that during these final tense days of the session, this incident will help focus all members on the need to elevate the political debate to a higher level.

During these last days of reflection, I also recalled that it was Rep. Emmer who was the first of the Republican House caucus to greet me on the first working day of my first term. You went out of your way, and I at once felt welcome in the House. I hope that we might renew that initial camaraderie and ask for your pardon.

I wish you the best for the remainder of the session.

Sincerely,

Paul Gardner