

## Subcommittee on Ethical Conduct

Wednesday, February 9, 2011

Present: Senator Michelle Fischbach

Senator Linda Scheid

Senator Kathy Sheran

Senator Bill Ingebrigtsen

Senator Fischbach called the subcommittee to order at 3:01 pm

Senator Fischbach briefed the subcommittee on the procedures for this meeting and explained the complaint. Explained the purpose of a probable cause hearing

Senator Fischbach made mention of the unprecedented appearance by Senator Latz as "in lieu" of counsel and explained how the subcommittee would continue with this.

Senator Newman's counsel, Fritz Knaak objected to Senator Latz's appearance "in lieu" of counsel and explained that he must either be counsel or added as a fourth complainant.

Senator Fischbach asked for clarification about what Mr Knaak would like from Senator Latz or action the subcommittee. Mr. Knaak wanted it to be made known on the record about his objection.

Senator Fischbach made note of Mr. Knaak's objection

Senator Fischbach proceeded with procedure explanation and described the "Order of Business" that was provided to the subcommittee members, the complainants, Senator Newman, and the public.

Senator Fischbach asked for any questions.

Mr. Knaak questioned procedure and lack of the use of witnesses used. He also acknowledged that the email was sent and offered to stimulate to the use of the email.

Senator Latz was given the opportunity to respond to Mr. Knaak and his objection to him as appearing in lieu of counsel

Senator Sheran requested that all involved speak clearly into the microphones.

Senator Ingebrigtsen wanted it to be made known that he was concerned by Senator Latz acting "in lieu" of counsel. Brought into question the Senator Latz's.

Senator Ingebrigtsen requested Senator Latz explain his role and his use of "in lieu of"

Senator Latz explained "in lieu of". Made mention that he was not actual legal counsel, but was going to present the complaint for the complainants, offer testimony, will question Senator Newman when appropriate. Senator Latz requested that he remain "in lieu of" counsel.

Senator Scheid asked Senator Latz if his intention would be to refrain from having any input if the Full Senate is asked to make a determination. Would he remove himself from the Full Senate Action?

Senator Latz responded, "no". But he would be willing to act as a complainant and displayed an amended complaint with him as the fourth named complainant.

Senator Ingebrigtsen questioned Senator Latz's statement about how he would question Senator Newman and made reference to a statement where Senator Latz likened the questioning of Senator Newman to a traditional Senate Floor debate or questioning.

Senator Ingebrigtsen moved that Senator Latz not be permitted to act as "in lieu of" counsel.

Senator Ingebrigtsen made the following motion: I move that the subcommittee prohibit Senator Latz from appearing on behalf of the complainants.

Senator Latz spoke to Senator Ingebrigtsen's motion and offered an amended complaint including him.

Senator Sheran moved that Senator Latz's sworn and amended complaint be included and that he be allowed to proceed.

Senator Latz provided the subcommittee and the public with an amended complaint.

Motion prevailed

Senator Fischbach explained Senator Sheran's motion

Senator Fischbach swore in the witnesses at 3:28pm

Senator Pappas made her opening statement; requesting the subcommittee to review the facts and how the conduct in the complaint violated Senate Rule 56.3

Senator Fischbach asked for any questions

Senator Ingebrigtsen discussed Senator Pappas' statement and her mention of campaign finance issues involved in the named email.

Senator Pappas acknowledged that she is unsure as to the use of campaign finance records in regard to the email.

Senator Fischbach indicated that Mr. Knaak had no questions.

Senator Latz wanted to present documentation.

Mr. Knaak wanted to object to the introduction of documents that he or Senator Newman have not seen.

Senator Latz responded to Mr. Knaak's objection and asked again to include documents.

Senator Fischbach is not accepting evidence on the record unless the subcommittee would like to see the documents. She reminded the subcommittee that this is not a judicial hearing, but a probable cause hearing. Senator Fischbach looked to the subcommittee for advice.

Senator Scheid said that the documents go to probable cause and she would like to see all the documents.

Senator Sheran seconded Senator Scheid's comments.

Senator Ingebrigtsen indicated a willingness to review the documents in question.

The Subcommittee accepted the documents from the complainants. The committee page distributed the documents to the members and the public. The complainants were requested when to provide additional copies, if needed.

Senator Newman's counsel, Mr. Knaak, made their opening statement. Proceeded to explain that the conduct described on the complaint:

- Not a violation of Senate rules

- What Senator Newman did is typical of Senate procedures

- Discussed the facts of the email

- Alleged that nothing in the complaint was a violation of Senate Rules

- Spoke to the complainants' documents that were distributed, described them to:

  - Purely political blogging and politically motivated

- Asked repeatedly for a Senate Rules to be shown that Senator Newman actually violated

- Suggested that the issue of the email should be dealt with internally, among staff, possibly making a new staff policy.

- Declared that Senator Newman had suffered political ramifications and embarrassment

Mr. Knaak stood for questions

Senator Fischbach asked the subcommittee for any questions

Senator Scheid spoke to how Senate Rule 56.3 is specific "accepted norms" and has never seen a staff member in all her years here that has done anything like this. She asked Mr. Knaak to respond to that point.

Mr. Knaak responded about what are and are not "accepted norms". Declared that it must be specific in the Senate Rules and this event is not specifically addressed in the Senate Rules. Questioned whether or not ethics were violated.

Senator Scheid wanted to discuss what “disrepute” means and whether or not this email made the public cynical.

Mr. Knaak responded to the discussion of cynicism.

Senator Sheran asked several questions of Mr. Knaak:

Mr. Knaak I want to be sure I understand what you are asking us to believe and accept from your remarks on behalf of Senator Newman

Senator Sheran responded: you are asking us to believe that restricting access to our offices due to lack of political support is a senate norm and that it is the norm that Senators enact this policy?

Senator Sheran: you are asking us to accept that unless a behavior is specifically stated as a violation of our ethical conduct in the Senate Rules it cannot be considered an ethical violation under rule 56.3?

Senator Sheran: you are saying that even if Senator Newman did direct his staff to enact this policy it is not a violation therefore no finding can be made of probable cause?

Mr. Knaak responded affirmatively

Senator Sheran made it clear that she did not accept these assertions in regard to her Senate Colleagues behavior

Senator Ingebrigtsen discussed: what are we going to do when we do not agree with members of the public? He wanted it known that if we think that this isn't happening it is just not true. It also stated that there will be political ramifications for Senator Newman.

Senator Fischbach asked if the subcommittee wanted to deliberate further before asking additional questions. The Subcommittee members decided not to continue discussion.

Senator Newman provided his statement, Senator Newman stated that he had not spoken with his Legislative Assistant about why she sent the email or how she checked campaign finance records.

Senator Fischbach asked the subcommittee members if they had any questions.

Senator Scheid asked if his Legislative Assistant, Kim Kelley, had worked on his campaign.

Senator Newman responded that he believed she marched in a parade in her hometown for him.

Senator Ingebrigtsen wanted to know how the Legislative Assistant became Senator Newman's aide.

Senator Newman said she was hired on his behalf and he was not her direct employer

Mr. Knaak made his last statement within his presentation.

Senator Fischbach explained how questioning would proceed.

Senator Latz began to question Senator Newman and Mr. Knaak regarding what was presented in their presentation.

Senator Latz asked a variety of questions about Senator Newman's knowledge regarding his legislative assistant

Senator Fischbach questioned Senator Latz on this line of questioning and how it goes to probable cause.

Senator Latz made known that Senator Fischbach, as chair, had allowed the subcommittee to act as a judicial hearing.

Senator Latz asked for leeway in questioning, and said he did have a point to be made through his questions.

Senator Fischbach explained the process of questioning and recognized Senator Latz to allow him to continue

Senator Latz's questioning continued. He questioned Senator Newman regarding Senator Newman's knowledge of Kim Kelley's background, previous work experience, political involvement, how she came to be his aide and what her job objectives are.

Mr. Knaak asked for clarification as to how this line of questioning went to probable cause.

Senator Fischbach asked Senator Latz about the specifics of finding probable cause through the above line of questioning.

Senator Latz continued to question Senator Newman concerning Kim Kelley.

Mr. Knaak questioned Senator Latz's questions based on probable cause.

Senator Fischbach asked subcommittee members about Senator Latz's line of questioning and if it should continue.

Senator Ingebrigtsen requested Senator Latz to get to the point

Senator Sheran assumed a foundation of probable cause was being set and was looking for a point to be made clear.

Senator Scheid wanted it to continue because it goes to probable cause

Senator Latz continued to question Senator Newman concerning Kim Kelley

Senator Ingebrigtsen asked Senator Latz to repeat a question and wanted to know how a Senator's specific policy on legislation could not be the Senator's own policy. Declared that this line of questioning was out of line.

Senator Fischbach questioned how long Senator Latz required for questioning..

Senator Latz said the line of questions goes to Senator Newman's control of his office

Mr. Knaak explained this line of questiong is not about probable cause but investigative in nature.

Senator Latz explained how it goes to probable cause

Senator Fischbach asked Senator Latz to focus his line of questioning and to remember that this not a courtroom and Senators on the committee understand how individual staff members are employed.

Senator Latz continued with questioning concerning Ms Kelley.

Senator Fischbach raised concerns at Senator Latz regarding his line of questioning and where it was going

Senator Latz said that it was determining that these facts go to probable cause

Senator Fischbach explained that it is the subcommittee's option to determine what is probable cause and wanted to know whether or not Senator Latz's line of questioning would be helpful

Senator Latz said that the subcommittee should decide probable cause and what weight to give his line of questioning and how it will help determine probable cause

Senator Latz continued to question Senator Newman

Senator Ingebrigtsen took the gavel at 5:13pm

Senator Ingebrigtsen moved a brief recess at 5:17pm to allow staff to change the recording card.

Senator Fischbach reconvened the meeting at 5:26pm

Senator Latz continued his line of questioning, similar to previously

Senator Scheid stated that she is troubled by the questions and felt that they must be answered by Kim Kelley and not Senator Newman

Senator Scheid asked the subcommittee if they could have Kim Kelley answer the questions.

Senator Fischbach discussed with the subcommittee about past precedents, the subpoena power of the subcommittee, the difference between probable cause and investigation. Also what are the options to compel Kim Kelley.

Senator Ingebrigtsen took the gavel at 5:37pm

Senator Fischbach consulted privately with Senate Counsel, Tom Bottern

Senator Fischbach took the gavel at 5:39pm

Senator Latz continued to question Senator Newman

Senator Fischbach directed Senator Latz about probable cause connection and to limit his questions to the scope of probable cause.

Senator Latz continued to question Senator Newman

Senator Latz requested that a campaign finance report be distributed to the subcommittee

Senator Fischbach said it does not go to probable cause and it is investigative; she permitted Senator Latz to distribute the report to the subcommittee

Senator Ingebrigtsen questioned whether Senator Latz knew of any indication that Senator Newman accessed the campaign finance record.

Senator Latz answered in the negative

Senator Latz and complainants ended questioning

Senator Fischbach explained the rebuttal process to the subcommittee

Complainants made a rebuttal

Senator Kelash spoke to how the email was offensive to him and that it hurt the appearance of the Senate

Senator Dibble spoke to Mr. Knaak's comments and how they make the Senate appear. He also said that this is not how his office operates. Made reference to the Minnesota Constitution and how members are sworn to uphold it. He also agreed Senator Kelash and objected to Mr. Knaak's comments that the complaint was a witchhunt brought by the Minnesota Nurses Association

Senator Latz asked the subcommittee to disregard Mr. Knaak's comments because he was acting as a witness. Made a direct reference to 56.3 and how the public views the Senate

Senator Latz asked for further investigation and to find probable cause

Complainants ended rebuttal

Mr. Knaak stated his rebuttal and explained how the subcommittee must find no probable cause

Mr. Knaak ended rebuttal

Senator Ingebrigtsen moved that the subcommittee go into executive session for the purpose of determining probable cause

The subcommittee discussed what happens in executive session; what it means; what will be determined.

Senator Fischbach spoke to the subcommittee regarding the executive session procedures

The subcommittee received direction and explanation from Senate Counsel, Tom Bottern. Mr. Bottern said that if the subcommittee continues with an investigation the executive session will be made public

Senator Ingebrigtsen's motion prevailed

Senator Fischbach decided the subcommittee would recess for five minutes to allow time for the public to clear the room and change the recording card at 6:28pm

The subcommittee reconvened in executive session at 6:37pm

Senator Fischbach explained executive session to the subcommittee

Senator Fischbach opened the subcommittee to discuss and bring questions.

Senator Sheran discussed facts versus things in dispute and what really is a violation of Senate Rules.

Senate Counsel, Tom Bottern, gave direction about what the options are for the subcommittee action on the complaint. It was also explained what direction the subcommittee should be looking to and the role the subcommittee plays in making a decision

The Subcommittee discussed the matter of probable cause

Senator Scheid stated that she believes Senator Newman, but also believed that conduct described in the complaint brought "disrepute" to the Senate. She also believes that Senator Newman did not have knowledge of the email

Senator Ingebrigtsen agreed with Senator Scheid's comments, and stated that no probable cause is apparent

Senator Sheran stated that Senator Newman's testimony was compelling, but she would like to hear from his Legislative Assistant to affirm Senator Newman's testimony and to make sure the subcommittee did its due diligence.

The Subcommittee discussed bringing the Legislative Assistant into the subcommittee to be questioned; the subcommittees subpoena power; how it was historically used and requested Senate Counsel to provide further information

The Subcommittee determined that the complaint was not issued against the Legislative Assistant

The subcommittee discussed how to proceed if it was agreed that conduct described in the complaint was an ethical violation and whether the subcommittee must find probable cause.

The subcommittee continued deliberations

The subcommittee discussed how to and what it would mean to compel a staff member to testify



The subcommittee discussed Senate Rule 56 and how it relates to Senator Newman and whether he knowingly harmed and brought the Senate into disrepute

Senator Sheran discussed Senate Rule 56.3 and how Senator Newman violated the ethical norms

Senator Sheran spoke to how the subcommittee must get confirmation that Senator Newman had no knowledge and did not give direction to the Legislative assistant, and to do this they must bring in the legislative assistant but it would not bring an ethical conduct charge against her

The subcommittee discussed how no Senator would have such a policy in their office denying meetings based on donations to an opponent and how members should respect the Senate. Members questioned whether there is there a specific rule prohibiting Senator Newman's conduct

Senator Sheran suggested the subcommittee move into an investigation

The subcommittee discussed Senate Rule 55.4 and whether the subcommittee should make a decision

The subcommittee discussed the three options with Senate Counsel, Tom Bottern, and questioned whether the subcommittee could proceed with an investigation without finding probable cause

Senator Sheran made a motion to defer action until the subcommittee can speak with the legislative assistant, Kim Kelley, and then make a probable cause finding

The subcommittee discussed Senator Sheran's motion and looked to Senate Counsel, Tom Bottern, about probable cause findings and how the subcommittee can conclude its proceedings

The subcommittee discussed additional options instead of bringing the legislative assistant, Kim Kelley, before the subcommittee and how to handle Senator Newman

It was questioned by the subcommittee whether Senator Newman actually engaged in conduct that was a violation of ethics.

Senator Sheran discussed and asked for a carefully worked apology and declared that the conduct described in the complaint brought "disrepute" to the Senate

The subcommittee discussed the merits of Senator Sheran's suggestions

Senator Sheran withdrew her motion to move forward with an investigation and compel the legislative assistant to appear before the subcommittee

Senator Fischbach suggested finding no probable cause if an apology is issued and received further advice from Senate Counsel, Tom Bottern, regarding past ethical conduct complaints and how probable cause was found if any apology was issued.

The subcommittee discussed the above option

The subcommittee questioned whether it could find no probable cause and still require an apology. Senator Ingebrigtsen stated that it cannot be had both ways.

Members of the subcommittee questioned whether what is described in the complaint is an ethics violation, but questioned how the subcommittee can move forward

The subcommittee discussed advice from Senate Counsel, Tom Bottern concerning a statement from the subcommittee finding no probable cause but that the subcommittee considers unethical conduct of any Senate office establishing a policy like the policy described in the complaint

The subcommittee discussed a formal resolution be drafted by Senate Counsel, Tom Bottern, in accordance with the will of the subcommittee

Senator Ingebrigtsen moved to find no probable cause

Motion prevailed

Senator Sheran moved to end the executive session and return to a public session

Senator Fischbach recessed to allow Senate Counsel, Tom Bottern, time to draft a resolution and return in a public subcommittee at 8:00pm

Senator Fischbach reconvened the subcommittee at 8:08pm

Senator Fischbach explained what took place during the executive session

The subcommittee discussed the formal resolution drafted by Senate Counsel, Tom Bottern.

The subcommittee moved the resolution

Motion prevailed

Senator Scheid moved that the executive session be made public

Motion prevailed

Senator Ingebrigtsen moved adjournment

Motion prevailed

The subcommittee adjourned at 8:11pm.

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Senator Michelle Fischbach

  
Senator Kathy Sheran

  
Senator Linda Scheid

  
Senator Bill Ingebrigtsen