



Materials relating to the Senate Subcommittee on Ethical Conduct investigation of the conduct of Senator Scott Newman, 2011.

1. Complaint (February 2, 2011)
2. Order of Business, Subcommittee on Ethical Conduct (February 9, 2011)
3. Minutes, Subcommittee on Ethical Conduct (February 9, 2011)
4. "A Resolution Relating to Ethical Conduct; Conduct of Senator Scott Newman," Subcommittee on Ethical Conduct (February 9, 2011)
5. Letter to Senator Michelle Fischbach, Chair of the Senate Rules Subcommittee on Ethical Conduct, from Frederick Knaak, Attorney. "RE: In Re Purported Complaint Against Senator Scott Newman" (February 9, 2011)
6. Memo to Senator Michelle Fischbach, Chair of the Senate Rules Subcommittee on Ethical Conduct, from Thomas Bottern, Senate Counsel. "Procedures Applicable to a Probable Cause Hearing Held by the Subcommittee on Ethical Conduct" (January 31, 2011)
7. News articles. Note: the online version of the document does not include the compiled news articles, due to copyright considerations.

Materials compiled by the Minnesota Legislative Reference Library from committee records from the Senate Rules & Administration, Subcommittee on Ethical Conduct.



Senate

State of Minnesota

February 2, 2011

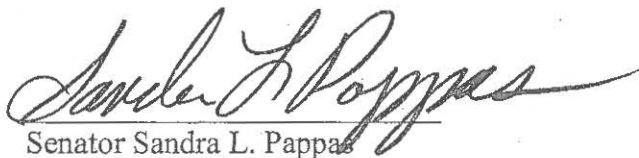
Senator Michelle Fischbach, Chair
Senate Rules Subcommittee on Ethical Conduct
226 State Capitol Building
75 Reverend Martin Luther King Jr. Blvd.
St. Paul, MN. 55155

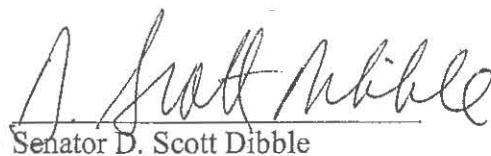
Dear Madam Chair,

Attached to this letter is a complaint regarding the conduct of Senator Scott J. Newman. This complaint is prepared pursuant to the provisions of Senate Temporary Rule 55. By the delivery of this letter and attached complaint, it is hereby filed pursuant to Rule 55. We ask for the Subcommittee on Ethical Conduct to investigate these matters and take action in accordance with this Rule.

We look forward to the Subcommittee acting on this complaint.

Sincerely,


Senator Sandra L. Pappas


Senator D. Scott Dibble


Senator Kenneth S. Kelash



**COMPLAINT
TO THE
SUBCOMMITTEE ON ETHICAL CONDUCT
REGARDING THE ACTIONS
OF
SENATOR SCOTT J. NEWMAN**

Senators Sandra Pappas, Scott Dibble, and Kenneth Kelash, each being first duly sworn, state and allege under oath the following based upon information and belief:

1. On January 20, 2011 Senator Scott J. Newman disseminated from his Senate office an email to the Minnesota Nurses Association (MNA) detailing that he would not meet with members of their organization due to the fact campaign contributions were made to Senator Newman's opponent during the 2010 election cycle.

2. This email stated that Senator Newman would not see any organizations (individuals) that donated to or supported his election opponent.

3. This email stated that Senator Newman's Legislative Assistant, Kim Kelley, confirmed MNA's position during the 2010 Senate District 18 campaign cycle "[a]fter some careful checking".

4. This email was disseminated on Senate equipment by Senator Newman's Legislative Assistant, Kim Kelley, and appears to be at the direction of the Senator.

5. Senate Temporary Rule 56.1 states that "Members shall adhere to the highest standard of ethical conduct".

6. When a Senator equates access based upon who may have made a legal contribution in an election contest or who supported a candidate due to an issue preference, party affiliation or membership in an association, this member conducts him or herself improperly and betrays the public trust.

7. The people of Minnesota expect the members of the Minnesota Senate to adhere to the highest ethical standards, impart fairness, and be open minded to the concerns of all constituencies.

8. Should the citizens of Minnesota see their elected officials segregating their interests due to political affiliation, the integrity of both individual members and the reputation of the Senate is damaged.

9. Senate Temporary Rule 56.3 provides the standard that "Improper conduct includes conduct...that violates accepted norms of Senate behavior, that betrays the public trust, or that tends to bring the Senate into dishonor or disrepute."

10. It is your complainants' belief that Senator Scott J. Newman violated Senate Temporary Rule 56.


11. Your complainants ask that the Subcommittee on Ethical Conduct investigate the details of this matter and interview both Senator Newman and his Legislative Assistant concerning who ordered the implementation of this policy.

12. Your complainants ask that the Subcommittee on Ethical Conduct find that Senator Scott J. Newman has violated Senate Temporary Rule 56 and that it recommends such disciplinary action as the Subcommittee finds appropriate.

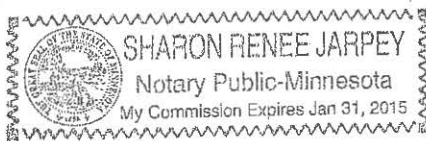
Date: February 2, 2011

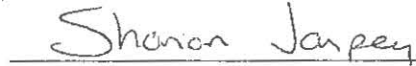

Senator Sandra L. Pappas


Senator D. Scott Dibble


Senator Kenneth S. Kelash

Subscribed to, and sworn before me, a notary public, on February 2, 2011.




Sharon Jarpey

-----Original Message-----

From: kim.kelley@senate.mn [mailto:kim.kelley@senate.mn]
Sent: Thursday, January 20, 2011 2:00 PM
To: Eileen Gavin
Subject: [Eileen Gavin] Meeting

Kim Kelley sent a message using the contact form at
<http://www.mnnurses.org/contact/staff/eileen-gavin>.

Hi Eileen-

Unfortunately, Senator Newman will not see any organizations that donated to/supported his opponent Hal Kimball. After some careful checking, I discovered that the MNA had donated to Kimball's campaign. Your association will be unable to schedule an appointment with Senator Newman.

Kim Kelley
Legislative Assistant

Subcommittee on Ethical Conduct

Order of Business

February 9, 2011

1. Call to order
2. Procedural background
 - a. Complaint filed January 27, 2011 (amended complaint filed February 2, 2011)
 - b. Senator Fischbach's office provided information to both parties and members about the proceedings (memo from Senate Counsel)
3. Explanation of plan for today
4. Swear in witnesses
5. Presentation by complainants (and counsel, if any)
 - a. Questions from the subcommittee
 - b. Questions from Senator Newman (and counsel, if any)
6. Presentation by respondent
 - a. Questions from the subcommittee
 - b. Questions from complainants (and counsel, if any)
7. Rebuttal evidence by complainants
8. Rebuttal evidence by Senator Newman
9. Deliberation by the subcommittee

2.

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 questioning 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 subcommittee's 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.



Senator Michelle Fischbach



Senator Kathy Sheran



Senator Linda Scheid



Senator Bill Ingebrigtsen

To: Subcommittee Members

From: Subcommittee on Ethical Conduct Staff

Date: Thursday, February 10, 2011

Subject: Staff Explanation of Subcommittee on Ethical Conduct Audio Recordings

All Minnesota Senate Committees use an electronic sound card to record all committee and subcommittee hearings. This morning it came to our attention that there were technical issues surrounding the recordings for the Senate Rules Subcommittee on Ethical Conduct that was held on Wednesday, February 9, 2011.

Two of the three sound cards had separate technical malfunctions. The first sound card inexplicably stopped functioning after one hour and 45 minutes and 52 seconds. By the time staff discovered that the sound card was no longer recording roughly 25 minutes of the hearing had elapsed, at which time the subcommittee recessed to put in a new recording sound card.

The second sound card recorded the remainder of the public session of the subcommittee.

The second sound card was removed after the subcommittee made a motion to discuss the ethical conduct complaint in executive session and was replaced with a third sound card.

The staff ensured that the third sound card appeared to be recording. After the hearing adjourned, we determined it was not picking up any audible sounds. After we examined the third sound card, we determined that it was functioning for 53 minutes and 16 seconds but no words or sounds were recorded.

During the executive session, a motion was made to adjourn the executive session portion of the subcommittee hearing and informed the public about the findings of the Subcommittee. At this time, the third sound card was removed and replaced with the second sound card to differentiate between the executive session and the public session.

At the time staff carefully observed standard procedures for recording and assumed that the sound cards recorded the subcommittee in its entirety. Please be aware that detailed meeting minutes were taken and the minutes are attached and will be made public.

We regret that this happened. Throughout the entire hearing we have made every effort to ensure that the meeting minutes provide a detailed picture of what the subcommittee discussed.

**COMPLAINT
TO THE
SUBCOMMITTEE ON ETHICAL CONDUCT
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Senator Ron Latz, being first duly sworn, states and alleges under oath the following based upon information and belief:

1. On January 20, 2011 Senator Scott J. Newman disseminated from his Senate office an email to the Minnesota Nurses Association (MNA) detailing that he would not meet with members of their organization due to the fact campaign contributions were made to Senator Newman's opponent during the 2010 election cycle.
2. This email stated that Senator Newman would not see any organizations (individuals) that donated to or supported his election opponent.
3. This email stated that Senator Newman's Legislative Assistant, Kim Kelley, confirmed MNA's position during the 2010 Senate District 18 campaign cycle "[a]fter some careful checking".
4. This email was disseminated on Senate equipment by Senator Newman's Legislative Assistant, Kim Kelley, and appears to be at the direction of the Senator.
5. Senate Temporary Rule 56.1 states that "Members shall adhere to the highest standard of ethical conduct".
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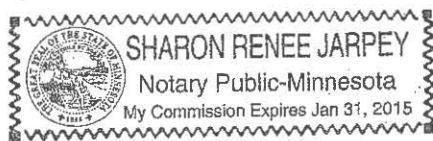
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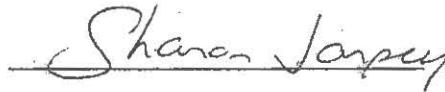
12. Your complainants ask that the Subcommittee on Ethical Conduct find that Senator Scott J. Newman has violated Senate Temporary Rule 56 and that it recommends such disciplinary action as the Subcommittee finds appropriate.

Date: February 9, 2011.


Senator Ron Latz

Subscribed to, and sworn before me, a notary public, on February 9, 2011.





A resolution relating to ethical conduct; conduct of Senator Scott Newman.

WHEREAS, the Subcommittee on Ethical Conduct of the Committee on Rules and Administration, in response to complaints submitted by Senators Sandra Pappas, D. Scott Dibble, Kenneth Kelash, and Ron Latz dated January 27, 2011, February 2, 2011, and February 9, 2011, met on February 9, 2011, to consider whether the conduct of Senator Scott Newman in regard to an e-mail sent from Senator Newman's office dated January 20, 2011, and received by Eileen Gavin of the Minnesota Nurses Association that stated he would not see any organization that donated money to or supported his most recent election opponent constituted improper conduct within the meaning of Senate Rule 56.3; and

WHEREAS, the Subcommittee on Ethical Conduct, meeting in executive session, has found that the complaint states facts that, if true, would support a finding of probable cause that Senate Rule 56.3 was violated, specifically including the description of a policy preventing an individual providing support or donations to a Senator's campaign opponent from obtaining any access or opportunity to meet with the Senator; and

WHEREAS, Senator Newman's testimony at the February 9, 2011, hearing that he did not have any prior knowledge concerning the e-mail dated January 20, 2011, or provide any instruction or policy to his staff regarding the preparation of such an e-mail was truthful and credible;

NOW THEREFORE,

BE IT RESOLVED, by the Subcommittee on Ethical Conduct:

1. The complaints be dismissed.

KNAAK & ASSOCIATES, P.A.

Attorneys at Law

Frederic W. Knaak*
Donald W. Kohler

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**Also Licensed in
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Of Counsel
Thomas M. Dailey, P.A.
Matthew E. Ludt
Joseph B. Marshall

February 9, 2011

Senator Michelle Fischbach, Chair
Senate Rules Subcommittee on Ethical Conduct
226 State Capitol Building
75 Reverend Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: In Re Purported Complaint Against Senator Scott Newman

Dear Senator Fischbach:

I was retained by Senator Scott Newman last week to assist him in his effort to respond to the "complaint" that has apparently been filed against him. I have been a practicing attorney in this state for 32 years and have extensive knowledge of election and public law. Moreover, I served 10 years in the Minnesota Senate and am very familiar with the operation of the Senate and its rules.

This matter is set for an initial probable cause hearing in your subcommittee at 3:00 p.m. on February 9.

I have to begin by pointing out that, in order to initiate an investigation under Rule 55.3 of the current Rules of the Senate, the subcommittee must have before it a sworn complaint "under oath". Until midday Tuesday, no such document existed. The letter I have been given a copy of did contain a notary's stamp and signature, but no indication that the statement is intended to be made "under oath," or "penalty of perjury" or any other basic indication of its sworn nature or that its contents are attested to as sworn testimony by its authors. Rather, the document was couched repeatedly as a "formal request".

An attempt now, apparently, has been made to formally remedy this obvious defect and an "amended" Complaint has now been submitted to your subcommittee. This new "complaint", it should be noted, was received by Senator Newman a mere 24 hours before the scheduled hearing.

This "amended complaint" is also defective.

Basic due process would require two things here: a clear statement of the charges and alleged misconduct as well as a clear statement of the allegedly wrongful conduct.

As best as I can tell from the "complaint", Senator Newman's staff member is alleged to have written an email to a special interest group representative refusing to schedule an appointment with the Senator because she had been identified as part of a group opposing the Senator's election.

For the moment and the sake of argument, let's assume that to be true.

Evidently (although it's not clear) the point of the "complaint" is that such an email from Senator Newman's staff member is a violation of Rule or law. Basic procedural fairness and due process would require that the Complaint itself spell out plainly **which rule**, or **which law** is allegedly being violated. It simply cannot be enough that other members of the Senate can bring a complaint such as this for no other reason that, whatever their motivation, they don't like the way another member of the body dealt with someone who was their own political ally. No specific statute, law or other precedent is invoked.

Instead, the "complaint" suggests that, somehow, the general standards of Rule 56.1 or 56.3 can be invoked here against Senator Newman. But where is the precedent or established standard that suggests that the above-noted staff conduct fails to embody "the ethical conduct as embodied in the Minnesota Constitution, state law and (the Senate's) rule?"

And where is the precedent or established standard that finds such conduct violative of "a rule or administrative policy of the Senate, (or that) violates accepted norms of Senate behavior, (or that) betrays the public trust...or tends to bring the Senate into dishonor or disrepute?"

What evidence, on the face of the "complaint", can be pointed to that shows a violation of a recognized norm or standard?

There is only one answer to these questions, and it's a simple one: no such standard or precedent is in the complaint. Nothing of the sort has even remotely been violated here.

Senator Newman has already repeatedly stated in public and, through me, repeats here that the statement allegedly made by the staff member in the email did not come from him, was not sent with his approval, nor did it in any way reflect the policy of his office in dealing with special interest groups or lobbyists.

He want this point plainly understood, even though it is not relevant for purposes of this complaint.

It cannot be said enough that the email, standing alone, presents no violation of law or Senate rule. Even if Senator Newman had refused to meet with a political opponent, there is nothing in rule or law that he would have violated in doing so.

There is nothing in the "evidence" before your subcommittee that says otherwise.

The Rules require your subcommittee to consider the issue of probable cause. This, under normal practices, would involve a decision on what is known as "the face of the complaint." This would mean that if the allegations contained in the written complaint are taken as true, a violation of Senate rules could have occurred.

Since, as we've pointed out, the conduct alleged, even if true, would not, under any circumstances, constitute a violation of the Senate rules as they have been interpreted to date, the Subcommittee must, in our view, make a determination of "no probable cause" in this matter.

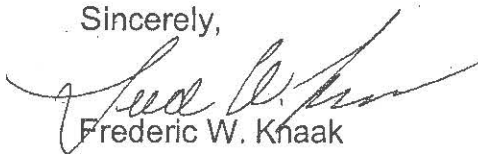
Late on Tuesday, Senator Newman advised me of yet another late correspondence from the complainants in this case. As I understand it, they are requesting testimony from two union representatives and want Senator Newman's staff person available to testify. They have also requested they be allowed to have Senator Latz present as legal counsel and to assist them in any subsequent presentation of their case.

As to the latter point, it is my view that Senator Latz has a conflict of interest. As a member of the Senate, he is part of the body with ultimate disciplinary authority over its members---in this case, Senator Newman. If he intends to act as an attorney in this case, I believe he would need to be excused from participating as a member of the Senate from any subsequent proceedings on the matter. I believe, under the Rules, this would have to occur prior to his participation at this hearing.

I do not see any relevance in testimony at the probable cause hearing itself. It is our view that the entire purpose of these accusations is to cause some form of political embarrassment to Senator Newman. Turning the simple probable cause hearing into an initial trial before a determination as to probable cause is, in our view, a transparent effort to attempt to create legitimacy in a process that, to date, has none.

It would be unfortunate, Senator Fischbach, if this kind of senseless, political game playing were to set the tone for relations among Members for the rest of the session. I would strongly that you and the members of your subcommittee promptly, and without hesitation, recognize the absence of any colorable complaint in this matter and dismiss it as being without probable cause.

Sincerely,



Frederic W. Knaak
Attorney at Law

Cc: Senator Newman

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TO: Senator Michelle Fischbach

FROM: Thomas S. Bottern, Senate Counsel (651/296-3810) *TJB*

DATE: January 31, 2011

RE: Procedures Applicable to a Probable Cause Hearing Held by the Subcommittee on Ethical Conduct

Senators Pappas, Dibble, and Kelash have filed a complaint with the Subcommittee on Ethical Conduct under Senate Rule 55.3. The complaint was received by your office on January 27. You have requested a brief description of the procedures applicable to the hearing required under Senate Rule 55.4.

Under Senate Rule 55.4, the Subcommittee on Ethical Conduct is charged with holding a hearing within 30 days after receiving a complaint, and either:

- (1) making a finding of no probable cause;
- (2) voting to defer action until a certain time; or
- (3) proceeding with its investigation.

The purpose for a probable cause hearing is to determine whether, if the facts presented in the complaint are presumed to be true, the conduct described in the complaint is subject to discipline under Senate Rules. The subcommittee should also consider the probable value of evidence that will be provided to support or deny the complaint. If the subcommittee determines that there is no probable cause, the complaint must be dismissed. If the subcommittee makes a finding of probable cause, the subcommittee may determine how to proceed further regarding the complaint.

Each of the parties appearing at the proceeding has the right to appear with counsel. The complainants (or their attorney) must first present the complaint. Senator Newman (or his attorney) must then be given an opportunity to respond to the complaint. The probable cause hearing is not a judicial proceeding, and the subcommittee is not bound by the rules of evidence applicable to judicial proceedings.



At the hearing, each individual providing testimony to the committee should be sworn in so that all testimony is provided under oath. After the subcommittee has begun its work to determine whether there is probable cause, any member of the subcommittee may at any time move to conduct the preliminary inquiry in executive session, which may be ordered by a vote of three of the members of the subcommittee. The executive session is not subject to the open meeting requirements of Rules 12.1 to 12.3. The executive session must be limited to the discussion of matters relating to probable cause. After a finding of probable cause, all further proceedings by the subcommittee must be open to the public.

Each of the complainants must be provided an opportunity to present the complaint and then may in turn be questioned by members of the subcommittee and, following that, Senator Newman or his counsel.

After the complainants have finished their presentation and questions have been answered, Senator Newman should be given the opportunity to present his response. After his response is complete, questions from the subcommittee, and subsequently the complainants or their counsel are appropriate.

The subcommittee's discussion and the presentations should provide the subcommittee with assistance in determining the nature of the conduct that is at issue, whether that conduct would violate Senate Rules, and the evidence that will be provided to support the allegations.

After the complainants and Senator Newman have finished their presentations and the subcommittee has deliberated, it must take one of the three steps previously described. Again, the subcommittee may:

- (1) make a determination regarding probable cause;
- (2) vote to defer action until time; or
- (3) proceed with its investigation.

The Senate Rules provide additional guidance for further proceedings of the Subcommittee on Ethical Conduct and applicable standards of conduct. I have attached a copy of the Senate Rules 55 to 58 for your reference.

TBS/rdr
Enclosure