# Ethics and the Minnesota House

## Issues and Answers

HOUSE RESEARCH

This publication answers basic questions about the operation of the House Ethics Committee.

### Do the House and the Ethics Committee have to follow adopted procedures?

The ability to punish its own members for poor conduct is a constitutional right of the House of Representatives (Minn. Const. art. IV, § 7). The House adopts rules outlining a process (House Rule 6.10) and requires the Ethics Committee to adopt written procedures. The members of the Ethics Committee must operate within the scope of the constitution, House Rules, and written procedures, in order to assure each member a fair process. These constraints allow significant latitude for judgment. The committee can amend procedures, but should avoid doing so during an ongoing matter unless a change is unavoidable, and the change is disclosed for debate by involved parties.

### What is the jurisdiction of the Ethics Committee?

Under the state constitution, the House has the power to punish its members for disorderly conduct. Courts around the country (there are no Minnesota cases) that have had to interpret this phrase find the power is very broad and largely within the body's discretion to define. House Rule 6.10 gives the Ethics Committee jurisdiction over complaints "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."

Since 1973, complaints have been brought for violations of House rules, Minnesota statutes, and for conduct that did not violate a rule or statute but that complainants apparently believed violated accepted norms of House behavior, betrayed the public trust, or tended to bring the House into dishonor or disrepute. In short, members have had to answer to the Ethics Committee for the same conduct that may also bring them before the criminal court courts or before an executive agency like the Campaign Finance and Disclosure Board.

Traditionally, the committee has not been thought to have jurisdiction to hear election contests, but there is no formal precedent on this. There have been no election contests in the House since the standing Ethics Committee was created in 1989.

### What is the composition of the Ethics Committee?

Since at least the 1986 select committee was established, the House select and standing ethics committees have always had an equal number of members from both parties. The committee size has ranged from four to ten. For many years there have been four members with an alternate from each party.

During the 1997-98 biennium, the Speaker of the House appointed one member of each party to serve as co-chair of the committee. At all other times, a member of the majority party has chaired the committee. In some years, the speaker has appointed a minority party member as vice chair.

**Does the Minnesota Attorney General have a role?**

The question has been raised whether the attorney general could have a role in investigating legislative ethics complaints or advising the committee on them. Minnesota Statutes, section 8.03, allows a standing legislative committee to ask the attorney general for a written opinion on any question of law. In the case of legislative ethics proceedings, that statute is probably superseded by the constitutional provision that gives each body authority over the misconduct of its members. Minn. Const., art. IV, § 7.

**How are the procedures for complaints established?**

House Rule 6.10 requires the Ethics Committee to establish procedures for handling complaints. These procedures exist in the form of committee rules that must be adopted by the committee every biennium. The rules have been amended several times since they were first developed in 1989. [The rules of procedure are available on the committee's homepage on the House website (http://www.house.leg.state.mn.us/cmte/Home/?comm=89010), and the procedures are listed in the flowchart at the end this document.]

**Do members have to vote?**

House Rules do not require or address that members of the committee vote. At times, members have chosen to abstain from voting.

**Does the committee have to go into executive session?**

Executive session, which is a closed meeting of the Ethics Committee members, can be entered into with a majority vote of the committee.

**How is due process assured?**

House Rule 6.10 and the committee's rules provide for traditional due process protections: notice of the complaint and the hearings, right to call and cross-examine witnesses and produce evidence, etc. Two aspects not addressed in the rules have raised questions more than once:

- Committee members have so far refused to allow complainants to examine the member complained about

- On one occasion the chair indicated that nothing in the House rule or committee rule authorizes the committee to require either side to provide materials to the committee or the other side in advance. This is incorrect; House Rule 6.10 requires the initial complaint to include "all supporting materials." It would be more accurate to note that complainants

have produced additional supporting materials without prior notice. Committee procedures require provision of all "factual supporting evidence." Parties have voluntarily made material available in advance on some occasions, and chairs have from time to time required advance disclosure. It is not clear whether a chair could rule new evidence "out of order" under current rules and procedures.

**Who acts as counsel for the committee, complainants, and members complained about?**

Under the committee's rule, House Research is counsel to the committee and not to either party to the complaint. House Rule 6.10 allows the committee, with the speaker's permission, to hire outside counsel. The committee had outside counsel for complaints in 1990 and 1996.

Recent complainants have had counsel. Most members complained about (respondents) have had counsel. House Rule 6.10 does not address hiring counsel for either party to a complaint. To date, the House has not paid attorney fees for a party to an ethics complaint.

**What are the rules for communication between members and third parties?**

After the rules were revised in 1996 to make nearly all information about complaints public at all times, committee members faced the possibility of being questioned by the press or other House members while a complaint was pending. They asked staff whether it was ethical for them to discuss a complaint outside of committee sessions. They considered the analogy to judicial practice, where judges (1) do not meet with one party unless the other is present or has the opportunity to be there and (2) rarely talk to the press about a pending case.

The issue is not covered in the House rules or committee rules. Some members decided they would not answer questions or make comments about a pending complaint outside of committee meetings, in order to assure fairness to the member complained about.

**When does confidentiality apply in ethics complaints?**

Since a 1996 revision of the rules, the existence and contents of a complaint have been public from the time of filing. However, confidentiality still applies to executive session if the committee votes to have one on the issue of probable cause, to protect a third party's privacy, or to examine member medical records. By committee rule, anything covered in executive session remains confidential unless the committee later decides to include it in the public record of its proceedings. A member who breaches the confidentiality of executive session is subject to an ethics complaint. Staff who violate confidentiality are subject to employee discipline measures.

**What are the rules for subpoenas?**

The complainants and members complained about have the right to subpoena witnesses and documents. The committee also has this right, although it has not so far exercised it on behalf of itself. Instead, following procedures for legislative subpoena under Minnesota Statutes, section 3.153, the committee has directed the Chief Clerk of the House to issue subpoenas at the request of either complaints or the member complained about.

A party wishing to use subpoenas must request that the committee authorize them. A written request is necessary for the committee records.

Pursuant to Minnesota Statutes, section 3.153, the committee must vote by two-thirds to issue subpoenas. If the witnesses or documents are requested for a hearing to be held in less than seven days, a majority of the committee must vote separately for the shorter time period. Witnesses subpoenaed by the legislature are entitled to the same fee that is provided by statute for witnesses in court.

Subpoenas have only been issued twice in connection with a complaint. If the committee approves subpoenas, the chair sends a letter to the chief clerk requesting that subpoenas be issued. In 1996, when subpoenas were issued in two matters, blank forms were signed for witnesses being requested to appear (i.e., the committee did not get involved in deciding which individuals were requested to appear, although it did ask for a list of witnesses from both sides in the case involving then-Rep. Jeff Bertram). In one of the 1996 cases, where documents were requested from a third party, the subpoena form signed by the chief clerk described the documents being requested.

The parties apparently served the subpoenas and accompanying forms in 1996, although there was some discussion of having the sergeant's office staff serve them.

In a 2003 complaint, the representative's attorney announced at a press conference that he intended to subpoena the complainants and only the complainants (he did not indicate why he thought he needed to subpoena them). At a meeting on March 31, 2003, the committee refused to authorize the subpoenas by a tie vote.

**What happens if the committee finds that there is either probable cause or no probable cause to support a complaint?**

If the committee finds there is probable cause to support a complaint and recommends that the House take some action, it makes a report to the floor. Members have asked how to proceed if there is no finding of probable cause, since the rules do not address this issue. The committee has followed different practices in this case. On more than one occasion, the committee simply voted "no probable cause" in a public session and adjourned. On another occasion it issued a brief statement as part of its finding. On yet another occasion, an informal reconciliation was proposed, under paragraph 9 of committee procedures.

**What kind of discipline can the committee impose?**

The Ethics Committee has very limited power to impose consequences on members complained about. For the most part the committee is limited to making recommendations for action by the full House. The committee's rules provide several options for responding to a complaint on a continuum from finding the complaint frivolous and reprimanding the complaints to recommending that the House expel a member. These options are laid out in the ethics complaint process flowchart (at the end of this document).

**Does the House have a code of conduct for members?**

In 1995 the House Rules Committee adopted House Rule 9.01 calling for a code of ethics to be adopted by the Rules Committee on recommendation of the Ethics Committee. The Ethics Committee and Rules Committee have adopted the 1995 code without changing it every subsequent biennium through 2015, except that in 2003, the Ethics Committee reviewed the existing code but did not act on it. Members noted that the code applies to members and staff and that some of the provisions do not logically apply to employees as opposed to members. They expressed an interest in further study of the issue before taking action.

**Additional Resources:**

- For an explanation of the laws and rules relating to ethical behavior, see the House Research information brief, *Legislative Ethics: A Guide to Minnesota Laws and Rules for House Members and Staff*
- For more specific information about gifts to elected officials, see the House Research short subject *Gift Ban Law and Rules for House Members and Employees*

# Ethics Complaint Process Under House Rule 6.10 and Ethics Committee Rules of Procedure

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