#### FIRST REGULAR SESSION

# [PERFECTED]

### HOUSE COMMITTEE SUBSTITUTE FOR

# **House Resolution No. 137**

# 100TH GENERAL ASSEMBLY

1350H.03P DANA RADEMAN MILLER, Chief Clerk

#### ETHICS COMMITTEE

	ETHICS CONNITTEE
2	RULES OF PROCEDURE
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4	RULE 1. Scope and Authority
5 6	These Rules of Procedure govern the conduct of the investigation of complaints of ethical misconduct by a member of the House and are adopted pursuant to House Rule 37.
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8	RULE 2. Definitions
9	As used in these Rules, unless the context requires otherwise, the following words and
10	terms shall have the following meanings, and the use of masculine gender shall include the
11	feminine.
12	(1) Letter of reproval - A sanction which expresses disapproval of conduct based on
13	the appropriateness of such conduct by a member, regardless of whether the conduct

(2) Reprimand - A sanction which recognizes the member's conduct constituted a legal or moral wrong and which may include punishment in the form of denying privileges of office, which recommendation is included as part of the Committee's report, is issued by the Speaker and the recommendation for reprimand is made a public record.

constitutes a legal or moral wrong and is included as part of the Committee's report.

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(3) Censure - A sanction which recognizes the [respondent's] member's conduct constituted a legal or moral wrong, and which shall include punishment in the form of denying privileges of office, which recommendation is included as part of the Committee's report and requires the presence of the [respondent] member in the chamber during consideration and vote by the entire House on such resolution.

24	[(2) Letter of Reproval - A sanction which expresses disapproval of conduct based on the				
25	appropriateness of such conduct by a legislator, regardless of whether the conduct constitutes a				
26	legal or moral wrong and is included as part of the Committee's report.				
27	(3) Reprimand - A sanction which recognizes the respondent's conduct constituted a legal				
28	or moral wrong and which may include punishment in the form of denying privileges of office,				
29	which recommendation is included as part of the Committee's report, is issued by the Speaker				
30	and the recommendation for reprimand is made a public record.]				
31	(4) Expulsion – A sanction which recognizes the member's conduct constituted a				
32	legal or moral wrong and which may include punishment in the form of removal from				
33	office as provided in Article III, Section 18 of the Missouri Constitution, which				
34	recommendation is included as part of the Committee's report.				
35	(5) Ethical misconduct –				
36	(a) A crime;				
37	(b) Willful neglect of duty;				
38	(c) Corruption in office;				
39	(d) Any conduct constituting a legal or moral wrong which materially impairs the				
40	member's ability to perform the duties of his office or substantially impairs public				
41	confidence in the General Assembly;				
42	(e) Any conduct constituting a conflict of interest under Chapter 105, RSMo;				
43	(f) The intentional filing of a false complaint or the filing of a complaint in reckless				
44	disregard of the truth; or				
45	(g) Any breach of confidentiality provided for under these rules.				
46	(6) Member – Any Missouri State Representative or Missouri State Representative-				
<del>4</del> 0 47	Elect.				
4/	Elect.				
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49	RULE 3. Quorum				
50	A quorum exists when a majority of the members of the Committee are present.				
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#### 52 RULE 4. Form of Complaints

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- 53 A. All complaints filed [with the Speaker] against a member [of the House] shall be made [by a member or other individual] under the authority of Rule [101] 37 of the House Rules of 54 55 Procedure or the Policy Handbook of the Missouri House of Representatives involving sexual 56 harassment investigations and member referral to the Committee on Ethics]. The complaints 57 shall be confidential and shall be referred to the Committee on Ethics within [ten (10) days, or 58 within fourteen (14) calendar days [under Rule 101 of the House Rules of Procedure, and]. 59 **Each complaint** shall be in writing and under oath, setting forth in simple, concise and direct 60 statements, unless such complaint alleges sexual harassment and is filed under the authority of Rule 101 of the House Rules of Procedure or the Policy Handbook, in which case the 61 62 investigative report shall be sufficient to be considered a proper complaint referred to the 63 Committee on Ethics from the member, or in the case of alleged sexual harassment, the investigative report shall be sufficient to be considered a proper complaint. All complaints shall contain: 65
- 66 (1) The name and [legal] address of the member or members or other individual or 67 individuals acting as complainant;
- 68 (2) The name of the member [of the House] alleged to have engaged in [the commission of a crime, misconduct, willful neglect of duty, corruption in office or other acts constituting 69 ethical misconduct. "Misconduct" means: 70
- 71 (a) Any conduct constituting a legal or moral wrong which materially impairs the member's ability to perform the duties of his office or substantially impairs public confidence 72 73 in the General Assembly;
- (b) Any conduct constituting a conflict of interest under Chapter 105, RSMo; 74
- 75 (c) The intentional filing of a false complaint or the filing of a complaint in reckless disregard of the truth. conduct constituting ethical misconduct; 76
- 77 (3) The nature of the alleged [crime, misconduct, neglect, corruption or other unethical 78 act act constituting ethical misconduct, including when applicable, the specific law, rule, regulation, or ethical standard violated;
  - (4) The facts alleged to have given rise to the [violation] act constituting ethical misconduct; and
- 82 (5) Where the facts are alleged upon the information and belief of the complainant, the 83 complaint shall so state and set forth the basis for such information and belief.

B. All [documents] records in the possession of the complainant that are relevant to and in support of the allegations shall be appended to the complaint.

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- RULE 5. [Initial Examination] Jurisdictional Hearing of the Complaint by the Committee
- 88 A. Within thirty (30) calendar days of the assignment of the complaint [by the Speaker], 89 the Committee shall determine if it is in compliance with Rule 4 of these Rules, and whether on 90 the face of the complaint, the allegations contained therein are within the jurisdiction of the 91 Committee, and if so, whether the allegations merit proceeding to a preliminary hearing. The 92 complainant shall not act as a member of the Committee at a hearing in which the complainant 93 is likely to be called as a necessary witness. A respondent |. No person named in the complaint 94 shall [not] act as a member of the Committee for purposes of [his] such complaint. The 95 jurisdictional hearing to examine the complaint and report or other evidence provided to 96 the Committee, and the determination under Rule 5. C. shall be conducted in a closed 97 hearing.
  - B. Complaints determined not to be in compliance with Rule 4 of these Rules shall be returned to the complainant with a [general] statement that it is not in compliance with the Rules of Procedure. The complaint may be resubmitted in the proper form.
- 101 C. Once a determination has been made that the complaint complies with Rule 4 of these 102 Rules, a majority of the Committee appointed shall vote by roll call to [either]:

### (1) Proceed to a preliminary hearing;

(2) Defer action pending completion of any other administrative, disciplinary, commission, or judicial proceeding; or

# [(2) Proceed to a preliminary hearing;]

- (3) Dismiss the complaint. When a motion to proceed to a preliminary hearing fails on a recorded vote, the complaint shall be immediately dismissed. The Committee may, in its discretion, issue a report in conjunction with the dismissal of the complaint.
- D. In determining whether or not to proceed **to a preliminary hearing**, the Committee shall consider the following:
- (1) The credible evidence **of ethical misconduct** contained in the complaint [of], **any** report, or other evidence appended thereto [of the commission of a crime, misconduct, willful neglect of duty, corruption in office, or other acts violating applicable ethical standards];

- (2) Other administrative or disciplinary action by other interested bodies;
- 116 (3) Criminal investigation, Missouri Ethics Commission proceeding, or judicial proceedings, either civil or criminal; and
- 118 (4) Other relevant circumstances that would justify expediting, declining, or deferring action by the Committee.
- E. Complaints determined to be in compliance with Rule 4 of these Rules and accepted for a preliminary hearing shall be transmitted to the respondent with a copy of the Rules of Procedure and notice in writing that the respondent has twenty-one (21) calendar days to respond to the complaint either by way of answer or motion pursuant to Rule [6] 7 of these Rules. The complainant and alleged victim shall also be notified, in writing, of the action of the Committee. [Examination of the complaint and the determination of Rule 5.C. shall be conducted in a closed meeting.]
  - F. Any party may make an objection to the participation of any member of the Committee in an examination of the complaint on the grounds that the member cannot render an impartial and unbiased decision in the case. The majority of the members present shall rule on the objection to the participation of any member of the Committee. A temporary replacement shall be made to serve on the Committee on Ethics for all actions concerning a particular complaint for any member of the Committee who is prevented from acting on a complaint under these rules. Any temporary replacement made shall be of the same party as the replaced member and shall be chosen by the Speaker for the replacement of a member of the majority party or chosen by the Minority Floor Leader for the replacement of a member of the minority party; except that, if the Speaker is the respondent, the complainant, or the victim, the temporary replacement shall be chosen by the Chair of the Committee or, if the Minority Floor Leader is the respondent, the complainant, or the victim, the temporary replacement shall be chosen by the Vice Chair of the Committee.

- 142 RULE 6. Confidentiality
- A. Counsel for the Committee on Ethics, with the consent of the Chair and Vice
  Chair, may redact any of the names and identifying information of the parties mentioned
  in any report, or provide a summary of the report.

- B. No member or staff of the Committee on Ethics shall disclose, to any person or entity outside the Committee, any information received in the course of service with the Committee, except as authorized by the Committee or in accordance with its rules.
- 149 C. No person, other than House staff or employees properly part of the complaint 150 process by rule or policy, who reviews or receives the results of any investigation or report 151 shall disclose any information contained in the report, except to his counsel or in 152 accordance with these rules.
  - D. If the complaint proceeds to a preliminary hearing, an unredacted report shall be provided to the complainant, respondent, and alleged victim. Any document provided by the Committee shall contain a watermark indicating that the document is confidential and shall list the name of the recipient.

#### **Rule 7.** Answers and Motions

- A. If the Committee determines that the complaint merits proceeding to a preliminary hearing, the respondent shall have twenty-one (21) calendar days in which to respond to the complaint by way of answer or motion, unless this time period is waived by the respondent. Any answer or motion shall be in writing, signed by the respondent and his counsel, if he has one, and shall be limited to the following:
- (1) An admission or denial under oath, of the allegations set forth in the complaint, including negative and affirmative defenses, and any other relevant information, including supporting evidence which the respondent may desire to submit. Failure to file an answer within the time prescribed shall be considered by the Committee as a denial of each allegation; or
- 168 (2) An objection to the jurisdiction of the Committee to investigate the complaint[;-or] 169 .
  - [(3) An objection to the participation of any member of the Committee in an investigation of the complaint on the grounds that the member cannot render an impartial and unbiased decision in the case. The majority of the members present shall rule on the objection to the participation of any member of the Committee. A temporary replacement shall be made to serve on the Committee on Ethics for all actions concerning a particular complaint for any member of the Committee who is prevented from acting on a complaint under these rules.]

- B. Any motion submitted pursuant to this rule is not in lieu of an answer and shall be accompanied by a memorandum of points and authorities. Answers or motions not submitted within the twenty-one (21) calendar-day period shall not be considered by the Committee.
- 179 C. The [Chairman] Chair of the Committee shall pass upon such motions as soon as 180 practicable and notice of the decision shall be furnished to the respondent and the complainant. 181 A motion to quash a subpoena shall be decided by the [Chairman] Chair of the Committee.
  - D. Time limitations imposed by this Rule may be extended when, in the discretion of the [Chairman] Chair, such extension would facilitate a fair and complete inquiry and may be shortened when the [Chairman] Chair determines that there are special circumstances compelling expedition, and upon twenty-four (24) hours notice of said action to the respondent and the claimant.
  - E. In the event that a special counsel is retained by the Committee, the attorney-client privilege is applicable to the Committee and not to the House.

# 190 RULE [7.] 8. Preliminary Hearings

A. A preliminary hearing may be held to hear arguments based on the [pleadings] evidence submitted in the case. The preliminary hearing [shall be an open meeting] may be closed at the discretion of the Committee. The Committee shall provide the complainant and the respondent or counsel for the complainant and respondent an opportunity to present, or ally or in writing, a statement, which shall be under oath or affirmation, regarding the allegations and any other relevant questions arising out of the [pleadings. A complainant or respondent who is represented by counsel shall not be questioned in the absence of counsel unless an explicit waiver is obtained] complaint or other evidence provided to the committee. Opening statements made during a preliminary hearing shall be limited to fifteen minutes for the complainant and fifteen minutes for the respondent; however, such time limitations may be increased at the discretion of the Chair of the Committee.

B. The Committee shall require that testimony be given under oath or affirmation. The form of the oath or affirmation shall be: "Do you solemnly swear (or affirm) that the testimony you will give before this Committee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth (so help you God)?" The oath or affirmation shall be administered by the [Chairman] Chair or Committee member designated by him to administer oaths. [Members of the Committee shall be given an opportunity to question the complainant and respondent or counsel for the complainant or respondent following the opening statements] The

209	Committee may take testimony from the complainant, alleged victim, respondent, and any				
210	other witness at the discretion of the Chair. The complainant, alleged victim, and				
211	respondent may submit a list of proposed witnesses to the Chair for consideration at least				
212	twenty-four hours in advance of the hearing. Only the Committee members, or special				
213	counsel for the Committee, may question a witness at the preliminary hearing.				
214	C. At the conclusion of the preliminary hearing, a majority of the Committee shall vote				
215	by roll call to [either]:				
216	(1) Dismiss the complaint, [or] which may be accompanied by a report issued by the				
217	Committee;				
218	(2) Proceed by [(a)] undertaking [an investigative] a formal hearing; or				
219	(b) deciding the case based upon the preliminary hearing.				
220	A decision based upon a preliminary hearing shall require the consent of the respondent.]				
221	(3) Offer a recommended sanction to the member which may include one of the				
222	following:				
223	(a) Letter of reproval;				
224	(b) Reprimand;				
225	(c) Censure; or				
226	(d) Expulsion.				
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	If the member accents the Committee's recommended constion the constion shall be				
<ul><li>228</li><li>229</li></ul>	,				
230	enforced and the complaint shall be concluded. If the member does not accept the recommended sanction, the Committee shall then proceed to a formal hearing which shall				
231	take place no later than ninety (90) calendar days after the date that the recommended				
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233	[D. If the Committee decides to make a summary decision of the case and the respondent				
234	accepts this disposition, the Committee may, by a majority vote, recommend one of the following				
235	sanctions:				
236	(1) Letter of reproval;				
237	(2) Reprimand; or				

238	(3) Censure.			I
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- 240 RULE [8.] 9. [Investigative Hearings] Formal Hearings
- 241 A. [An investigative] A formal hearing [may] shall be held on the record to receive 242 evidence upon which to base findings, conclusions, and recommendations, if any, to the House; 243 except that, such hearing may be closed at the discretion of the Committee. The Committee 244 may require, by subpoena or otherwise, or by subpoena duces tecum, the attendance and 245 testimony of such witnesses and the production of such books, records, correspondence, 246 memorandums, papers, electronic communications, and documents as it deems necessary. [The 247 Committee may obtain a court-issued subpoena in the event that any person refuses to obey the 248 subpoena issued by the Committee. The Committee may issue and enforce subpoenas as 249 allowed by law.
  - B. Prior to setting a hearing date and issuing subpoenas for witnesses, the Committee shall resolve the scope and purpose of the hearings. A copy of this statement of scope and purpose shall be furnished to all witnesses. During the course of the hearings the Committee may expand or contract the scope in light of evidence received.
- 254 C. The order of the [investigative] formal hearing shall be as follows:
- 255 (1) The [Chairman] Chair shall open the hearing by stating the Committee's authority 256 to conduct the investigation, the purpose of the investigation and its scope.
- 257 (2) The complainant and the respondent or counsel for the complainant and respondent 258 shall be permitted to make opening statements. Such opening statements shall not exceed fifteen 259 minutes each.
- 260 (3) Testimony from witnesses and other evidence pertinent to the matter under 261 investigation shall be received in the following order:
- 262 (a) Witnesses and other evidence offered by the complainant;
- 263 (b) Witnesses and other evidence offered by the respondent;
- (c) Witnesses and other evidence offered by the Committee [staff]; and
- 265 (d) Rebuttal witnesses.
- 266 (4) The [Chairman] Chair, or his designee [shall examine each], and the Committee 267 members may question any witness. [The Committee members may then question the witness.

The respondent or his counsel may then cross-examine the witness. Redirect or recross examination may be permitted in the Chairman's discretion. With respect to witnesses offered by the respondent, a witness shall be examined first by the respondent or his counsel, if he has one, and then may be cross-examined by the complainant or his counsel, if he has one, and then may be cross-examined by the Chairman or his designee. Committee members may then question the witness. Redirect and recross examination may be permitted in the Chairman's discretion.]

D. Testimony of all witnesses shall be taken under oath. The form of the oath shall be: "Do you solemnly swear (or affirm) that the testimony you will give before this Committee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth (so help you God)?" The oath shall be administered by the [Chairman] Chair or Committee member designated by him to administer oaths.

# 280 RULE [9.] 10. Admissibility of Evidence

- A. The object of the hearings shall be to ascertain the truth. Any evidence that is relevant and probative shall be admissible, unless privileged or unless the Constitution otherwise requires its exclusion. Objections going only to the weight that should be given to evidence will not justify its exclusion.
- B. The [Chairman] Chair or other member presiding shall rule upon any question of admissibility of testimony or evidence presented to the Committee. The [Chairman] Chair or other member presiding may limit the presentation of repetitious evidence. Rulings shall be final unless reversed or modified by a majority vote of the Committee members present.
- C. At [an investigative] a formal hearing, the burden of proof is on the complainant with respect to each count to establish the facts alleged therein clearly and convincingly by the evidence that he introduces.

# 293 RULE [10.] 11. Witnesses

A. A subpoena to a witness shall be served sufficiently in advance of his scheduled appearance to allow him a reasonable period of time, as determined by the Committee, to prepare for the hearing and to employ counsel should he so desire.

B. Except as otherwise specifically authorized by the [Chairman] Chair, no member of the Committee or staff shall make public the name of any witness subpoenaed by the Committee before his scheduled appearance.

- C. Witnesses at [investigative] formal hearings may be accompanied by their counsel for the purpose of advising them concerning their constitutional rights and to raise objections to procedures or to the admissibility of testimony and evidence. [Counsel for a witness other than the respondent shall not be permitted to engage in oral argument with the Committee. After a witness has testified, his counsel may submit to the Committee, in writing, any questions he wishes propounded to his client and any request for additional witnesses or other evidence. Such request may be granted in the discretion of the Committee.]
- D. [The respondent may apply to the Committee for the issuance of subpoenas for the appearance of witnesses or the production of documents on his behalf. The application shall be granted upon good cause shown by the respondent that the proposed testimony or evidence is relevant and not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.
- 312 E.] The respondent is entitled to present witnesses [in] on his behalf. However, the 313 [Chairman] Chair may limit such testimony when, in his discretion, he finds the testimony is 314 repetitious [or], cumulative, or irrelevant.
  - [F.] E. Each witness subpoenaed by the Committee shall be reimbursed for those reasonable expenses approved by the Committee.
- [G.] F. Each witness shall be furnished a printed copy of the Rules of Procedure and the pertinent provisions of the Rules of the House applicable to the rights of witnesses.
  - [H. Within ten (10) calendar days before the scheduled investigative hearing, the Chairman shall notify the respondent, in writing, of the witnesses that are to appear before the Committee. Within five (5) calendar days before the scheduled investigative hearing, the respondent shall notify the Committee, in writing, of the witnesses that are to appear in his behalf. Additional witnesses may be brought before the Committee, in the discretion of the Chairman or other member presiding and upon good cause, if their whereabouts or existence were unknown to the respondent at the time for submission of the witness list to the Committee.]
  - G. Within ten calendar days before the scheduled formal hearing, each party shall notify the Committee and all other parties to the complaint, in writing, of the witnesses that are to appear at the formal hearing. Within five calendar days before the scheduled formal hearing, each party shall notify the Committee and all other parties to the complaint, in

330 writing, of any proposed rebuttal witnesses that are to appear on his behalf. The Chair 331 may exercise discretion in allowing any party's good faith request for additional witnesses 332 that are proposed after the expiration of these time limits, or in denying any witness 333 request made by a party if such request is not made in good faith. 334 335 RULE [44.] 12. Findings, Conclusions and Recommendations 336 A. At the completion of the preliminary hearing or [investigative] formal hearings, the 337 Committee, by a majority vote of its members, shall, within forty-five (45) days, adopt a report 338 stating its findings and conclusions on the complaint. The report shall be filed with the Chief 339 Clerk of the House and shall be printed in the House Journal. In the event the Committee finds 340 that the complaint is not well-founded, the report shall so state, and shall include a copy of a 341 Letter of Reproval if the Committee authorized such sanction. In the event the Committee finds 342 that the complaint is well-founded, the report shall state the Committee's recommendation in a 343 resolution appended thereto. 344 B. The resolution shall state the Committee's findings and conclusions on each allegation 345 in the complaint with the recommendation that the House take one of the following actions: 346 (1) [Expel the member as provided in Article III, Section 18 of the Missouri Constitution; 347 (2) Punish the member as provided in Article III, Section 18 of the Missouri Constitution, by reprimand on the adoption of the resolution, or by censure by the Speaker in open session; or 348 349 (3) Take no further action, stating the reasons therefor Letter of reproval; 350 (2) Reprimand; 351 (3) Censure; or 352 (4) Expulsion. 353 C. The chair or counsel for the Committee shall redact from its findings, 354 conclusions, and recommendations, the name or names and any identifying information 355 of any person or persons alleged to be a victim of sexual harassment or sexual misconduct 356 by a member. An alleged victim may consent to the release of his or her name or other 357 identifying information by providing a written request to the chair of the Committee.

The Rules of Procedure of the United States House of Representatives Committee on Ethics of the [++5<sup>th</sup>] 116th Congress shall be taken as guidelines in deciding questions, issues, and other matters not otherwise provided for in these Rules of Procedure, except that the Rules of the Missouri House of Representatives governing the party representation on committees shall apply to this Committee.

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