

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE RESOLUTION NO. 70

ETHICS COMMITTEE
RULES OF PROCEDURE

RULE 1. Scope and Authority

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.

RULE 2. Definitions

As used in these rules, unless the context requires otherwise, the following words and terms shall have the following meanings, and the use of masculine gender shall include the feminine.

(1) Letter of reproof - A sanction which expresses disapproval of conduct based on the appropriateness of such conduct by a member, regardless of whether the conduct constitutes a legal or moral wrong ~~[and is included as part of the Committee's report]~~.

(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.

(3) Censure - A sanction which recognizes the 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 member in the chamber during consideration and vote by the entire House on such resolution.

(4) Expulsion - A sanction which recognizes the member's conduct constituted a legal or moral wrong and which may include punishment in the form of removal from office as provided in Article III, Section 18 of the Missouri Constitution ~~[, which recommendation is included as part of the Committee's report]~~.

(5) Ethical misconduct -

(a) A crime;

(b) Willful neglect of duty;

(c) Corruption in office;

(d) 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 in the General Assembly;

(e) Any conduct constituting a conflict of interest under Chapter 105, RSMo;

1 (f) The intentional filing of a false complaint or the filing of
2 a complaint in reckless disregard of the truth; or
3 (g) Any breach of confidentiality provided for under these
4 rules.
5 (6) Member - Any Missouri State Representative or Missouri State
6 Representative-Elect.

7 No allegation of ethical misconduct may be based on actions that
8 occurred more than six years prior to the date the respondent assumed
9 the office of Representative, unless the actions, whether charged or
10 uncharged, would constitute a Class A felony offense under the laws of
11 this state, or would constitute an offense of a sexual nature under
12 the laws of this state.

13
14 RULE 3. Quorum

15 A quorum exists when a majority of the members of the Committee
16 are present. A quorum of appointed members shall be necessary to hold
17 a hearing of any type.

18 RULE 4. Form of Complaints

19 A. All complaints filed against a member shall be made under the
20 authority of Rule 37 of the House Rules of Procedure. The complaints
21 shall be confidential and shall be referred to the Committee on Ethics
22 within fourteen (14) calendar days. The Speaker's referral of a
23 complaint shall include a letter delivered to the Chief Clerk noting
24 the date and time of receipt of the complaint, and the date and time
25 of delivery to the Committee on Ethics. Each complaint shall be in
26 writing and under oath from the member, or in the case of alleged
27 sexual harassment or a violation of the amorous relationship policy,
28 the investigative report shall be sufficient to be considered a proper
29 complaint. All complaints shall contain:

30 (1) The name and address of the member or members or other
31 individual or individuals acting as complainant;

32 (2) The name of the member alleged to have engaged in conduct
33 constituting ethical misconduct;

34 (3) The nature of the alleged act constituting ethical
35 misconduct, including when applicable, the specific law, rule,
36 regulation, or ethical standard violated;

37 (4) The facts alleged to have given rise to the act constituting
38 ethical misconduct; and

39 (5) Where the facts are alleged upon the information and belief
40 of the complainant, the complaint shall so state and set forth the
41 basis for such information and belief.

42 B. All records in the possession of the complainant that are
43 relevant to and in support of the allegations shall be appended to the
44 complaint.

45 C. In the case that the Chief Clerk retains outside counsel to
46 investigate an alleged violation of the sexual harassment or amorous
47 relationship policies, the Chief Clerk shall notify the respondent in
48 writing that a complaint has been filed, but shall not disclose

1 details of the complaint to the respondent without permission from the
2 Chair and Vice Chair of the Committee.

3 RULE 5. Jurisdictional Hearing of the Complaint by the Committee

4 A. Within thirty (30) calendar days of the assignment of the
5 complaint, the Committee shall determine if it is in compliance with
6 Rule 4 of these Rules, and whether on the face of the complaint, the
7 allegations contained therein are within the jurisdiction of the
8 Committee. No person named in the complaint shall act as a member of
9 the Committee for purposes of such complaint. The jurisdictional
10 hearing to examine the complaint and report or other evidence provided
11 to the Committee, and the determination under Rule 5. C. shall be
12 conducted in a closed hearing.

13 B. Complaints determined not to be in compliance with Rule 4 of
14 these Rules shall be returned to the complainant with a statement that
15 it is not in compliance with the Rules of Procedure. The complaint
16 may be resubmitted in the proper form.

17 C. Once a determination has been made that the complaint
18 complies with Rule 4 of these Rules, a majority of the Committee
19 appointed shall vote by roll call to:

20 (1) Proceed to a [~~preliminary~~] primary hearing;

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

23 (3) Dismiss the complaint. When a motion to proceed to a
24 [~~preliminary~~] primary hearing fails on a recorded vote, the complaint
25 shall be immediately dismissed. The Committee may, in its discretion,
26 issue a report in conjunction with the dismissal of the complaint.

27 D. In determining whether or not to proceed to a [~~preliminary~~]
28 primary hearing, the Committee shall consider the following:

29 (1) The credible evidence of ethical misconduct contained in the
30 complaint, any report, or other evidence appended thereto;

31 (2) Other administrative or disciplinary action by other
32 interested bodies;

33 (3) Criminal investigation, Missouri Ethics Commission
34 proceeding, or judicial proceedings, either civil or criminal; and

35 (4) Other relevant circumstances that would justify expediting,
36 declining, or deferring action by the Committee.

37 E. Complaints determined to be in compliance with Rule 4 of
38 these Rules and accepted for a [~~preliminary~~] primary hearing shall be
39 transmitted to the respondent with a copy of the Rules of Procedure
40 and notice in writing that the respondent has twenty-one (21) calendar
41 days to respond to the complaint either by way of answer or motion
42 pursuant to Rule 7 of these Rules. The complainant and alleged victim
43 shall also be notified, in writing, of the action of the Committee.

44 F. Any party may make an objection to the participation of any
45 member of the Committee in an examination of the complaint on the
46 grounds that the member cannot render an impartial and unbiased
47 decision in the case. The majority of the members present shall rule
48 on the objection to the participation of any member of the Committee.
49 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.

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.

C. No person, other than House staff or employees properly part of the complaint process by rule or policy, who reviews or receives the results of any investigation or report shall disclose any information contained in the report, except to his counsel or in accordance with these rules.

D. If the complaint proceeds to a ~~[preliminary]~~ primary 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.

E. No audio or visual recording shall be made of any closed hearing of the Committee on Ethics without the prior, express permission of the Chair. A violation of this paragraph may be treated as contempt or disorderly conduct as authorized under Article III, Section 18 of the Constitution of the state of Missouri.

RULE 7. Answers and Motions

A. If the Committee determines that the complaint merits proceeding to a ~~[preliminary]~~ primary 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

1 denial of each allegation; or

2 (2) An objection to the jurisdiction of the Committee to
3 investigate the complaint.

4 B. Any motion submitted pursuant to this rule is not in lieu of
5 an answer and shall be accompanied by a memorandum of points and
6 authorities. Answers or motions not submitted within the twenty-one
7 (21) calendar-day period shall not be considered by the Committee.

8 C. The Chair of the Committee shall pass upon such motions as
9 soon as practicable and notice of the decision shall be furnished to
10 the respondent and the complainant. A motion to quash a subpoena
11 shall be decided by the Chair of the Committee.

12 D. Time limitations imposed by this Rule may be extended when,
13 in the discretion of the Chair, such extension would facilitate a fair
14 and complete inquiry and may be shortened when the Chair determines
15 that there are special circumstances compelling expedition, and upon
16 twenty-four (24) hours notice of said action to the respondent and the
17 claimant.

18 E. In the event that a special counsel is retained by the
19 Committee, the attorney-client privilege is applicable to the
20 Committee and not to the House.

21 RULE 8. [~~Preliminary~~] Primary Hearings

22 A. A [~~preliminary~~] primary hearing may be held to hear arguments
23 based on the evidence submitted in the case. The [~~preliminary~~]
24 primary hearing may be closed at the discretion of the Committee. The
25 Committee shall provide the complainant and the respondent or counsel
26 for the complainant and respondent an opportunity to present, orally
27 or in writing, a statement, which shall be under oath or affirmation,
28 regarding the allegations and any other relevant questions arising out
29 of the complaint or other evidence provided to the committee. Opening
30 statements made during a [~~preliminary~~] primary hearing shall be
31 limited to fifteen minutes for the complainant and fifteen minutes for
32 the respondent; however, such time limitations may be increased at the
33 discretion of the Chair of the Committee.

34 B. The Committee shall require that testimony be given under
35 oath or affirmation. The form of the oath or affirmation shall be: "Do
36 you solemnly swear (or affirm) that the testimony you will give before
37 this Committee in the matter now under consideration will be the
38 truth, the whole truth, and nothing but the truth (so help you God)?"
39 The oath or affirmation shall be administered by the Chair or
40 Committee member designated by him to administer oaths. The Committee
41 may take testimony from the complainant, alleged victim, respondent,
42 and any other witness at the discretion of the Chair. The
43 complainant, alleged victim, and respondent may submit a list of
44 proposed witnesses to the Chair for consideration at least twenty-four
45 hours in advance of the hearing. Only the Committee members, or
46 special counsel for the Committee, may question a witness at the
47 [~~preliminary~~] primary hearing.

48 C. At the conclusion of the [~~preliminary~~] primary hearing, a
49 majority of the Committee shall vote by roll call to:

- 1 (1) Dismiss the complaint, which may be accompanied by a report
- 2 issued by the Committee;
- 3 (2) Proceed by undertaking a formal hearing; or
- 4 (3) Offer a recommended sanction to the member which may include
- 5 one of the following:
- 6 (a) Letter of reproof;
- 7 (b) Reprimand;
- 8 (c) Censure; or
- 9 (d) Expulsion.

10 ~~[If the member accepts the Committee's recommended sanction, the~~
11 ~~sanction shall be enforced and the complaint shall be concluded. If~~
12 ~~the member does not accept the recommended sanction, the Committee~~
13 ~~shall then proceed to a formal hearing which shall take place no later~~
14 ~~than ninety (90) calendar days after the date that the recommended~~
15 ~~sanction was rejected or as scheduled or extended by a majority vote~~
16 ~~of the Committee.]~~ The member shall be given notice of his or her
17 right to object to the Committee's recommended sanction by the time
18 set forth by the Committee, which shall be no less than seventy-two
19 hours. If the respondent fails to object in writing to the
20 Committee's recommendation, he or she shall be deemed to waive any and
21 all rights to further proceedings before the Committee on Ethics and
22 the Committee report shall be filed by the Committee in the form of a
23 House Resolution with the Clerk of the House. The recommendation
24 shall also be published in the House Journal and automatically placed
25 on the House Resolutions Calendar without further referral. If the
26 respondent objects in writing to the recommendation within the time
27 set forth by the Committee, the Committee shall proceed to a formal
28 hearing, which shall take place no later than ninety days after the
29 receipt of such objection or as scheduled or extended by a majority
30 vote of the Committee.

31 RULE 9. Formal Hearings

32 A. A formal hearing shall be held on the record to receive
33 evidence upon which to base findings, conclusions, and
34 recommendations, if any, to the House; except that, such hearing may
35 be closed at the discretion of the Committee. The Committee may
36 require, by subpoena or otherwise, or by subpoena duces tecum, the
37 attendance and testimony of such witnesses and the production of such
38 books, records, correspondence, memorandums, papers, electronic
39 communications, and documents as it deems necessary. The Committee
40 may issue and enforce subpoenas as allowed by law.

41 B. Prior to setting a hearing date and issuing subpoenas for
42 witnesses, the Committee shall resolve the scope and purpose of the
43 hearings. A copy of this statement of scope and purpose shall be
44 furnished to all witnesses. During the course of the hearings the
45 Committee may expand or contract the scope in light of evidence
46 received.

47 C. The order of the formal hearing shall be as follows:

- 48 (1) The Chair shall open the hearing by stating the Committee's

1 authority to conduct the investigation, the purpose of the
2 investigation and its scope.

3 (2) The complainant and the respondent or counsel for the
4 complainant and respondent shall be permitted to make opening
5 statements. Such opening statements shall not exceed fifteen minutes
6 each.

7 (3) Testimony from witnesses and other evidence pertinent to the
8 matter under investigation shall be received in the following order:

9 (a) Witnesses and other evidence offered by the complainant;

10 (b) Witnesses and other evidence offered by the respondent;

11 (c) Witnesses and other evidence offered by the Committee; and

12 (d) Rebuttal witnesses.

13 (4) The Chair, or his designee, and the Committee members may
14 question any witness.

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

21 RULE 10. Admissibility of Evidence

22 A. The object of the hearings shall be to ascertain the truth.
23 Any evidence that is relevant and probative shall be admissible,
24 unless privileged or unless the Constitution otherwise requires its
25 exclusion. Objections going only to the weight that should be given
26 to evidence will not justify its exclusion.

27 B. The Chair or other member presiding shall rule upon any
28 question of admissibility of testimony or evidence presented to the
29 Committee. The Chair or other member presiding may limit the
30 presentation of repetitious evidence. Rulings shall be final unless
31 reversed or modified by a majority vote of the Committee members
32 present.

33 C. At a formal hearing, the burden of proof is on the
34 complainant with respect to each count to establish the facts alleged
35 therein clearly and convincingly by the evidence that he introduces.

36 RULE 11. Witnesses

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

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

44 C. Witnesses at formal hearings may be accompanied by their
45 counsel for the purpose of advising them concerning their
46 constitutional rights and to raise objections to procedures or to the
47 admissibility of testimony and evidence.

48 D. Chair may limit such testimony when, in his discretion, he

1 finds the testimony is repetitious, cumulative, or irrelevant.

2 E. Each witness subpoenaed by the Committee shall be reimbursed
3 for those reasonable expenses approved by the Committee.

4 F. Each witness shall be furnished a printed copy of the Rules
5 of Procedure and the pertinent provisions of the Rules of the House
6 applicable to the rights of witnesses.

7 G. Within ten calendar days before the scheduled formal hearing,
8 each party shall notify the Committee and all other parties to the
9 complaint, in writing, of the witnesses that are to appear at the
10 formal hearing. Within five calendar days before the scheduled formal
11 hearing, each party shall notify the Committee and all other parties
12 to the complaint, in writing, of any proposed rebuttal witnesses that
13 are to appear on his behalf. The Chair may exercise discretion in
14 allowing any party's good faith request for additional witnesses that
15 are proposed after the expiration of these time limits, or in denying
16 any witness request made by a party if such request is not made in
17 good faith.

18 RULE 12. Findings, Conclusions and Recommendations

19 A. At the completion of the ~~[preliminary]~~ primary hearing or
20 formal hearings, the Committee, by a majority vote of its members,
21 shall, within forty-five (45) days, adopt a report stating its
22 findings and conclusions on the complaint. The report shall be filed
23 with the Chief Clerk of the House, with a copy delivered to the office
24 of the Speaker, office of the Majority Floor Leader, and office of the
25 Minority Floor Leader, and shall be printed in the House Journal. In
26 the event the Committee finds that the complaint is not well-founded,
27 the report shall so state, and shall include a copy of a Letter of
28 Reproval if the Committee authorized such sanction. In the event the
29 Committee finds that the complaint is well-founded, the report shall
30 state the Committee's recommendation in a resolution appended thereto.

31 B. The resolution shall state the Committee's findings and
32 conclusions on each allegation in the complaint with the
33 recommendation that the House take one of the following actions:

- 34 (1) Letter of reproof;
35 (2) Reprimand;
36 (3) Censure; or
37 (4) Expulsion.

38 C. The chair or counsel for the Committee shall redact from its
39 findings, conclusions, and recommendations, the name or names and any
40 identifying information of any person or persons alleged to be a
41 victim of sexual harassment or sexual misconduct by a member. An
42 alleged victim may consent to the release of his or her name or other
43 identifying information by providing a written request to the chair of
44 the Committee.

45 D. The Committee's recommendation may also require payment of
46 restitution and costs incurred in the investigation, or impose any
47 other sanction that the Committee deems just and proper under the
48 circumstances, but the amount of restitution and costs shall not
49 exceed the costs incurred by the House related to the complaint. Any

1 assessment of fines or restitution and costs shall be paid in full by
2 the member no later than thirty days after the adoption of a
3 recommendation by the House of Representatives. If the member fails
4 to pay in full by the expiration of the thirty-day time period, then
5 the Chief Clerk may deduct from the member's salary an appropriate
6 monthly sum to repay the full amount due by the conclusion of the
7 member's current term of office.

8 RULE 13. Matters Not Covered in These Rules of Procedure

9 The Rules of Procedure of the United States House of
10 Representatives Committee on Ethics of the 116th Congress shall be
11 taken as guidelines in deciding questions, issues, and other matters
12 not otherwise provided for in these Rules of Procedure, except that
13 the Rules of the Missouri House of Representatives governing the party
14 representation on committees shall apply to this Committee.

15 RULE 14. Depositions

16 The Chair of the Committee, upon consultation with the Vice
17 Chair, may order the taking of depositions, under the authority of
18 Section 21.380, RSMo, by a member or counsel of the Committee.
19 Witnesses may be accompanied at a deposition by counsel to advise the
20 witnesses of their rights. Only members of the Committee, Committee
21 staff designated by the Chair or Vice Chair, an official reporter, the
22 witness, and the witness's counsel are permitted to attend.
23 Depositions may be taken at any stage of the proceedings and may be
24 used as evidence submitted by the Committee on Ethics.

25 RULE 15. Limitations on Scope and Authority

26 Nothing contained in these rules shall be construed to limit the
27 authority of the House of Representatives as enumerated under Article
28 III, Section 18, of the Constitution of the state of Missouri.

Introduced By: (Sponsor) _____
Signature Dist. #

REMINDER: Co-sponsors must sign onto a house bill or resolution electronically through a house computer or the house WEB Portal (home.house.mo.gov). Please call the office of the Assistant Chief Clerk at (573) 751-4503 if you have questions.