

Below, Legislative Council Policy No. 15 is set forth in full, with additions underlined and deletions denoted with brackets and strikeouts.

15. INTERIM LEGISLATIVE ETHICS COMMITTEE.--

D A. The interim legislative ethics committee is the body to which shall be referred matters relating to the ethical conduct of legislative members which arise during the interim, including conduct which may give rise to constitutional discipline under Article 4, Section 11 of the constitution of New Mexico.

B. The interim legislative ethics committee shall be appointed by the legislative council in accordance with the recommendations of the respective floor leaders of each house. The two major political parties in each house shall have equal representation on the committee. Members of the legislative council may serve on the interim legislative ethics committee. There shall be co-chairs of the committee, one from each house of the legislature. To the extent feasible, the committee shall be comprised of members of the standing committees of the house and senate responsible for ethics matters during legislative sessions.

C. The interim legislative ethics committee is authorized, during the interim, to issue advisory opinions and letters on matters relating to the ethical conduct of legislators in accordance with the provisions of these policies. The committee is also authorized, during the interim, to conduct investigations and hearings concerning the ethical conduct of legislators in accordance with the provisions of these policies. Except in an extreme emergency, the committee shall meet no more than once a month during the interim.

D. Advisory opinions shall be issued by the full committee and shall be dealt with in the following manner.

(1) Any legislator may seek an advisory opinion relating to the interpretation and enforcement of principles of ethics with respect to a situation affecting that legislator.

(2) A request for an advisory opinion shall be submitted in writing by the requesting legislator. The question may describe a real or hypothetical situation and request an advisory opinion establishing an appropriate standard of ethical conduct for that situation. Neither the contents nor the nature of a request for an opinion shall be revealed to any person outside of the committee or the staff to the committee except with the consent of the legislator requesting the opinion.

(3) The committee shall issue a written opinion regarding each inquiry or explain in writing why no opinion will be issued. Opinions shall be prospective only. Once issued, opinions shall be public documents, except that no opinion shall identify the requesting legislator without the legislator's consent.

(4) A requesting legislator may rely upon an advisory opinion of the interim legislative ethics committee, and any legislator acting in good faith reliance upon such an advisory opinion shall be immune from sanctions for conduct allowed by the opinion, unless the advisory opinion has been rejected by the relevant standing committee prior to the conduct in question.

D (5) Committee advisory opinions shall be forwarded to the relevant standing committees for adoption or rejection in accordance with their respective procedures.

E. In dealing with charges brought against a legislator or a referral relating to the conduct of a legislator, the committee shall function through investigative and hearing subcommittees.

(1) Hearing subcommittees shall be comprised of the members of the committee from the house of the charged member that were not members of the investigative subcommittee, plus any additional members appointed pursuant to a legislative council-approved anti-harassment policy.

(2) Investigative subcommittees shall be comprised of an equal number from each party of the committee members of the charged member's respective house selected by the appropriate co-chair of the council in accordance with the recommendations of the appropriate majority and minority floor leaders, plus any additional members appointed pursuant to a legislative council-approved anti-harassment policy.

(3) Subcommittees may only act by a majority vote of their members.

(4) Special legal counsel, arbitrators, hearing officers or other professionals may be hired by the legislative council service as authorized by the investigative subcommittees, hearing subcommittees or the interim legislative ethics committee to assist the subcommittees or committee with their respective duties and responsibilities.

F. Except as provided in Subsection [H] J, any charge seeking the discipline of a member of the legislature during the interim shall be in writing, under oath or affirmation, signed by a member of the legislature or a member of the public, verifying the truthfulness of the allegations in the complaint, addressed to the respective co-chair of the legislative council and filed with the legislative council service at the state capitol. The complaint shall state with reasonable particularity the relevant facts upon which the charge is based and the substantive ethics rule or law which the legislator is charged with violating.

G. The respective co-chair of the legislative council and the [relevant] respective majority and minority floor leaders, plus any outside counsel included pursuant to a legislative council-approved anti-harassment policy, shall determine whether the complaint raises an issue implicating the charged member's role as a legislator under the substantive ethics rules or laws governing legislative conduct. If a complaint is made against a respective co-chair of the

legislative council, that person is ineligible to make the determination and the determination shall be made by the remaining members eligible to make the determination, plus any outside counsel included pursuant to a legislative council-approved anti-harassment policy. If a complaint is made against one of the floor leaders, that person is ineligible to make the determination and the respective whip shall replace the floor leader for that determination.

~~D~~ [(+) H. Unless all [~~three~~] of the members making a determination as provided in Subsection G agree that the complaint does not raise an ethics issue implicating the charged member's role as a legislator under the applicable rules or laws, the complaint shall be forwarded to the interim legislative ethics committee. If all [~~three~~] of the members agree that the complaint does not raise an ethics issue, the complaint shall be dismissed and a copy of the dismissal and an explanatory letter shall be sent to the complainant.

~~[(2) The respective co-chair of the legislative council and the respective majority and minority leaders]~~ ~~I.~~ The members making a determination as provided in Subsection G may also determine whether, under the particular circumstances of the case, the matter is best left to the appropriate standing committee of the relevant house during the next session of the legislature. If all [~~three~~] of the members agree that the matter is best left to the appropriate standing committee, the case shall be referred to that committee rather than to the interim legislative ethics committee.

~~[H.]~~ J. During the interim, the speaker of the house of representatives or the president pro tempore of the senate, in conjunction with the respective majority and minority leaders, may also refer any ethics matter affecting a member of the respective house which might require investigation to the interim legislative ethics committee, including, when appropriate, requests by legislators which ask the speaker or the president pro tempore to provide for an investigation of the requesting legislator's own conduct. Such requests by a legislator shall be in writing addressed to the speaker or president pro tempore and shall state with reasonable particularity the conduct to be investigated and the reason for the request.

~~[I.]~~ K. The complaint, referral or self-referral shall be delivered to the appropriate investigative subcommittee and shall be dealt with as follows.

(1) A legislator against whom a complaint is filed or with respect to whom a referral is made shall immediately be given a copy of the complaint or referral.

(2) The investigative subcommittee shall conduct a confidential investigation [~~resulting in a recommendation to the hearing subcommittee as follows~~].

(a) If the investigative subcommittee finds no probable cause to believe a charge is warranted, it shall recommend that the hearing subcommittee close the investigation or dismiss the charge. Dismissal by the hearing subcommittee shall be communicated to the complainant, and the [~~member~~] legislator charged shall not be subject to further charges by the complainant for the same [~~act~~] event. However, if the investigative

subcommittee finds no probable cause to believe a charge is warranted after an investigation is made pursuant to a legislative council-approved anti-harassment policy, the investigative subcommittee shall immediately close the investigation, dismiss the complaint and so inform the complainant, the legislator against whom the complaint is filed and the appropriate ethics committee during the interim or standing committee during the session. The appropriate interim ethics committee receiving such notice during the interim shall issue a public report of the investigative subcommittee's determination within 10 days. The legislator charged shall not be subject to further charges by the complainant for the same event.

(b) Before the investigative subcommittee may move forward with a finding of probable cause with respect to a referral made pursuant to Subsection [H] J of this section, it shall obtain a written statement under oath or affirmation verifying the truthfulness of the allegations in the complaint or subject of the referral from a person with firsthand knowledge of the subject of the referral.

(c) If the investigative subcommittee finds probable cause to believe that the charge is warranted, it shall recommend that the hearing subcommittee initiate a formal hearing. However, if the investigative subcommittee finds probable cause to believe a charge is warranted after an investigation is made pursuant to a legislative council-approved anti-harassment policy, the investigative subcommittee shall cause to be prepared and presented a charging document to the appropriate ethics subcommittee during the interim or standing committee during the session.

[F:] L. A formal hearing is initiated by the issuance of a written finding of probable cause by the hearing subcommittee and the service of a copy of that document on the legislator being charged. [The] However, when the investigative subcommittee finds probable cause pursuant to a legislative council-approved anti-harassment policy, the hearing subcommittee shall set the matter for a formal hearing to occur within 45 days of the investigative subcommittee's finding of probable cause. A written finding of probable cause made by the investigative subcommittee pursuant to a legislative council-approved anti-harassment policy or made by the hearing subcommittee shall be limited to matters reasonably related to the original charge and shall become the formal charging document.

(1) A member or members of the investigative subcommittee or special legal counsel to the investigative subcommittee shall become the charging party and present the case against the legislator being charged. Members of the investigative subcommittee shall not serve as members of the hearing subcommittee and shall avoid ex parte communications with members of the hearing subcommittee regarding matters referred for investigation.

(2) The hearing subcommittee shall hear the matter. Members of the hearing subcommittee shall avoid ex parte communications regarding matters referred for hearing. Good cause excusal of a member from investigating, hearing or voting on a matter may be granted only by a majority vote of the hearing subcommittee. A vacancy shall be filled by the appointing authority in the same manner as the original appointment.

(3) If a charge is brought against a member of either house who has appointing, investigative or hearing responsibilities to carry out under this policy, that member shall be relieved of those responsibilities for purposes of that charge. The respective co-chair of the legislative council, in accordance with the recommendations of the respective floor leader, or succeeding appropriate party leader if necessary, shall appoint a substitute from the same political party to act in the stead of that member.

(4) If the charge involves conduct that is the subject of a pending civil or criminal proceeding in which the charged party is a defendant, the hearing subcommittee shall determine whether the public interest is best served by suspending the disciplinary proceedings pending resolution of the civil or criminal charges or whether portions of the formal proceedings shall be kept confidential, and notice thereof shall be forwarded to the appropriate standing committee of the relevant house.

~~[K.]~~ M. At the formal hearing, all parties shall have an opportunity to be heard, to request the presence of witnesses and the production of relevant evidence and to cross-examine witnesses against them. The member being charged may be represented by counsel at the member's own expense.

~~[L.]~~ N. At the time a formal hearing is scheduled, the hearing subcommittee shall establish and notify the parties of the preliminary schedule and the procedures to be followed, including those for making opening and closing statements and for the presentation of evidence. The hearing subcommittee shall not be bound by the rules of evidence applicable in the courts of New Mexico and may hire legal counsel to assist the subcommittee.

(1) The procedures shall include notice that all testimony shall be taken under oath and that the hearings shall be open to the public, except that the hearing subcommittee may designate specific information or portions of the hearing to be confidential in order to protect the integrity of an ongoing investigation or prosecution or to preserve the privacy of third parties or for any other lawful purpose.

(2) All testimony at the formal hearing shall be recorded. The recorded testimony, together with all other evidence, shall be compiled as the record of the formal hearing.

~~[M.]~~ O. If the hearing subcommittee determines that the legislator being charged has not committed an offense that justifies the imposition of sanctions, it shall recommend in its report to the appropriate standing committee that the complaint be dismissed.

~~[N.]~~ P. If the hearing subcommittee determines that the legislator has committed an offense that justifies the imposition of sanctions, it shall make such a recommendation, including the severity of the sanction, in its report to the appropriate standing committee.

Recommended sanctions may include but are not limited to the following.

(1) Reprimand -- a reprimand is normally appropriate for a single, relatively minor act of unethical conduct.

(2) Censure -- censure is normally the appropriate sanction for more serious or repeated acts of unethical conduct, although repeated or aggravated violations may merit expulsion. Censure normally carries with it a stripping of leadership and chairmanship positions for the remainder of that legislator's current term in office.

(3) Expulsion -- the extraordinary power of expulsion generally should be reserved for very serious breaches of legal or ethical responsibilities of members that directly relate to their duties as members of the legislature and that impugn the integrity of the legislature, reflect adversely on the legislature or otherwise undermine public trust in the institution of the legislature.

[~~Q.~~] Q. In accordance with the report from the hearing subcommittee and the respective house's rules, the appropriate standing committee shall either dismiss the complaint or refer the matter to the appropriate house of the legislature with the recommendations of the subcommittee, with the understanding that the ultimate authority lies with the appropriate house of the legislature pursuant to its rules. (As amended [~~January 20, 2020~~] October 11, 2022.)

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