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The ability to punish its own members for poor conduct is a constitutional right of the House of Representatives ([Minn. Const. art. IV, § 7](#)). This is largely carried out through the work of the House Ethics Committee. This publication answers basic questions about the operation of the House Ethics Committee, including jurisdiction, committee procedures, and the complaint process.

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## Common Sense and Behavioral Issues

In dealing with member conduct, the House uses a common-sense approach based on a ladder of response that allows the response to escalate based on the severity of the conduct. Members are human beings, with all the foibles of any person. In addition, members are in one sense employees of the House of Representatives, with some basic employee rights.

Often, the first step in the ladder comes in the form of informal responses to the member from peers and family members. When member behavior becomes public, the caucus leader (minority or majority) and the Speaker of the House may become aware of the behavior and may also respond privately. The Speaker of the House is the elected leader of the entire House and may become involved at any point. Private responses may include suggestions for changes to behavior, mental health or chemical dependency support, or small changes to assignments or duties. In some instances, the House Human Resources staff may become involved. But as an institution, the House of Representatives has avoided taking official notice of many issues that are personal in nature.

Some behaviors are best dealt with as a political matter, a matter for the electorate to handle in campaigns for re-election. Political parties may target a member for behavioral choices. The judgment here is that the salience of behavior is something for the electorate to judge.

Official responses, short of an ethics complaint, center on actions of the caucus or the Speaker. Punishments may include a caucus suspending or ejecting a member from the caucus. A Speaker may change committee assignments or take a matter public in other ways. Any member may issue a press release or public statement about another's behavior.

Finally, a matter may become the subject of an official complaint. In the House, the complaint must be made by at least two members, in writing and under oath.

Many behavior issues are not ethical matters, but instead are personal issues that call for a quiet and behind-the-scenes response, institutional support for personal crises, or modest leadership reactions that draw a line for future behaviors. The distinction may itself be a moral judgment. This "ladder of response" serves the function of acknowledging the member's behavioral difficulties and provides a gentle pathway for response by the House of Representatives. The goal is to have responses that work and prevent behavior that goes beyond the pale.

## Authority of the House Ethics Committee

When an official complaint against a member is made, it is handled by the House Ethics Committee. The committee's authority comes indirectly from the constitutional powers of the body and directly from adoption of House Rules by the body.

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

The state constitution gives each legislative body the power to punish its members for disorderly conduct:

**Rules of government.** Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member; but no member shall be expelled a second time for the same offense. ([Minn. Const. art IV, § 7](#))

Other state constitutions contain similar language, and courts around the country (there are no Minnesota cases) that have had to interpret the phrase "disorderly conduct" find the power is very broad and largely within the body's discretion to define. Under this authority, the House has adopted Rule 6.10, which 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 a criminal court or before an executive agency like the Campaign Finance and Public 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 1986 when a 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.

## **Committee Operation and Procedures**

### **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. (Current written procedures can be found in the appendix.) 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 arguably should avoid doing so during an ongoing matter unless a change is unavoidable, and the change is disclosed for debate by involved parties.

### **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.

### **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.

## Can the committee have closed meetings?

The Ethics Committee must hold open meetings unless a majority of the committee votes to enter 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. However, House Rule 6.10 requires the initial complaint to include "all supporting materials." While complainants have produced additional supporting materials without prior notice, committee procedures do 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.

## Roles in Committee

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

The question has been raised regarding 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](#))

### 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.

Some 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.

## **Communication and Confidentiality**

### **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 publicly 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 have 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 rules govern 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-at-Arms Office staff serve them.

In a 2003 complaint, the respondent'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.

## **Committee Actions and Findings**

### **What does the committee do with a complaint?**

When the committee receives a complaint, it must first determine if the complaint has probable cause. If the committee finds there is probable cause to support a complaint and recommends that the House as a whole 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 provide a clear answer to this issue. On more than one occasion, the committee simply voted "no probable cause" in a public session and adjourned. The committee has on other occasions issued a brief statement as part of its finding. On yet another occasion, an informal reconciliation was proposed, under paragraph 9 of committee procedures. (See the next section and the flowchart on page 9 for more on the complaint process.)

### **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 complainants to recommending that the House expel a member. These options are laid out in the ethics complaint process flowchart (on page 9 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.

## The Complaint Process

### How are complaints filed and processed?

Steps for filing an ethics complaint are outlined in House Rule 6.10 and dictated by the Ethics Committee Rules of Procedure (see page 10).

**Step 1:** A complaint is made to the Speaker of the House and a copy is provided to the member.

The complaint process can end early in two ways:

- Complainants may withdraw their complaint and the proceedings end, unless the Ethics Committee finds the complaint frivolous. If a complaint is found frivolous, the committee sends the complainants a public reproof letter and may recommend other discipline for the complainants.
- At any time, a majority of the whole committee may decide a violation was inadvertent, technical, de minimis, or may not warrant discipline. It may:
  - attempt voluntary remedial or other action by the subject of the complaint without discipline
  - recommend clarifying a law, rule, policy, or behavior norm and may caution members about it

**Step 2:** If the complaint was filed properly, the Speaker forwards it to the Ethics Committee.

If the complaint was not filed properly, it is not forwarded to the Ethics Committee and the complaint dies.

**Step 3:** Ethics Committee receives the complaint to determine probable cause.

- If the complaint is not otherwise resolved, a probable cause hearing must be held within 21 days.
- If probable cause is not found by the majority of the whole committee, the complaint is dismissed and the process ends.
- If probable cause is found by the majority of the whole committee, the committee notifies the Speaker and the subject of the complaint.

**Step 4:** The Ethics Committee holds a hearing to take and evaluate evidence for or against discipline and to make a final determination on the complaint.

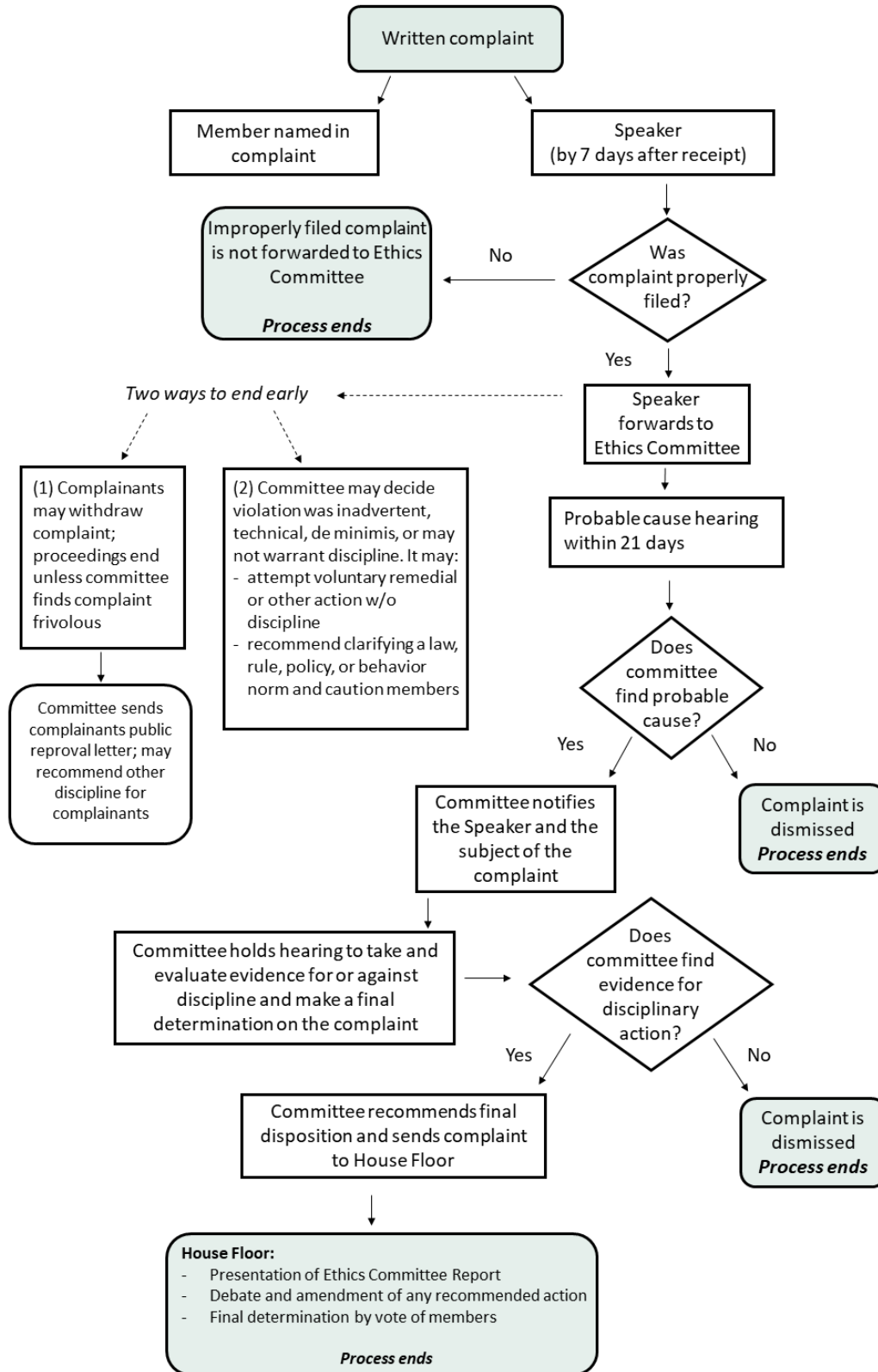
- If a majority of the whole committee fails to find clear and convincing evidence for disciplinary action, the complaint is dismissed and the process ends.
- If a majority of the whole committee finds clear and convincing evidence for discipline, it recommends final disposition with or without comment. The disposition could be:
  - Expulsion
  - Reprimand
  - Censure
  - Financial restitution (may also be part of censure of reprimand resolution)
  - Remedial or other action (may also be part of censure of reprimand resolution)
  - Counseling (may also be part of censure of reprimand resolution)
  - Other discipline (may also be part of censure of reprimand resolution)

**Step 5:** The complaint moves to the House floor for consideration by the entire House.

- The Ethics Committee presents its report.
- Members debate and amend any recommended action.
- Members vote on the final determination and the process ends.



### The Ethics Complaint Process



## Appendix: House Committee on Ethics, Rules of Procedure

**1. PURPOSE.** The Committee shall meet only: (a) to review and dispose of complaints against members (other than those arising out of election contests), as authorized by House Rule 6.10, which are submitted to the Speaker prior to adjournment sine die; (b) to adopt written procedures for handling complaints; (c) to review and make recommendations regarding ethical guidelines; (d) to consider complaints alleging violations of open meeting requirements that the Speaker has referred to the Committee under House Rule 6.23; and, (e) to consider matters referred to it by the Committee on Rules and Legislative Administration or the House.

Pursuant to House Rule 6.10, the following shall serve as the written procedures and due process requirements for handling complaints referred to the Committee on Ethics.

**2. COMPLAINTS.** As specified in House Rule 6.10, a complaint regarding the conduct of a member of the House shall be made by two or more members of the House, shall be in writing and under oath, shall name the member or members charged and the actions complained of, shall present with specificity the factual evidence supporting the complaint, and shall be submitted to the Speaker.

On matters of complaints against members, the House Research Department shall serve as staff to the Committee only, and not to either the complainants or any member named in a complaint.

If a complaint is withdrawn by the complainants, the Committee shall immediately terminate all proceedings respecting the complaint, except as the Committee deems necessary to determine whether the complaint is frivolous for purposes of action under Rule 8.

**3. PROCEEDINGS TO BE HELD IN PUBLIC; EXCEPTIONS.** The existence and substance of the complaint, including any supporting materials, and all proceedings, meetings, hearings and records of the Committee are public; except that the committee, upon a majority vote of the whole Committee, may meet in executive session to consider or determine the question of probable cause, as provided in Rules 6 and 7, to consider a member's medical or other health records, or to protect the privacy of a victim or a third party.

**4. DUE PROCESS.** Any member named in a complaint must be fully informed of due process rights. The member must be given a copy of the complaint and must be given timely notice of and the right to be present at all meetings and hearings. The member has the right to respond to all charges, to be represented by counsel, to call and cross-examine witnesses, to introduce exhibits, to be furnished with exhibits, documents, and evidence in possession of the Committee, and to rebut evidence offered by the complainants. The members making a complaint must be notified of all meetings and hearings on the complaint and must be given notice of their opportunity to offer evidence of matters alleged in the complaint.

**5. COMMITTEE PROCEEDINGS; RECORDS.** All public records of the Committee must be disposed of in accordance with House Rule 6.24. When the Committee meets in executive session, the proceedings, all evidence presented in the session, and all records of the session are confidential except insofar as the Committee determines, by a majority vote of the whole Committee, that items should be made part of the public record. The Committee shall advise all participants in an executive session of the confidentiality requirement. Confidential records of executive sessions must be kept by the Committee until the December 31 next following adjournment sine die, at which time the confidential records must be destroyed by the Chair of the Committee, or the Chair's designee, and notification of the destruction sent to the Chief Clerk.

**6. MEETING ON PROBABLE CAUSE.** The Committee shall, upon receipt of a complaint, hold a meeting within 21 days to determine whether there is probable cause to support the complaint. The Committee may, upon a vote of the majority of the whole Committee, defer its proceedings until the completion of ongoing criminal proceedings related to the conduct named in the complaint.

**7. FINDING ON PROBABLE CAUSE.** If a majority of the whole Committee finds, based upon the complaint and supporting and rebutting evidence presented by the complainants and the member or members named, sufficient factual evidence to believe that the allegations contained in the complaint are more probably true than not and that, if true, they tend to support disciplinary action, the Committee shall inform the Speaker and the member or members named that it has found probable cause and shall proceed to public hearings under Rule 10. If a majority of the whole Committee fails to find probable cause, the complaint shall be dismissed.

**8. FRIVOLOUS COMPLAINTS.** If a complaint is withdrawn or dismissed, and a majority of the whole Committee finds the complaint to have been frivolous, the Committee shall immediately issue a public letter of reproof to the complainants and may recommend other disciplinary action against the complainants.

**9. MINOR VIOLATIONS; INFORMAL RECONCILIATION.** At any time during the proceedings, if a majority of the whole Committee finds that a violation of a law, rule, administrative policy, or norm of behavior was inadvertent, technical, or of a de minimis nature, or may not warrant disciplinary action by the House, the Committee may attempt to bring about voluntary remedial or other action by the subject of the complaint without disciplinary action. The Committee also may recommend clarification of a law, rule, policy, or norm of behavior and may caution the members of the House with respect to it.

**10. FINAL HEARING.** The hearing to make a final Committee determination on a complaint shall be held in public except insofar as the Committee votes to meet in executive session pursuant to House Rule 6.10 and Rule 3. The purpose of the hearing shall be to receive and evaluate the evidence offered in support of or opposition to disciplinary action and to make a final Committee determination on the complaint.

**11. COMMITTEE DETERMINATION.** If a majority of the whole Committee finds clear and convincing evidence in support of disciplinary action, the Committee shall, with or without comment, make a recommendation to the House for final disposition. If a majority of the whole Committee fails to find clear and convincing evidence in support of disciplinary action, the complaint shall be dismissed.

**12. RECOMMENDATIONS.** The Committee may recommend disciplinary action by the House as follows:

(a) The Committee may recommend expulsion. Expulsion is the ultimate penalty available to the House. It is the only sanction expressly referred to in the state constitution, which recognizes the gravity of this power by requiring a vote of two thirds to exercise it. Expulsion is a sanction that is properly reserved for the most serious violations of law, rule, standards, or duty, for conduct so abhorrent that it obliges the House to repudiate an elected representative of the people.

(b) The Committee may recommend censure. Short of expulsion, censure is the strongest formal statement of disapproval of the conduct of a member by the member's peers. It is used to condemn very serious misconduct that does not justify expulsion from the House. Censure is carried out by a majority vote of the House, through the adoption of a resolution of censure that is entered in the permanent Journal of the House.

(c) The Committee may recommend reprimand. Reprimand is the appropriate discipline for misconduct that warrants formal disapproval by the House but is not so serious as to justify censure. Reprimand is carried out by a majority vote of the House, through the adoption of a resolution of reprimand that is entered in the permanent Journal of the House.

(d) As part of a resolution of censure or reprimand, the Committee may recommend that the member be required to make financial restitution. This is appropriate in cases where the Committee finds that the misconduct was committed to secure, or resulted in, an undeserved personal financial benefit due to misuse or misappropriation of public funds or assets.

(e) As part of a resolution of censure or reprimand, the Committee may recommend that remedial or other action be required of the member, including a requirement that the member accept professional counseling or assistance.

(f) As part of a resolution of censure or reprimand, the Committee may recommend that the House impose other discipline that the Committee deems appropriate.

(g) Under the [Minnesota Constitution, article IV](#), section 6, and [article VII](#), section 1, a member who is convicted of a felony is not entitled to continued membership in the House, until restored to civil rights, and must, if necessary, be expelled.

## Additional Resources:

- For an explanation of the laws and rules relating to ethical behavior, see the House Research publication, [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 publication [Gift Ban Law and Rules for House Members and Employees](#)



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