

# House Resolution No. 227

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RICHARDSON.

1752H.011

### ETHICS COMMITTEE

#### RULES OF PROCEDURE

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#### 4 RULE 1. Scope and Authority

5           These Rules of Procedure govern the conduct of the investigation of complaints of  
6 ethical misconduct by a member of the House and are adopted pursuant to House Rule 36.

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#### 8 RULE 2. Definitions

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

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

17           (2) Letter of Reproval - A sanction which expresses disapproval of conduct based on  
18 the appropriateness of such conduct by a legislator, regardless of whether the conduct  
19 constitutes a legal or moral wrong and is included as part of the committee's report.

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

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#### 25 RULE 3. Quorum

26           A quorum exists when a majority of the members of the Committee are present.

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## 28 RULE 4. Form of Complaints

29 A. All complaints filed with the Speaker against a member of the House shall be  
30 made by a member. The complaints shall be confidential and shall be referred to the  
31 Committee on Ethics within ten (10) days and shall be in writing and under oath, setting forth  
32 in simple, concise and direct statements:

33 (1) The name and legal address of the member or members acting as complainant;

34 (2) The name of the member of the House alleged to have engaged in the commission  
35 of a crime, misconduct, willful neglect of duty, corruption in office or other acts constituting  
36 ethical misconduct. "Misconduct" means:

37 (a) Any conduct constituting a legal or moral wrong which materially impairs the  
38 member's ability to perform the duties of his office or substantially impairs public confidence  
39 in the General Assembly;

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

41 (c) The intentional filing of a false complaint or the filing of a complaint in reckless  
42 disregard of the truth.

43 (3) The nature of the alleged crime, misconduct, neglect, corruption or other unethical  
44 act, including when applicable, the specific law, rule, regulation or ethical standard violated;

45 (4) The facts alleged to have given rise to the violation; and

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

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

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## 51 RULE 5. Initial Examination of the Complaint by the Committee

52 A. Within thirty (30) days of the assignment of the complaint by the Speaker, the  
53 Committee shall determine if it is in compliance with Rule 4 of these Rules, and whether on  
54 the face of the complaint, the allegations contained therein are within the jurisdiction of the  
55 Committee, and if so, whether the allegations merit proceeding to a preliminary hearing. The  
56 complainant shall not act as a member of the Committee at a hearing in which the  
57 complainant is likely to be called as a necessary witness. A respondent shall not act as a  
58 member of the Committee for purposes of his complaint.

59 B. Complaints determined not to be in compliance with Rule 4 of these Rules shall be  
60 returned to the complainant with a general statement that it is not in compliance with the  
61 Rules of Procedure. The complaint may be resubmitted in the proper form.

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

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

66 (2) Proceed to a preliminary hearing;

67 (3) Dismiss the complaint. When a motion to proceed to a preliminary hearing fails  
68 on a recorded vote, the complaint shall be immediately dismissed.

69 D. In determining whether or not to proceed the Committee shall consider the  
70 following:

71 (1) The credible evidence contained in the complaint or appended thereto of the  
72 commission of a crime, misconduct, willful neglect of duty, corruption in office, or other acts  
73 violating applicable ethical standards;

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

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

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

79 E. Complaints determined to be in compliance with Rule 4 of these Rules and  
80 accepted for a preliminary hearing shall be transmitted to the respondent with a copy of the  
81 Rules of Procedure and notice in writing that the respondent has twenty-one (21) calendar  
82 days to respond to the complaint either by way of answer or motion pursuant to Rule 6 of  
83 these Rules. The complainant shall also be notified, in writing, of the action of the  
84 Committee. Examination of the complaint and the determination of Rule 5.C. shall be  
85 conducted in a closed meeting.

86

#### 87 RULE 6. Answers and Motions

88 A. If the Committee determines that the complaint merits proceeding to a preliminary  
89 hearing, the respondent shall have twenty-one (21) calendar days in which to respond to the  
90 complaint by way of answer or motion, unless this time period is waived by the respondent.  
91 Any answer or motion shall be in writing, signed by the respondent and his counsel, if he has  
92 one, and shall be limited to the following:

93 (1) An admission or denial under oath, of the allegations set forth in the complaint,  
94 including negative and affirmative defenses, and any other relevant information, including  
95 supporting evidence which the respondent may desire to submit. Failure to file an answer  
96 within the time prescribed shall be considered by the Committee as a denial of each  
97 allegation;

98 (2) An objection to the jurisdiction of the Committee to investigate the complaint; or

99 (3) An objection to the participation of any member of the Committee in an  
100 investigation of the complaint on the grounds that the member cannot render an impartial and  
101 unbiased decision in the case. The majority of the members present shall rule on the objection  
102 to the participation of any member of the Committee. A temporary replacement shall be made  
103 to serve on the Committee on Ethics for all actions concerning a particular complaint for any  
104 member of the Committee who is prevented from acting on a complaint under these rules.

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

108 C. The Chairman of the Committee shall pass upon such motions as soon as  
109 practicable and notice of the decision shall be furnished to the respondent and the  
110 complainant. A motion to quash a subpoena shall be decided by the Chairman of the  
111 Committee.

112 D. Time limitations imposed by this Rule may be extended when, in the discretion of  
113 the Chairman, such extension would facilitate a fair and complete inquiry and may be  
114 shortened when the Chairman determines that there are special circumstances compelling  
115 expedition, and upon twenty-four (24) hours notice of said action to the respondent and the  
116 claimant.

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

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#### 120 RULE 7. Preliminary Hearings

121 A. A preliminary hearing may be held to hear arguments based on the pleadings  
122 submitted in the case. The preliminary hearing shall be an open meeting. The committee shall  
123 provide the complainant and the respondent or counsel for the complainant and respondent an  
124 opportunity to present, orally or in writing, a statement, which shall be under oath or  
125 affirmation, regarding the allegations and any other relevant questions arising out of the  
126 pleadings. A complainant or respondent who is represented by counsel shall not be  
127 questioned in the absence of counsel unless an explicit waiver is obtained.

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

136 C. At the conclusion of the preliminary hearing, a majority of the Committee shall  
137 vote by roll call to either:

138 (1) Dismiss the complaint, or

139 (2) Proceed by

140 (a) undertaking an investigative hearing; or

141 (b) deciding the case based upon the preliminary hearing.

142 A decision based upon a preliminary hearing shall require the consent of the  
143 respondent.

144 D. If the committee decides to make a summary decision of the case and the  
145 respondent accepts this disposition the Committee may, by a majority vote, recommend one  
146 of the following sanctions:

147 (1) Letter of reproof;

148 (2) Reprimand; or

149 (3) Censure.

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#### 151 RULE 8. Investigative Hearings

152 A. An investigative hearing may be held on the record to receive evidence upon  
153 which to base findings, conclusions, and recommendations, if any, to the House. The  
154 Committee may require, by subpoena or otherwise, or by subpoena duces tecum, the  
155 attendance and testimony of such witnesses and the production of such books, records,  
156 correspondence, memorandums, papers and documents as it deems necessary. The  
157 Committee may obtain a court-issued subpoena in the event that any person refuses to obey  
158 the subpoena issued by the Committee.

159 B. Prior to setting a hearing date and issuing subpoenas for witnesses, the Committee  
160 shall resolve the scope and purpose of the hearings. A copy of this statement of scope and  
161 purpose shall be furnished to all witnesses. During the course of the hearings the Committee  
162 may expand or contract the scope in light of evidence received.

163 C. The order of the investigative hearing shall be as follows:

164 (1) The Chairman shall open the hearing by stating the Committee's authority to  
165 conduct the investigation, the purpose of the investigation and its scope.

166 (2) The complainant and the respondent or counsel for the complainant and  
167 respondent shall be permitted to make opening statements. Such opening statements shall not  
168 exceed fifteen minutes each.

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

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

- 172 (b) Witnesses and other evidence offered by the respondent;  
173 (c) Witnesses and other evidence offered by the Committee staff; and  
174 (d) Rebuttal witnesses.

175 (4) The Chairman or his designee shall examine each witness. The Committee  
176 members may then question the witness. The respondent or his counsel may then cross-  
177 examine the witness. Redirect or recross examination may be permitted in the Chairman's  
178 discretion. With respect to witnesses offered by the respondent, a witness shall be examined  
179 first by the respondent or his counsel, if he has one, and then may be cross-examined by the  
180 complainant or his counsel, if he has one, and then may be cross-examined by the Chairman  
181 or his designee. Committee members may then question the witness. Redirect and recross  
182 examination may be permitted in the Chairman's discretion.

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

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#### 189 RULE 9. Admissibility of Evidence

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

194 B. The Chairman or other member presiding shall rule upon any question of  
195 admissibility of testimony or evidence presented to the Committee. The Chairman or other  
196 member presiding may limit the presentation of repetitious evidence. Rulings shall be final  
197 unless reversed or modified by a majority vote of the Committee members present.

198 C. At an investigative hearing, the burden of proof is on the complainant with respect  
199 to each count to establish the facts alleged therein clearly and convincingly by the evidence  
200 that he introduces.

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#### 202 RULE 10. Witnesses

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

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

209 C. Witnesses at investigative hearings may be accompanied by their counsel for the  
210 purpose of advising them concerning their constitutional rights and to raise objections to  
211 procedures or to the admissibility of testimony and evidence. Counsel for a witness other than  
212 the respondent shall not be permitted to engage in oral argument with the Committee. After a  
213 witness has testified, his counsel may submit to the Committee, in writing, any questions he  
214 wishes propounded to his client and any request for additional witnesses or other evidence.  
215 Such request may be granted in the discretion of the Committee.

216 D. The respondent may apply to the Committee for the issuance of subpoenas for the  
217 appearance of witnesses or the production of documents on his behalf. The application shall  
218 be granted upon good cause shown by the respondent that the proposed testimony or evidence  
219 is relevant and not otherwise available. The application shall be denied if not made at a  
220 reasonable time or if the testimony or evidence would be merely cumulative.

221 E. The respondent is entitled to present witnesses in his behalf. However, the  
222 Chairman may limit such testimony when, in his discretion, he finds the testimony is  
223 repetitious or cumulative.

224 F. Each witness subpoenaed by the Committee shall be reimbursed for those  
225 reasonable expenses approved by the Committee.

226 G. Each witness shall be furnished a printed copy of the Rules of Procedure and the  
227 pertinent provisions of the Rules of the House applicable to the rights of witnesses.

228 H. Within ten (10) calendar days before the scheduled investigative hearing, the  
229 Chairman shall notify the respondent, in writing, of the witnesses that are to appear before the  
230 Committee. Within five (5) calendar days before the scheduled investigative hearing, the  
231 respondent shall notify the Committee, in writing, of the witnesses that are to appear in his  
232 behalf. Additional witnesses may be brought before the Committee, in the discretion of the  
233 Chairman or other member presiding and upon good cause, if their whereabouts or existence  
234 were unknown to the respondent at the time for submission of the witness list to the  
235 Committee.

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#### 237 RULE 11. Findings, Conclusions and Recommendations

238 A. At the completion of the preliminary hearing or investigative hearings, the  
239 Committee, by a majority vote of its members, shall, within forty-five (45) days, adopt a  
240 report stating its findings and conclusions on the complaint. The report shall be filed with the  
241 Chief Clerk of the House and shall be printed in the House Journal. In the event the  
242 Committee finds that the complaint is not well-founded, the report shall so state, and shall  
243 include a copy of a Letter of Reprimand if the Committee authorized such sanction. In the  
244 event the Committee finds that the complaint is well-founded, the report shall state the  
245 Committee's recommendation in a resolution appended thereto.

246 B. The resolution shall state the Committee's findings and conclusions on each  
247 allegation in the complaint with the recommendation that the House:

248 (1) Expel the member as provided in Article III, Section 18 of the Missouri  
249 Constitution;

250 (2) Punish the member as provided in Article III, Section 18 of the Missouri  
251 Constitution, by reprimand on the adoption of the resolution, or by censure by the Speaker in  
252 open session; or

253 (3) Take no further action, stating the reasons therefor.

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255 RULE 12. Matters Not Covered in These Rules of Procedure

256 The Rules of Procedure of the United States House of Representatives Committee on  
257 Ethics of the 114<sup>th</sup> Congress shall be taken as guidelines in deciding questions, issues, and  
258 other matters not otherwise provided for in these Rules of Procedure, except that the Rules of  
259 the Missouri House of Representatives governing the party representation on committees  
260 shall apply to this Committee.

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