

# House Resolution No. 74

## 99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CIERPIOT.

1277H.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 ethical  
6 misconduct by a member of the House and are adopted pursuant to House Rule [38] 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) Censure - A sanction which recognizes the respondent's conduct constituted a legal  
13 or moral wrong, and which shall include punishment in the form of denying privileges of office,  
14 which recommendation is included as part of the committee's report and requires the presence  
15 of the respondent in the chamber during consideration and vote by the entire House on such  
16 resolution.

17           (2) Letter of Reproval - A sanction which expresses disapproval of conduct based on the  
18 appropriateness of such conduct by a legislator, regardless of whether the conduct constitutes a  
19 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 legal  
21 or moral wrong and which may include punishment in the form of denying privileges of office,  
22 which recommendation is included as part of the committee's report, is issued by the Speaker  
23 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 made  
30 by a member. The complaints shall be confidential and shall be referred to the Committee on  
31 Ethics within ten (10) days and shall be in writing and under oath, setting forth in simple, concise  
32 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 of  
35 a crime, misconduct, willful neglect of duty, corruption in office or other acts constituting ethical  
36 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, the  
47 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 support  
49 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 the  
54 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 complainant  
57 is likely to be called as a necessary witness. A respondent shall not act as a member of the  
58 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 Rules  
61 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 these  
63 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 on  
68 a recorded vote, the complaint shall be immediately dismissed.

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

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

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

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

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

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

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#### 85 RULE 6. Answers and Motions

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

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

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

96 (3) An objection to the participation of any member of the Committee in an investigation  
97 of the complaint on the grounds that the member cannot render an impartial and unbiased  
98 decision in the case. The majority of the members present shall rule on the objection to the  
99 participation of any member of the Committee. A temporary replacement shall be made to serve

100 on the Committee on Ethics for all actions concerning a particular complaint for any member of  
101 the Committee who is prevented from acting on a complaint under these rules.

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

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

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

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

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#### 115 RULE 7. Preliminary Hearings

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

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

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

132 (1) Dismiss the complaint, or

133 (2) Proceed by

134 (a) undertaking an investigative hearing; or

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

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

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

140 (1) Letter of reproof;

141 (2) Reprimand; or

142 (3) Censure.

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#### 144 RULE 8. Investigative Hearings

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

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

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

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

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

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

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

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

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

166 (d) Rebuttal witnesses.

167 (4) The Chairman or his designee shall examine each witness. The Committee members  
168 may then question the witness. The respondent or his counsel may then cross-examine the  
169 witness. Redirect or recross examination may be permitted in the Chairman's discretion. With  
170 respect to witnesses offered by the respondent, a witness shall be examined first by the

171 respondent or his counsel, if he has one, and then may be cross-examined by the complainant or  
172 his counsel, if he has one, and then may be cross-examined by the Chairman or his designee.  
173 Committee members may then question the witness. Redirect and recross examination may be  
174 permitted in the Chairman's discretion.

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

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#### 181 RULE 9. Admissibility of Evidence

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

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

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

193

#### 194 RULE 10. Witnesses

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

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

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

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

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

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

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

220 H. Within ten (10) calendar days before the scheduled investigative hearing, the  
221 Chairman shall notify the respondent, in writing, of the witnesses that are to appear before the  
222 Committee. Within five (5) calendar days before the scheduled investigative hearing, the  
223 respondent shall notify the Committee, in writing, of the witnesses that are to appear in his  
224 behalf. Additional witnesses may be brought before the Committee, in the discretion of the  
225 Chairman or other member presiding and upon good cause, if their whereabouts or existence  
226 were unknown to the respondent at the time for submission of the witness list to the Committee.

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

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

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

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

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

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

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#### 244 RULE 12. Matters Not Covered in These Rules of Procedure

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

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