

AMENDED AGENDA #2
HOUSE ETHICS AND HOUSE POLICY COMMITTEE
8:00 A.M.
WW 02 Lincoln Auditorium
Wednesday, April 28, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	Call to Order	
	Opening Comments by Chairman	
	Opening Statements by Committee Counsel and Committee Members	
	Opening Statements by Respondent's Counsel and Committee Members	
	Presentation of the Complaint	
	Questioning of Witnesses by Committee's Counsel	
	Questioning of Witnesses by Respondent's Counsel	
	Committee Discussion	
	Adjourn	

COMMITTEE MEMBERS

Chairman Dixon
Rep Horman
Rep Crane
Rep Gannon
Rep McCrostie

COMMITTEE SECRETARY

Susan Werlinger
Room: EW45
Phone: 332-1161
Email: hethics@house.idaho.gov

MINUTES
HOUSE ETHICS AND HOUSE POLICY COMMITTEE

DATE: Wednesday, April 28, 2021
TIME: 8:00 A.M.
PLACE: WW 02 Lincoln Auditorium
MEMBERS: Chairman Dixon, Representatives Horman, Crane, Gannon, McCrostie
**ABSENT/
EXCUSED:** None
GUESTS: Bill Myers, Holland & Hart, LLP; Rep. von Ehlinger, Edward Dindinger, Dindinger & Kohler, PLLC; Leslie Hayes, Emma Nowacki, Idaho Attorney General's Office

Per Joint Rule 19, these minutes have been prepared in summary fashion. They are not a verbatim transcription of the proceedings on April 28, 2021.

Chairman Dixon called the meeting to order at 8:01 a.m.

Chairman Dixon made remarks on the purpose of the hearing, saying it is to determine whether the complaint against **Rep. Aaron von Ehlinger** should be dismissed, whether by clear and convincing evidence the complaint can be proven that Rep. von Ehlinger has engaged in conduct unbecoming a member of the House, which is detrimental to the integrity of the House as a legislative body and whether there is good cause shown to recommend to the House the expulsion of the respondent from the Idaho House of Representatives. Chairman Dixon explained the authority of the Committee comes from House Rule 45 and the Constitution of Idaho. He said this is not a criminal trial, this is a matter internal to the House of Representatives which has become public by House Rules. He reviewed the schedule of proceedings.

Bill Myers, Holland and Hart, counsel for the Ethics Committee yielded his time back to **Chairman Dixon**.

Edward Dindinger, Dindinger & Kohler, PLLC, counsel for **Rep. von Ehlinger** explained the Idaho Constitution grants the House of Representatives as a body the power to expel a member for good cause shown, but not to a single Committee. The Committee only has the ability to make a recommendation to the body. He explained the burden of proof under House Rule 45 is a finding beyond a reasonable doubt the misconduct involves commission of a felony or the use of office for pecuniary gain. He explained he will demonstrate a recommendation of expulsion would be an overreach. He further explained they will demonstrate House Rule 45 provides for the Committee to recommend reprimand or censure, which was not mentioned and the process and procedures adopted by the Committee do not satisfy constitutional requirements and that Rep. von Ehlinger is innocent of any wrongdoing in this matter because he has not violated any written law or rule of the Idaho House of Representatives.

Rep. Scott Bedke, Speaker of the House of Representatives, presented the complaint against **Rep. von Ehlinger**. Speaker Bedke said this complaint was brought to the House Ethics Committee in order to protect the integrity of the Idaho House of Representatives not only of those who serve here today, but also of every person who has ever been elected or will be elected to the Idaho House of Representatives. He explained the process of which the complaint was brought forward.

Speaker Bedke answered questions from Leslie Hayes, Deputy Attorney General, regarding other complaints and concerns regarding **Rep. von Ehlinger's** behavior, the process of bringing a complaint forward through the proper channels and that there was no pending criminal case when the complaint was brought.

Speaker Bedke answered questions from **Mr. Dindinger** regarding the provision for expulsion of a House member using the Idaho Constitution Article III, Section 11 and the provision of expelling a member under House Rule 45. He also answered questions regarding any pending criminal investigation.

Rep. Aaron von Ehlinger was sworn in to testify. Rep. von Ehlinger answered general questions from **Ms. Hayes** regarding his background and any Respectful Workplace training during orientation of new legislators he may have had. Rep. von Ehlinger answered questions regarding two conversations with **Rep. Holtzclaw** and a conversation with **Rep. Blanksma** regarding behavior in the workplace.

Rep. von Ehlinger answered general questions from **Ms. Hayes** regarding how he met **Jane Doe** and their interactions before their date on March 9, 2021 and at the beginning of the date. **Mr. Dindinger** objected to some questions and advised Rep. von Ehlinger to not answer the questions pursuant to his rights under the Fifth Amendment of the United States Constitution.

There was discussion regarding a possible ongoing criminal investigation and how the Committee received no communication asking for the hearing to be stopped to let the outcome of the investigation to be known. **Mr. Myers**, Holland & Hart, stated there is a provision in Idaho Code regarding a statement made by the witness can not be used against him in a criminal proceeding and also that such witness cannot refuse to testify. Mr. Myers explained the Committee has subpoenaed the witness and if he refuses to testify he could be issued a contempt citation.

Rep. Crane explained in reference to the objection the intent of the hearing is for the entire body of the House to be able to understand the events that took place. The Committee had already heard the answers to the questions being asked and wants the full body to have the opportunity to hear the answers in order to make their own decision as to whether conduct unbecoming a Representative has occurred in this instance. Discussion was held regarding a waiver to the Fifth Amendment in this case and previous statements made by the witness to the Committee.

Ms. Hayes continued questions confirming content of the transcripts from interviews by the witness to the Committee under continued objection from **Mr. Dindinger**.

Chairman Dixon recessed the Committee at 8:45 a.m. and reconvened the Committee at 8:52 a.m.

Ms. Hayes asked **Rep. von Ehlinger** whether the transcripts submitted to the Committee could be considered his testimony in the hearing. Ms. Hayes questioned if Rep. von Ehlinger had dated anyone else during the Special or Regular Legislative Sessions. Rep. von Ehlinger responded that he had and answered other questions regarding his responsibilities as a Representative and if Legislators are held to a higher standard than the general public. In response, Rep. von Ehlinger said Representatives should not break the law.

Mr. Dindinger asked **Rep. von Ehlinger** general questions regarding the Legislature's Respectful Workplace training and if he was aware of any official rule, specific law or policy against dating anyone working in the Capitol Building. Rep. von Ehlinger said he was not aware of any official rule, law or policy and did not think he had violated or was at risk of violating any rule, law or policy regarding dating people who worked in the Capitol Building.

Rep. Crane questioned **Rep. von Ehlinger** regarding an exchange in the interview with the Committee and a text exchange with **Jane Doe** regarding continued contact with Ms. Doe after the incident. **Rep. McCrostie** questioned Rep. von Ehlinger regarding unwritten rules of the House that Representatives abide by. **Rep. Gannon** asked questions regarding the customs and practices of other entities Rep. von Ehlinger had worked for previously.

Mr. Dindinger redirected **Rep. von Ehlinger's** testimony regarding if he had any knowledge of violating any written or properly codified or enacted rules, policies, procedures or laws relating to the allegations being reviewed. Rep. von Ehlinger said he did not. He redirected Rep. von Ehlinger's testimony regarding his regret, not for taking **Ms. Doe** out, but for having to explain details of his private life.

Ms. Hayes redirected **Rep. von Ehlinger's** testimony regarding whether wearing a suit and tie to work is a written rule of the House.

Carrie Maulin, Chief Clerk of the House of Representatives, was sworn in to testify. **Ms. Hayes** reviewed general questions with Ms. Maulin regarding **Erica McGinnis** who is the Journal Clerk in Ms. Maulin's office. Ms. Hayes reviewed the interview transcript Ms. Maulin had with the Ethics Committee regarding an incident with Ms. McGinnis and **Rep. von Ehlinger** where he had asked Ms. McGinnis to go running and then out for a meal. Ms. Maulin answered questions regarding the power differential between Legislators and staff members.

Mr. Dindinger asked **Ms. Maulin** questions regarding whether or not **Ms. McGinnis** regularly wore a wedding ring and whether wearing a wedding ring was indicative of a woman being unavailable or not. Ms. Maulin answered questions regarding her knowledge of the interaction and whether **Rep. von Ehlinger** violated any section of the staff's Respectful Workplace Policy. Ms. Maulin also answered questions regarding clerks in the House being subordinate to all Legislators and if Legislators have hiring or firing power over staff.

Ms. Hayes redirected **Ms. Maulin's** testimony regarding when the incident happened and what date the Legislative Respectful Workplace training occurred.

Chairman Dixon recessed the Committee at 9:31 a.m. and reconvened the Committee at 9:43 a.m.

Rep. Megan Blanksma was sworn in to testify. **Emma Nowacki**, Deputy Attorney General, introduced herself and questioned Rep. Blanksma regarding her interview with the Ethics Committee. Rep. Blanksma relayed information regarding incidents involving a lobbyist and **Rep. von Ehlinger**. She reviewed two incidents explained to her by the lobbyist to the Committee saying the lobbyist said she was uncomfortable around Rep. von Ehlinger and how she felt he was pursuing her. Rep. Blanksma said the lobbyist wanted to remain anonymous because she has to have good relationships with Representatives in order to do her job.

Rep. Blanksma said she sought out **Rep. Holtzclaw's** help to talk to **Rep. von Ehlinger**, because he had had a similar experience and felt Rep. Holtzclaw could offer some advice to Rep. von Ehlinger.

Rep. Blanksma testified she had learned **Rep. Holtzclaw** was able to speak with **Rep. von Ehlinger** and later Rep. von Ehlinger came to her office to confront her about who may have reported any allegation against him. **Ms. Nowacki** continued questions to Rep. Blanksma about any unwritten rules regarding decorum in the House.

Mr. Dindinger questioned **Rep. Blanksma** about having no firsthand knowledge regarding what the lobbyist had reported to her. **Rep. Blanksma** answered questions regarding the decorum in dress of the House and if there were lines of behavior a Representative should not cross. She answered questions in regard to keeping records of informal complaints and if there were any written policy of the body which prohibits dating or other relationships between adults.

Rep. James Holtzclaw was called to testify and was sworn in. **Ms. Nowacki** asked **Rep. Holtzclaw** questions regarding information he provided to the Ethics Committee during an interview about his conversations with **Rep. von Ehlinger** about being careful of his actions.

Mr. Dindinger questioned **Rep. Holtzclaw** whether he had any factual knowledge of any allegations against **Rep. von Ehlinger** and his opinion regarding the notion that Representatives should not date staff members. **Mr. Dindinger** reviewed questions regarding if there is any written policy for the House to this effect.

Rep. Horman asked **Rep. Holtzclaw** about a portion of his interview with the Committee regarding a power differential between a Legislator and others who work in the building.

Rep. Jason Monks was sworn in to testify before the Committee. **Rep. Monks** stated he was interviewed by the Ethics Committee regarding conversations with **Jane Doe** which **Rep. von Ehlinger** implied took place in his response statement to the complaint to the Committee.

Mr. Dindinger questioned **Rep. Monks** regarding statements made by **Rep. von Ehlinger** in which he claims were made by **Jane Doe** about **Rep. Monks** and if he was aware of the statements. He also asked **Rep. Monks** if he was aware of any reason someone would make false statements against him. **Rep. Monks** stated it was possible because he holds a position in the House Majority Leadership.

Chairman Dixon made a statement regarding keeping the identity of **Jane Doe** confidential regardless of what may have been made public prior to the hearing. **Ms. Hayes** also mentioned that it was agreed upon before the public hearing that **Ms. Doe** would testify from a concealed location and would not be visible to the members of the public or the press. She asked the press to not attempt to capture her image or likeness and reproduce it in any stories that are published.

Erica Birch and **Anne Hightower** introduced themselves as **Ms. Doe's** counsel and explained their role in being at the hearing was to make sure their client's privacy and dignity was protected and to try and minimize the re-traumatization of their client.

Ms. Birch explained a motion filed with the Committee asking for restriction on questions being asked of the witness that put her in a position of having to defend herself or that are irrelevant to the incident under review at this hearing.

Jane Doe was sworn in to testify. **Ms. Hayes** asked general questions of **Ms. Doe** regarding her age, when she graduated from high school and what her position is in the House. **Ms. Doe** answered general questions about when and how many times she had interactions with **Rep. von Ehlinger**. **Ms. Hayes** reviewed and questioned **Ms. Doe** regarding the incident that occurred on March 9th between her and **Rep. von Ehlinger** and what she had reported to the House Assistant Sergeant at Arms and to the Boise Police. **Ms. Hayes** also reviewed and asked questions of **Ms. Doe** regarding an incident between her and **Rep. Priscilla Giddings**.

Mr. Dindinger asked **Ms. Doe** questions regarding why she went to dinner with **Rep. von Ehlinger** and about statements she made or didn't make to either the Boise Police detective or the Ethics Committee. Mr. Dindinger asked questions regarding statements made by Rep. von Ehlinger and about the text exchange between Ms. Doe and Rep. von Ehlinger after the incident occurred, under heavy objection from **Ms. Hayes** and **Ms. Birch**.

Kiona Hadsell was sworn in as a witness to testify. **Ms. Nowacki** asked Ms. Hadsell general questions about her current and previous employment. Ms. Nowacki asked questions regarding any interaction Ms. Hadsell may have had with **Rep. von Ehlinger** in the Capitol Building and how those interactions progressed into the two having two lunch dates. Ms. Hadsell gave some specific information about the first lunch date. She also gave details of the second lunch date with Rep. von Ehlinger in which they had a sexual interaction.

Mr. Dindinger questioned **Ms. Hadsell** regarding her former position in the Capitol Building as a security guard and if **Rep. von Ehlinger** had any supervisory, hiring or firing authority over her.

Chairman Dixon recessed the meeting at 11:30 a.m.

Chairman Dixon called the meeting back to order at 12:33 p.m.

Speaker Scott Bedke was sworn in to testify before the Committee. **Mr. Dindinger** asked questions about if the Speaker knew of any concerns previously with the conduct of **Jane Doe**. Speaker Bedke said he did not and answered questions regarding how a new House Rule is brought forward or a current House Rule is amended. He answered questions regarding the Respectful Workplace Policy being adopted by Legislative Council and the Senate but that it has not been formally adopted by the House. Mr. Dindinger asked questions regarding if there was any provision violated by **Rep. von Ehlinger** and if any Representative has hiring or firing and supervisory authority over an intern who works for another member. There were no questions for Speaker Bedke from **Ms. Hayes** or the Committee.

Rep. Vito Barbieri was sworn in to testify. **Mr. Dindinger** asked questions regarding **Rep. von Ehlinger's** interaction with the lobbyist mentioned in **Rep. Blanksma's** testimony. He also explained the process for adding or amending House Rules. Rep. Barbieri answered questions regarding his knowledge of any other dating or relationships he was aware of in the Capitol Building. **Ms. Hayes** had no questions.

Rep. Crane asked **Rep. Barbieri** questions relating to amending or suspending House Rules on the floor of the House by a two-thirds majority.

Rep. Chad Christensen was sworn in to testify before the Committee. **Mr. Dindinger** ask Rep. Christensen how he met and knew **Jane Doe** and how she became his intern for this session. Rep. Christensen explained that Ms. Doe did mostly research as an intern for him and that **Rep. von Ehlinger** had no supervisory or hiring or firing authority over her. Mr. Dindinger asked questions about how Rep. Christensen learned of the incident on March 9th and what Ms. Doe had told him had happened.

Ms. Nowacki asked if **Rep. Christensen** had sent a text message to **Speaker Bedke** regarding what he knew about the incident, Rep. Christensen said he had.

Rep. Crane questioned **Rep. Christensen** regarding following up with his intern and checking on any progress of the situation after it had been reported.

Erica McGinnis, House Journal Clerk, was sworn in to testify. **Mr. Dindinger** questioned Ms. McGinnis about wearing a wedding ring and about **Rep. von Ehlinger's** response to her e-mail saying she was married.

Ms. Nowacki questioned **Ms. McGinnis** regarding how she felt about **Rep. von Ehlinger** asking her on a date saying she was uncomfortable and thought it was inappropriate because she is a staff member.

Rep. Priscilla Giddings was sworn in. **Mr. Dindinger** questioned her about a confrontation with **Jane Doe** and her perspective of what happened that day.

Ms. Hayes asked general questions of **Rep. Giddings** about her military and athletic background. Ms. Hayes asked questions regarding if Rep. Giddings posted a picture and the actual name of **Jane Doe** on social media of which she denied doing.

Rep. Crane asked **Rep. Giddings** if she had any understanding of why **Ms. Doe** would be so upset with her as to confront her. Rep. Giddings stated she was looking for more information on the situation and had received a copy of the complaint and response to the complaint. She said she wrote about it in her weekly newsletter and posted a link to a press article giving more information. Rep. Crane continued with questions regarding the headline and the contents of the news article.

Rep. Gannon continued questioning **Rep. Giddings** along the lines of what she had posted on social media and if it contained the name and a picture of **Jane Doe**.

Rep. Dorothy Moon was sworn in to testify. **Mr. Dindinger** asked Rep. Moon to recall a time when she saw **Rep. von Ehlinger** and **Jane Doe** interact. She gave some details she observed of the two together.

Chairman Dixon recessed the meeting at 1:34 p.m. and reconvened the Committee at 1:39 p.m.

Ms. Hayes questioned **Rep. Moon** regarding further details of her observations on the day she saw the Representative and intern together and of her thoughts of appropriateness for sexual relationships of Representatives with interns and pages in the building.

Rep. Judy Boyle was sworn in to testify. **Mr. Dindinger** asked Rep. Boyle if she had ever been told of any concerns with **Jane Doe's** behavior in the past. Under objection by **Ms. Hayes** it was determined Jane Doe's prior conduct was irrelevant for this case. Mr. Dindinger ask if Rep. Boyle had knowledge of any other relationships between consenting adults in the building and if there was any policy, rule or law against this type of relationship. Ms. Hayes and the Committee had no questions for Rep. Boyle.

Chip Morgan, polygraph examiner, was sworn in to testify before the Committee. **Mr. Dindinger** asked general questions of Mr. Morgan regarding his type of employment, his schooling and other training. Mr. Morgan explained in layman's terms the science behind polygraphy. He also reviewed the results of two of the three different polygraph examinations he had administered to **Rep. von Ehlinger**.

Chairman Dixon recessed the meeting at 2:07 p.m. and reconvened the meeting at 2:28 p.m.

Mr. Morgan continued explanation of results to a second polygraph he had administered to **Rep. von Ehlinger**. **Ms. Hayes** objected to several of the questions that were administered during the examinations.

Ms. Hayes questioned **Mr. Morgan** on polygraphs being admissible or not admissible in courts and how much he was paid to administer these polygraphs.

Mr. Dindinger called no other witnesses on behalf of **Rep. von Ehlinger**.

Committee members expressed the need for the Committee to recess in order to process the testimony and continue with public deliberation the following day.

MOTION: **Rep. Crane** made a motion to recess until 10:00 a.m. on April 29, 2021. **Motion carried by voice vote.**

ADJOURN: The House Ethics Committee adjourned the Public Hearing regarding an ethics complaint against **Rep. Aaron von Ehlinger** at 2:39 p.m.

Representative Dixon
Chair

Susan Werlinger
Secretary

AGENDA
HOUSE ETHICS AND HOUSE POLICY COMMITTEE
10:00 A.M.
Room WW 02
Thursday, April 29, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	Committee Deliberation and Recommendation (action item)	

COMMITTEE MEMBERS

Chairman Dixon
Rep Horman
Rep Crane
Rep Gannon
Rep McCrostie

COMMITTEE SECRETARY

Susan Werlinger
Room: EW45
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MINUTES
HOUSE ETHICS AND HOUSE POLICY COMMITTEE

DATE: Thursday, April 29, 2021
TIME: 10:00 A.M.
PLACE: Room WW 02
MEMBERS: Chairman Dixon, Representatives Horman, Crane, Gannon, McCrostie
**ABSENT/
EXCUSED:** None
GUESTS: Bill Myers, Holland & Hart, LLC; Rep. von Ehlinger, Edward Dindinger, Dindinger & Kohler, PLLC

Per Joint Rule 19, these minutes have been prepared in summary fashion. They are not a verbatim transcription of the proceedings on April 29, 2021.

Chairman Dixon called the meeting to order at 10:02 a.m.

Bill Myers, Holland & Hart, LLP, provided to the Committee and for the benefit of the other members of the chamber and the public the parameters of the Committee's decision space in the complaint they received. He said the authority for the Committee arises from two sources, the first is Article III, Section 11 of the Idaho Constitution. The other authority that the Committee has is Rule 45 of the Idaho House of Representatives Rules. Rule 45(4), specifically addresses what the Committee can do in response to the complaint received under Rule 45. Mr. Myers said in addition, a third authority is Mason's Manual of Legislative Procedure, which is incorporated by reference through House Rule 75 wherever it is not inconsistent with existing House Rules. He explained under Rule 45(5), there are basically three options pending before the Committee. If they vote by four-fifths vote, they can dismiss the complaint; they can issue a reprimand; or they can issue a censure, and that censure can be with or without restrictions and conditions.

Chairman Dixon opened the Committee for deliberation.

Rep. McCrostie said the Ethics Committee is charged with determining whether **Rep. von Ehlinger** engaged in conduct unbecoming a Representative which is detrimental to the integrity of the House as a legislative body by a standard of clear and convincing evidence. Clear and convincing indicates that it is highly probable that the conduct occurred, and as a Committee, must either find clear and convincing evidence or must dismiss the complaint.

He said the facts here are incontrovertible. The Representative, an elected state Representative, engaged in a sexual relationship with a student intern. The court system can determine if rape occurred, but there is no doubt that this relationship was inappropriate. He said he is not persuaded by the repetition of whether a specific policy exists. Common sense and basic morality dictates that an elected Representative should not entertain a relationship with a student intern, regardless of who initiated the relationship.

Rep. McCrostie said, moreover, the Committee has heard with similar repetition how the Representative should have known better. In his short tenure in the Idaho Legislature, he was spoken to twice by **Rep. Holtzclaw** on monitoring his conduct, and over the course of two months he attended two legislative trainings on a respectful workplace; and yet in that amount of time, he has pursued four different women with ties not just to the legislature, but actually limited to the Idaho House. This pattern of behavior, on not only ignoring counsel on appropriate workplace boundaries, but also pursuing relationships, including sexual relationships in the House.

Rep. McCrostie said he is also un-persuaded on the selective use of three separate polygraph tests. The Representative appeared before this Committee three times, including yesterday's public hearing, where he had an opportunity to clear up any prior testimony. Rather than clear his name, he chose to hide behind his selective polygraph questions. Neither the Committee nor the complainant's attorney were able to select questions for the Representative's polygraph tests, so these polygraph tests hold less weight and less credibility. Further, upon review of the limited questions included in the polygraph tests, any test results are of little relevance in his determination of conduct unbecoming.

The Representative's aggressive tactics towards women are unsettling. **Rep. McCrostie** said he feels horrible that **Jane Doe** was in the situation she was in and is now in the situation she is now in. He said he applauds her bravery in sharing her truth with **Kim Blackburn** and appreciate Ms. Blackburn's professionalism in moving Ms. Doe's story through the proper channels. He applauds her bravery in sharing her incident with **Rep. Christensen** and grateful that he offered her sound counsel to follow through with the criminal investigation. And he applauds her bravery in sharing her testimony with this Committee and in particular at yesterday's hearing. Sexual assault survivors are seldom subjected to having their testimony publicly broadcast, but she knew that her truth may enable others to not suffer as she has.

Rep. McCrostie continued saying along those lines, how **Jane Doe** was treated by some members of yesterday's audience is abhorrent. Those who engaged in that mistreatment yesterday should be ashamed of themselves. As an aside, here's another rule that's not part of Idaho Code, policy, or administrative rule, but maybe it should be. It's the Golden Rule. Do unto others as you would have them do unto you. If there's any other higher standard that House members should be held to, the Golden Rule is a good place to start. We owe it to Jane Doe and to future Jane Does to ensure that the Idaho House can conduct our business with integrity. The Legislative work environment must be safe for legislators, staff, interns, pages, lobbyists, legislative employees, legislative partners, credentialed members of the press, guests testifying before Committee, and visitors to our Capitol.

Rep. McCrostie said the incident that initiated the ethics complaint, the Ethics Committee investigation, and the ethics hearing has revealed the House to be unsafe. The body's integrity is damaged, and the charge of the Committee is to repair that. Therefore, for the aforementioned reasons, he found the Representative has engaged in conduct unbecoming a Representative which is detrimental to the integrity of the House as a legislative body.

Rep. Horman spoke next stating she would like to state a point about this investigation by the Ethics Committee, the business of the Committee and the House is the Representative's integrity before this Committee and a pattern of behavior with subordinates in the workplace, whether there was a formal rule about it or not, and whether that constitutes conduct unbecoming that is detrimental to the integrity of the Idaho House of Representatives. She said this is a trust that none of the Committee members has undertaken lightly, but was considered with the utmost diligence and gravity. The Representative was told that in an interview with the Committee. It is the entirety of the actions and how that reflects upon the body.

She said she would like to make three points: First, the Representative refused to testify in a public hearing on certain aspects of his behavior, second, he misled the Ethics Committee; and third, she said she believes he has engaged in conduct unbecoming that is detrimental to the integrity of the House.

First, refusing to testify. One purpose of yesterday's hearing was to provide all House members evidence, as much evidence as possible, upon which they could make their decision. It is the Idaho House of Representatives that will ultimately make the decision on the outcome of this proceeding. This Committee has spent many, many hours investigating the facts of this case. The Committee's colleagues in the House do not yet have that same benefit. By pleading the Fifth and refusing to answer questions for the benefit of his colleagues who ultimately will make the decision on the outcome of this proceeding, it shows tremendous disrespect for those colleagues who also want to make a fair decision based on the facts of the case. Some people may have rushed to judgment on this matter without the benefit of the facts, facts that came out in the preliminary confidential portion of the investigation, facts that came out following the release of the evidence for public records request, and additional new facts that came forward yesterday. By refusing to testify to pertinent facts, the House was denied the opportunity to hear the full story from the Representative's perspective.

Second, misleading the Committee. **Rep. Horman** said multiple inconsistencies were identified during testimony. Things such as statements from the transcript, that he would not be moving forward with trying to have any further relationship with this person, to texts later that say the opposite.

Third, conduct unbecoming. **Rep. Horman** said through hours of interviews and investigation into the original complaint, the Committee has established that the Representative has a pattern of dating, attempted dating, and sexual relationships with subordinates in the Capitol, and concerns serious enough from a lobbyist that she spoke with a member of House Leadership about it. Yet, the testimony before the Committee was, quote: "I'll admit I don't date a lot, and when I do, I try to make sure it's someone I have a connection with. I'm not a person that goes out on a date every week or anything like that." Rep. Horman said, yet, there are two witnesses before this Committee that testified under oath that in early March, after a handful of inconsequential or non-substantive conversations, he initiated two dates with women he'd only recently met which led to sexual activity. The Representative concedes he was specifically warned against such behavior on multiple occasions, starting with the training, where he acknowledged in the preliminary phase of this investigation that he remembered from freshman orientation that hugging in the workplace was not a good idea. He was subsequently warned by two Representatives that had his best interest in mind, and those of the House of Representatives, to help him learn what he should not need a written rule to know, that the elected position carries with it certain elements of power and status, not to mention trust, having wisdom and good judgment. She said they were trying to help him, as stated yesterday, avoid anguish going forward. Quote: "Don't be overly nice with anyone. You don't want to have anyone misconstrue what you're doing if you're flirting with them. Be pleasant but not overly nice because you're

single. I owed it to him as a human being to speak candidly." Quote: "Look, you can't talk to anyone in a flirty manner. You cannot date anyone, ask out anyone, be with anyone. This place is off limits to you. No more. You can't do it." The Representative was told that in a kind way, that because you're single, if you would like to go to the movies with a young lady, someone in this building, but because of the position you're in, it could weigh more heavily in her decision than if you were equally yoked. Which was later clarified before the Committee to mean peers or other elected representatives holding the same position.

Rep. Horman said other Representatives testified under oath yesterday that they understood that a custom of dating a staffer is unacceptable in this building. When questioned, the Representative's interpretation of the counsel he was offered by a fellow Representative was that he needed to be on his best behavior. When questioned yesterday about what best behavior was, the Committee was told it means you should be extra careful to follow the law. He said he had listened to that counsel and agreed, made a mental note that "Some things could be considered possibly flirtatious and I needed to be extra vigilant with anything like that."

She went on to say the Representative admits and acknowledges that he was warned multiple times against hugging in the workplace, against flirtatious behavior, even against any kind of behavior that was simply polite but that could be misconstrued. It appears the Representative doesn't appear to consider sexual relations with subordinates to be in any of those categories. She said there is no House Rule against poisoning another person, yet his behavior has poisoned the reputation of all of us and tarnished and discredited other elected officials who serve. "Conduct unbecoming" is an undefined term for a reason, per our rules. Each Representative in the House of Representatives will evaluate the facts of the case and agree or disagree whether the behavior constitutes conduct unbecoming detrimental to the integrity of the House. This body will now define it by the Committee's actions, and will further define it by any consequences associated with such behavior.

Rep. Gannon stated this has been a tough experience for everyone. This legislature is a political body, but it is a legislature in the United States of America, not Russia, and that means, he hoped people understand that the accused has rights and that the law should apply as much as possible. He said he hoped that is what the Committee has tried to do with the hearing. But for those who work and serve as interns in the legislature, they have rights and expectations too. They have a right to have a respectful, helpful workplace and a safe workplace for them and a good, positive experience.

Rep. Gannon said the issue is conduct unbecoming, and there is no rule in place directly dealing with sexual harassment, that is correct. He said therefore, under Mason's rule 4.2, it speaks to custom, usage, and precedents in order to determine what the rule is in the House. Mason's 4.2 lists states as follows: Rules of legislative procedure are derived from several sources and take precedence in the order listed below. Principal sources are as follows: A, constitutional provisions and judicial decisions thereon; B, adopted rules; C, custom, usage, and precedence; D, statutory provisions.

Rep. Gannon said he looked at customs, usage, and precedents in order to determine what the standard is for the House of Representatives from a legal perspective and not so much from an emotional perspective. He said **Rep. Holtzclaw** described how there is a difference in authority and power between a Legislator and staff. He said twelve-year legislator, defense witness, **Rep. Barbieri** said he had never heard of a legislator dating an intern. Respondent witness and staff member **Erica McGinnis** said she had never been asked out by any other legislator. **Rep. Gannon** went on to say, uniform and commercial justice gives an idea of what the term "usage" is, and it defines conduct unbecoming as including strict rules against dating.

He said finders of facts must consider evidence, and he would have liked more evidence about sexual harassment policies, in general, from Boise businesses, and other public entities. He said it is a known fact, private companies regularly fire employees who troll female workers or make unwanted sexual advances, whether there is a policy or not. He said so the custom at the legislature appears to be, and would say definitely is, no dating with interns and probably no dating with staff either.

Rep. Gannon said the usage of conduct unbecoming is well-settled in military context. The precedent in the legislature that happened a couple years ago was something you did not do as a legislator. There is custom, there is usage, and precedent, he said in his view that is enough to find that there is conduct unbecoming.

He said the next question is: how culpable is this violation? The first issue he was told by **Rep. Holtzclaw** not to date women from the Capitol. **Rep. Blanksma** told him that his actions with a female lobbyist, whether intentional or not, were of concern. The Representative's actions with the Journal Clerk were rebuffed. **Rep. Gannon** said the Representative is 38 years old and is very aware of the military's fraternization policy. He's worked for a large county in Arizona and other places. He's intelligent and successfully completed a degree at the University of Alabama. **Rep. Gannon** said he would have to conclude that he was well-familiar with custom, usage, and precedent, and that dating interns would violate the legislature's policy. **Rep. Gannon** went on to say the Representative was made aware of these policies prior to pursuing **Ms. Doe** and the Capitol Mall security guard. He said the culpability involves consideration of the difference in power between the Representative and the intern, and that power differential is clear from the evidence and really from common sense. What are the age, maturity, and experience differences between the parties? There is a significant difference in age between the parties and an even more significant difference in experience. And there is no comparable experience for a 19-year-old unpaid student intern, to the maturity and experience of the other party. The security guard presumably has some minimal training, but is still pursuing her education and wants to be a police officer someday. **Rep. Gannon** said this conduct would cause him to support censure with some conditions.

Rep. Gannon said unfortunately there is more. He said the testimony of the Capitol Mall security guard, which was not denied or refuted in any way, was very compelling to him. It took her tremendous courage to come and testify in front of this crowd, she was visibly nervous and uncomfortable and she described an experience very similar to **Jane Doe's**. Buy a meal, drive to the apartment, and then there was an unpleasant sexual encounter. She did not enjoy seeing the gun collection in the Representative's apartment as she thought she would. And she left employment at the Capitol a few weeks later. Her testimony was very compelling, and it was not refuted.

Rep. Gannon also explained the date with the intern, **Ms. Doe**, was more than unpleasant. It evolved into a nightmare, and there is no dispute concerning the events that led up to the arrival inside the apartment. There is agreement that she was driven to an expensive dinner in a BMW. There was an effort to impress her, and she was driven back to his apartment, instead of to her car. Then there was the sex which is described, and other entities will have to determine, whether the sex was consensual or not.

The fact that there are age differentials, experience, power differentials, leads to serious problems, and this is why workplace liaisons are discouraged. **Rep. Gannon** mentioned one comment regarding the lie detector. He said the lie detector's questions were not selected by the Committee. He said to his knowledge, the Committee didn't even have notice of what questions were being asked, and then when the Committee did have questions or when a Deputy Attorney General had questions, there was a refusal to answer. It is grossly unfair to the process to select the questions to be answered on a polygraph and decline to answer other questions.

Rep. Gannon stated in the end, that this is a little more emotional than the evidence, but consideration must be taken into account of what members would want for their children if they came to the Idaho Legislature to serve as interns. He said he would want a place where children would have had a safe place and positive experience and be treated with respect. That didn't happen in this case, and therefore because of the knowledge and the pattern, he thought there needed to do more than censure.

Rep. Crane thanked the Chairman for giving the Committee time last evening and this morning to contemplate. He said it was very helpful to him personally, having sat through nearly 70 hours of meetings, and testimony. He mentioned he knew the audience here and fellow colleagues only got about 10 percent of that yesterday. He said it was important for him to be able to collect his thoughts, weigh out the testimony that was heard yesterday. Some of that testimony, like the security guard, for the first time.

Rep. Crane said House Rule 45 is very clear. This issue was not about consent. This was simply about conduct unbecoming a Representative which is detrimental to the integrity of the House as a legislative body. He said he focused his research last night on some of those terms that he did not have a clear definitive answer on. Unbecoming. "Unbecoming" is defined as not fitting or appropriate. It's also defined as ill-suited, unacceptable, improper, inappropriate, undignified, indecent, ungentlemanly. "Detrimental" is damaging, harmful, hurtful. "Integrity," the quality of being honest and having strong moral principles, moral uprightness. He said the question that is asked: Is the conduct unbecoming a Representative which is detrimental to the integrity of the House as a legislative body? He said he did not feel that the respondent's counsel yesterday was able to prove that the conduct by **Rep. Aaron von Ehlinger** was becoming to a member of the House of Representatives.

Rep. Crane explained other questions he wrestled with: Did **Rep. von Ehlinger's** actions from August 20, 2020 through April 29, 2021 help or harm the integrity of the House? He said he didn't think there was any actions taken from that time that we heard about in the 70 hours of investigation and evidence that were helpful to the integrity of the House. He said the actions taken by the Representative were extremely detrimental to the integrity of the House.

He said the other question he asked is: Was this an isolated incident or was there a predatory pattern? There was indeed a predatory pattern that was established. In the special session of August 20, 2020, the Representative was warned to be careful. January 22, 2021, he made an attempt to have a date with the Journal Clerk, just one week after having completed Respectful Workplace training. In February he was warned by **Rep. Holtzclaw**, "This building is off limits. You don't date anyone in this building." He wasn't happy about that, so he went to see **Rep. Blanksma**, who further reiterated the point. And yet the clerk that rebuffed his advances in January, was sent a birthday card. **Rep. Crane** said he's served in the legislature for 15 years. He doesn't know how long that clerk has served in this body, but he believed it would be at least six to eight years. He said he doesn't know when her birthday is and that he just found that out yesterday. It's not a common practice that lawmakers do, to send birthday cards to females that we've asked out on a date that have rebuffed us. Rep. Crane said in March, the Representative asked **Jane Doe** out on a date and through the course of this investigation he found out the Representative asked a Capitol Mall security member out on a date.

Rep. Crane said he went back through the two binders, and tried to compile some of the testimony that was heard, some of the questions that were asked, and it was interesting reading back through some of the information and statements that were made to the Committee while we were still in executive session. On April 2, 2021, the Committee received a letter from the Representative's legal counsel that said: At this point, given the bizarre statements by **Ms. Jane Doe** at the end of the night, **Rep. von Ehlinger** knew that he would not pursue a relationship with Ms. Jane Doe. On April 12th, ten days later, he appeared before the Committee, and interestingly enough, there was a text exchange, that took place, between Jane Doe and Rep. von Ehlinger where Rep. von Ehlinger said, "I assure you I didn't. I like you and I had a nice time. I'd like to go out again, if you're interested. Can I call you?" So now to the phone call: "So, I mean" – this is Rep. von Ehlinger speaking. "So, I mean, if that's the way you want it, I'll never bother you again. Yeah. I hope you'll reconsider and – at some time and consider giving me another chance." This is after he had testified very clearly and told the Committee he had no intent of dating this person. This was going to be an isolated event. He had found some things out. But yet the Committee has evidence to the contrary. The Representative had also said to the Committee: "I'll admit I don't date a lot. I'm a rather busy person. When I do, I try to make sure it's someone that I feel like I have a connection with." Rep. Crane said for an individual that doesn't date a lot, the Committee found out in our research that there was four people that he had attempted to go on dates with.

When he appeared before the Committee with his second legal counsel, **Mr. Leroy**, he was interviewed again. And if anyone actually wants to hear the details of what happened on the night that the gentleman pled the Fifth on and would not relay to the entire body, I would suggest that you read that. It is a very graphic – it's very descriptive. At the end of the hearing on April 15th he said to the Committee: "I would just like to express to each and every one of you that a situation like this will never happen again. I promise each and every one of you that this will never happen again. It's all I have to say. I hope you'll accept that and know that I am deeply serious about it. And that's all."

Rep. Crane said its interestingly enough, in that discussion with the Committee and that interview, that's when we found out that there was second individual that he had had a relationship with, the Capitol Mall security guard. What was not revealed in that relationship – and if you read the exchange, there is some questions of – to his truthfulness, as to how truthful he was in revealing that he had had a relationship with her. But it wasn't until yesterday that we learned that that was a sexual relationship. And to find out that the facts in that sexual relationship were almost identical to the facts of the relationship with **Jane Doe**. Go out to dinner, come back to my apartment, and you serve me.

Rep. Crane said he has thought a lot about this. The Idaho House of Representatives existed long before we arrived, and it will be here long after we leave, but history will judge us by the actions today. He said he wants our actions to provide a clear directive to the current and future members of the Idaho House of Representatives that this body expects the members of the Idaho House of Representatives to serve their constituents with the highest ethical and moral manner.

Chairman Dixon stated of what his colleagues have said, he is in agreement with. But what he wanted to touch upon is mainly for his colleagues and the responsibility that comes with the badges that are worn when here, when we take the role and title of Representative and the weight that that carries with it, and it's not something to be dismissed easily. Representatives have a responsibility to those who helped us get elected. There is a responsibility to our district as a whole, even if people didn't vote for us in that. That's still our responsibility. We have a responsibility to this state. We have a responsibility to this institution, to all those that came before us, as **Rep. Crane** said, and those who will come after us. We have a responsibility to uphold a good public perception of this institution, to continue confidence in government, not to undermine that confidence so that people are questioning what happens so that we can have an orderly society.

He said whether we like it or not, in the public eye we are held to a higher standard, and that's a standard we should embrace. It is an honor to gain the trust of your constituency of the people that voted for you, and we need to hold ourselves to a higher standard of conduct. **Chairman Dixon** said in his opinion, there was clearly conduct unbecoming by the Representative in this case. He said by anybody's standards, if you were to ask, "Is it appropriate for a 38-year-old to be dating a 19-year-old," that alone in itself would be questionable, but the fact that there's a title borne with it makes it even more questionable. He stated these actions, in his opinion, are denigrating to the institution. They're undermining the public confidence in government and the work that we have to do as elected officials.

MOTION:

Rep. Horman made a motion that in the matter of **Rep. Aaron von Ehlinger**, following our investigation and hearing held pursuant to House Rule 45, the Committee unanimously finds by clear and convincing evidence that Rep. von Ehlinger engaged in conduct unbecoming a Representative which is detrimental to the integrity of the House as a legislative body. Therefore, we unanimously recommend that the House of Representatives censure Rep. von Ehlinger with the restrictions and conditions that: One, he be immediately suspended without pay or benefits from serving as the Representative for District 6, Seat A, for the remainder of the 66th Idaho Legislature; two, he must immediately vacate his office in the Capitol and not return to the Capitol grounds for the remainder of the 66th Idaho Legislature; and three, a substitute Representative should be appointed with compensation as soon as possible following his suspension to represent District 6, Seat A, for the remainder of the 66th Idaho Legislature. In addition to the Rule 45 sanction, we would unanimously support a procedurally proper motion before the House to expel Rep. von Ehlinger for good cause shown under Article III, Section 11, of the Constitution of the State of Idaho. Further, we intend to bring forward a

resolution entered on the House Journal citing Rep. von Ehlinger for contempt. The Committee subpoenaed Rep. von Ehlinger pursuant to Idaho Code Section 67-407 to appear before the Committee to testify on the allegations in the complaint filed against him in this matter. He appeared before the Committee but refused to testify as to the events of that night that primarily gave rise to the complaint, invoking the Fifth Amendment to the United States Constitution. After being informed that Idaho Code Section 67-411 provides that self-criminating testimony can be exacted by the Committee and that Idaho Code Section 67-409 provides that refusal to testify can lead to adoption of a resolution by the House citing him for contempt and after repeatedly waiving his silence during the Committee's investigation, Rep. von Ehlinger still refused to testify at the hearing. Dated 29th day of April, 2021.

Chairman Dixon restated the motion that **Rep. von Ehlinger** should be censured with the following restrictions and conditions: One, that he be immediately suspended without pay or benefits; two, that he must immediately vacate his office in the Capitol and not return to Capitol grounds for the remainder of the 66th Idaho Legislature; and three, that a substitute Representative should be appointed with compensation as soon as possible following his suspension so that District 6 remains with a Representative. He asked for any discussion on that motion.

Rep. Crane clarified the recommendation to suspend for the 66th Legislative Session, would be for this legislative session 2021, and for the next legislative session, 2022.

**VOTE ON
MOTION:**

Chairman Dixon called for a vote on the motion. **Motion carried by voice vote.**

Rep. Gannon gave a statement of his concerns about what happened yesterday when a witness left the Capitol through the hallway, and stated he would like to see an investigation of the incident. The last thing that anyone would ever want here is that witnesses are intimidated or harassed, and that means a witness of any political philosophy or any viewpoint or with any evidence. They should not be harassed by others who are here, and people should feel that if they come to this legislature, they can speak their minds, whether we like it or anybody likes it, regardless of opinions. And that was infringed upon yesterday, and he didn't know the extent because he didn't see it. But would like that investigated, and anybody who did harass or intimidate a witness should be reviewed for possible prosecution. He said the Committee cannot tolerate that kind of conduct here at the legislature by anybody.

Rep. Horman followed with a comment regarding the Committee having gone to great lengths to protect the identity of the intern. The Committee has never released the name. She said the Committee protected her visual identity when she chose to testify in the confidential portion of the investigation and yesterday. And had asked all in the room, including the press, to do that as she entered and exited the building. She said she shares the concerns of **Rep. Gannon** that have been expressed and will also be inquiring further into that incident yesterday.

Rep. McCrostie stated he joins in the sentiments of **Reps. Gannon** and **Horman**. He said he learned about what took place after the Committee was able to go home and think about things and then found out how **Jane Doe** was accosted. It's possible that that person or people are even here today, and it's troubling. And it may not be the purview of this particular Committee, but he certainly believed that it is something that needs to be pursued, that the people who come to our building where we come to work, that they need to be safe. And he expressed his support for that.

ADJOURN: There being no further business to come before the House Ethics Committee in the matter of **Rep. Aaron von Ehlinger**, the meeting adjourned at 10:54 a.m.

Representative Dixon
Chair

Susan Werlinger
Secretary

AMENDED AGENDA #1
HOUSE ETHICS AND HOUSE POLICY COMMITTEE
9:00 A.M.
Room EW42
Monday, August 02, 2021

Meeting Room Subject to Change

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	Call to Order	Chairman Dixon
	Opening Comments	Chairman Dixon
	Opening Statements	Committee Counsel and Committee Members
	Opening Statement	Rep. Giddings
	Presentation of April 19, 2021 Complaint	Rep. Chaney
	Presentation of May 3, 2021 Complaint	Mr. Jeff Hepworth
	Presentation of Committee Evidence and Witnesses	Committee Counsel and Committee Members
	Questioning of Committee Witnesses	Rep. Giddings
	Presentation of Respondent's Evidence and Witnesses	Rep. Giddings
	Questioning of Respondent's Witnesses	Committee Counsel and Committee Members
	Committee Discussion	
	Adjourn	

COMMITTEE MEMBERS

Chairman Dixon
Rep Horman
Rep Crane
Rep Gannon
Rep McCrostie

COMMITTEE SECRETARY

Susan Werlinger
Room: EW45
Phone: 332-1161
Email: hethics@house.idaho.gov

MINUTES
HOUSE ETHICS AND HOUSE POLICY COMMITTEE

DATE: Monday, August 02, 2021
TIME: 9:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Dixon, Representative(s) Horman, Crane, Gannon, McCrostie
**ABSENT/
EXCUSED:** None
GUESTS: Bill Myers, Chris McCurdy, Holland & Hart, LLP; Jeff Hepworth, Hepworth Law Offices; Rep. Giddings; Rep. Green; Rep. Yamamoto; Rep. Vander Woude; Rep. Mathias

Per Joint Rule 19, these minutes have been prepared in summary fashion. They are not a verbatim transcription of the proceedings on August 2, 2021.

Chairman Dixon called the meeting to order at 8:59 a.m.

Chairman Dixon presented the procedure for decorum in the committee room and the actions which would be taken if there was disruption in the committee process. He explained the hearing is not a criminal proceeding, but an internal matter for the House and its membership. He explained House Rule 45 and how the Committee works through the process using the rule. Chairman Dixon yielded time to **Bill Myers**, Holland & Hart, LLP, counsel for the Committee for opening comments who yielded his time back.

Rep. Priscilla Giddings gave her opening comments, stating she is from a family of public servants and has served in the military for over 20 years. She said she would be representing herself in the proceedings and denied all the allegations made against her saying they were unfounded and biased attacks. Rep. Giddings reviewed the timeline of her actions in locating **Rep. von Ehlinger's** response to the complaint against him and verifying it was released to the press so both sides of the issue could be made public. She said she was sent a link to an article and after skimming over the article she copied the link to her Facebook page. Rep. Giddings said the next afternoon she finalized her weekly legislative newsletter and hyperlinked the same article to the newsletter and sent it out.

Rep. Giddings continued her comments, saying three days after she posted the links, **Rep. von Ehlinger's** attorney contacted her by email requesting destruction of any copies of the von Ehlinger response. She said on April 28, 2021 during the von Ehlinger hearing was the first time she heard the identity of Jane Doe was to be protected and she deleted the post from her Facebook page. Rep. Giddings said she stood by her testimony on April 28, 2021, and due process and innocence until proven guilty are very important elements of a just society. She questioned the process of the Committee and the rules of confidentiality as well as the cost to taxpayers for the proceedings.

Rep. Greg Chaney was called to the podium to present the complaint dated April 19, 2021. Rep. Chaney reviewed the complaint and referenced statutes and concepts adopted and endorsed as standards of conduct for everyone including legislators. He recalled that on or about April 16, 2021 House members learned of allegations against **Rep. von Ehlinger**. The next day he was made aware of a Facebook post made by **Rep. Giddings** which included a link to an article exposing **Jane Doe's** real name and picture. He reviewed the timeline he took collecting the evidence and drafting the complaint which is before the Committee. He said he later found out that; Rep. Giddings also added a link to the article to her legislative newsletter along with commentary referencing financial motivation.

Rep. Chaney stated he felt **Rep. Giddings** while acting in her official function conducted retaliated against a person reporting a violation of sexual discrimination and she knowingly misrepresented the way the Ethics Committee operates. She also made allegations against leadership without facts, for signing the complaint against **von Ehlinger**. He said Rep. Giddings' actions undermine faith in government and insults the Committee, the House of Representatives, and the legislature in general. He reviewed how Rep. Giddings' actions would be perceived in private employment and is below the expectations of the general public.

Mr. Jeff Hepworth, Hepworth Law Offices, presented the complaint dated May 3, 2021. He said he was asked by the bi-partisan group of 24 House members who signed the complaint to read the complaint. Mr. Hepworth read and reviewed the complaint to the Committee. He reviewed two points of the complaint regarding **Rep. Giddings'** actions by disseminating through a Facebook post a link to an article which included the identity and photo of Jane Doe who reported sexual assault by a Representative and making defamatory statements in an official legislative newsletter which also included the link to the article posted on Facebook.

Mr. Hepworth reviewed the second point of the complaint being that **Rep. Giddings** appeared to misrepresent her actions to the Ethics Committee while under oath during the **von Ehlinger** hearing. When asked direct questions regarding her actions in posting these links on Facebook and in her newsletter, the complaint says Rep. Giddings was elusive in her answers to the Committee. These actions may be considered conduct unbecoming a Representative which is detrimental to the integrity of the House as a legislative body.

Chairman Dixon put the Committee at ease at 9:37 a.m. and called the Committee back to order at 9:45 a.m. Chairman Dixon provided time for Committee members to make opening statements.

Rep. McCrostie stated he would like to make a correction to **Rep. Giddings'** opening statement in that he is certain the entire Democratic Caucus did not sign the May 3, 2021 complaint as Rep. Giddings stated and that he, **Rep. Gannon, Rep. Davis, and Rep. Chew's** names were not on the complaint.

Rep. Gannon made a statement that to have 23 legislators sign a complaint is a very serious matter and his main issue is the rights of an employee intern to make a claim of improper conduct and the response by a legislator to this claim.

Rep. Horman reiterated the description of the process and House Rule 45 and added the definition of what constitutes a valid ethics complaint. She said a valid complaint is not a statement of guilty or not guilty, it means it complies with House Rule 45 as written. She restated the portion of the rule for releasing the complaint to the public and said the Committee has fully complied with the rule.

Rep. Crane reviewed some history of how Ethics Committee members are volunteered by their colleagues to serve on the Committee. He also explained how complaints are filed with the Committee and how the process begins. He explained how some complaints are not properly filed and can be dismissed and how **Rep. Giddings** was invited to participate in the preliminary investigation for these two complaints to give her side, but she refused to participate which brought the Committee to this point. Rep. Crane reviewed the definitions of "conduct unbecoming", "detrimental" and "integrity".

Chairman Dixon turned the time over to **Chris McCurdy**, Holland & Hart, LLP, counsel to the Committee to present the Committee's evidence and witnesses.

Mr. McCurdy asked the Committee from an efficiency standpoint to consider the complaints, their exhibits and the exhibits put forth before the witnesses as submitted for the Committee's consideration.

Rep. Brooke Green was sworn in as a witness to testify. Rep. Green answered questions from **Mr. McCurdy** verifying her signature on the May 3, 2021 complaint and explained she was the chief complainant, and it was a bipartisan effort. She explained the process she and others took to find signers to the complaint without the intent of political positioning and ensuring confidentiality.

Rep. Green further answered questions regarding what conduct by **Rep. Giddings** spurred this effort, saying after the **von Ehlinger** hearing she felt Rep. Giddings' testimony during that hearing was not forthcoming and she was also made aware of the Facebook post which she felt further disseminated the picture and name of the young lady who had filed the claim of sexual misconduct. Rep. Green answered questions regarding the evidence attached to the complaint, the printout of the Facebook post and whether **Jane Doe's** picture and name are visible. She said one of the most important things as a Representative is to not only represent constituents but also to represent the institution, to hold themselves to a higher standard and to ensure the privacy and confidentiality of those who legislators work with but also the process itself. She described what she believed to be conduct unbecoming and how she thought Rep. Giddings' testimony under oath in the **von Ehlinger** hearing was evasive.

Rep. Green answered questions from the Committee saying there is an expectation to a level of protection for those who may come forward with a complaint and it is not in the public's best interest to know the identity of that person. She explained she was not aware of any other member of the legislature who had published the identity of **Jane Doe** and explained that not all members of the Democratic Caucus had signed the complaint. Rep. Green also explained in answer to questions she did not believe the legislature should limit or restrict social media posts, but if a post is detrimental to the institution it may be necessary to take steps for reprimand.

The Committee went at ease from 10:29 a.m. to 10:34 a.m. to allow **Rep. Giddings** to return to the room to cross examine **Rep. Green**. Rep. Giddings did not return. After the five-minute allotted time, **Chairman Dixon** called the Committee back to order and Rep. Green was dismissed as a witness.

Mr. McCurdy called **Rep. Greg Chaney** as the next witness and he was sworn in to testify. Rep. Chaney answered questions and verified he filed the April 19, 2021 complaint and explained he thought **Rep. Giddings** behavior seemed to be inconsistent with the decorum of the House and felt it was necessary for an Ethics Committee investigation to begin. He described what he believed to be the standard of conduct for a member of the House saying decorum, civility and honesty are all essential in conducting themselves in a manner that brings credit to the institution and he believed Rep. Giddings did not act in this manner in her social media post or in her testimony at the **von Ehlinger** hearing.

Rep. Chaney answered questions from the Committee saying he was not aware of any other member of the legislature who posted either a photo or the name of **Jane Doe**. He described the type of work he has done in the past and any experience he had with personnel issues. He recalled the timeline of when he discovered the post by **Rep. Giddings** on Facebook and when he saw that the article and post were altered or removed. Rep. Chaney answered questions regarding First Amendment rights and restricting social media posts saying he did not believe there should be restrictions to a person's First Amendment rights but there can be a response to social media posts if they are defamatory.

The Committee went at ease from 10:55 a.m. to 11:00 a.m. to allow **Rep. Giddings** to return to the room to cross examine **Rep. Chaney**. Rep. Giddings did not return. After the five-minute allotted time, **Chairman Dixon** called the Committee back to order and Rep. Chaney was dismissed as a witness.

Rep. John Vander Woude was called as a witness to testify and was sworn in by the Chairman. Rep. Vander Woude reviewed the May 3, 2021 complaint which he signed and answered questions from **Mr. McCurdy** about what brought him to the point that he wanted to sign a complaint against **Rep. Giddings**. He said he felt this type of behavior was not only unbecoming a Representative but was unbecoming of any member of society. He further explained what he thought the standards of conduct should be for general citizens, including members of the House which include integrity and honesty and he felt if he was not honest as a Representative, he would not be able to do his job as a Representative. In answer to questions Rep. Vander Woude said he believed Rep. Giddings' testimony in the **von Ehlinger** hearing was evasive to the truth and the testimony was unbecoming of anybody, not just a member of the House and warranted an ethics complaint. He said there is free speech but there also can be liabilities that comes along with free speech and sometimes consequences are suffered from it.

Rep. Vander Woude answered questions from the Committee saying sometimes as elected officials the liabilities of what is said can be suffered at the election box. He said he had never, at any time, heard of a legislator disclosing the name of or information about anyone who may have filed a complaint regarding alleged sexual harassment and was not aware of any other legislator who published the name and photo of **Jane Doe** in this incident. He regarded the actions of **Rep. Giddings** not showing up to any investigatory meetings and not being here today as disappointing. That as legislators, if there are accusations against someone, they should participate in the process and stand up and defend their position.

The Committee went at ease from 11:17 a.m. to 11:22 a.m. to allow **Rep. Giddings** to return to the room to cross examine **Rep. Vander Woude**. Rep. Giddings did not return. After the five-minute allotted time, **Chairman Dixon** called the Committee back to order and Rep. Vander Woude was dismissed as a witness.

Mr. McCurdy called **Rep. Chris Mathias** as the next witness for the Committee, and he was sworn in to testify. Rep. Mathias verified his signature on the May 3, 2021 complaint and explained why he signed on to the complaint. He said there were four things that motivated him to sign, first, he believed **Rep. Giddings** violated her oath that is taken every day during the morning floor sessions to pursue justice for all, by publicly defaming and casting doubt upon people who report violent crimes. He said secondly, he felt Rep. Giddings was negligent in that she knew or should have known her actions would cause harm to **Jane Doe**. Rep. Mathias said, third, he felt Rep. Giddings probably committed perjury during her testimony in the previous hearing by giving evasive answers and fourth, he believed legislators have a heightened responsibility to examine information before redistributing it to the public.

Rep. Mathias said from his experience in the criminal justice system, victims of sexual assault are usually given the least amount of justice and fairness in the system and protecting the identity of people who come forward to report allegations of sexual assault is one way to help remedy that. He said he had concerns about saying things on social media that directly cause harm to others may not be protected free speech. He also said he did not feel **Rep. Giddings'** testimony to the Committee in the **von Ehlinger** hearing was forthright. Rep. Mathias explained in answer to questions his interpretation of conduct unbecoming as conduct that if every legislator did it, it would lead the public to frown upon the body as a whole. So, if every legislator publicly cast doubt on the claims and defamed people who report sexual assault, it would create an environment in which there would be fewer reports of claims of violence or violent crimes or claims of sexual assault. It would also create an environment where the court of public opinion would have undue impact and influence on the investigative process, the adjudicative process and would not promote justice.

In answer to Committee questions, **Rep. Mathias** said he was not aware of any other member of the legislature that posted the name and identity of **Jane Doe**. In response to questions regarding restricting free speech of fellow lawmakers, Rep. Mathias said he believed legislators should be subjected to the same constitutional protections as a member of the public but not speech that brings direct harm to others, at which point it would not be protected speech and therefore suppressive.

The Committee went at ease from 11:49 a.m. to 11:54 a.m. to allow **Rep. Giddings** to return to the room to cross examine **Rep. Mathias**. Rep. Giddings did not return. After the five-minute allotted time, **Chairman Dixon** called the Committee back to order and Rep. Mathias was dismissed as a witness.

Rep. Julie Yamamoto was called and sworn in to testify as the next witness for the Committee. Rep. Yamamoto verified her signature on the May 3, 2021 complaint and described how she was first approached about potentially signing onto the complaint. She explained why she signed the complaint saying a person has a right to do and say whatever they want, they have a right to post on social media whatever they want but there are consequences, and a person should accept those consequences. She explained there is also the issue of **Rep. Giddings** being evasive when she was asked direct questions during the previous ethics hearing. She said when she hears about things that may have happened in the past and those legislators were not held accountable, that she didn't want to be counted as not holding her colleagues accountable in their actions.

In further answer to questions from **Mr. McCurdy**, **Rep. Yamamoto** said she follows **Rep. Giddings'** social media and gets her newsletter and felt her postings in the matter were inappropriate. She said she understood how Rep. Giddings may have wanted the situation to have fairness and to stand up for a friend and that is reasonable. But she said but it is not prudent to put something out that has someone's name and picture and then instead of owning that you posted it, to say it really wasn't their post, it was only a link, is disingenuous and not in keeping with the integrity of the House.

In answer to committee questions, **Rep. Yamamoto** said she was not aware of any other member of the legislature who posted the name and identity of the alleged victim in the **von Ehlinger** case. She said under different scenarios up to the point of the public hearing, if **Rep. Giddings** had been accountable for her actions, taken her post down and apologized, Rep. Yamamoto would have removed her signature from the complaint and offered forgiveness to Rep. Giddings.

The Committee went at ease from 12:10 p.m. to 12:15 p.m. to allow **Rep. Giddings** to return to the room to cross examine **Rep. Yamamoto**. Rep. Giddings did not return. After the five-minute allotted time, **Chairman Dixon** called the Committee back to order and Rep. Yamamoto was dismissed as a witness.

Chairman Dixon recessed the Committee at 12:16 p.m.

Chairman Dixon reconvened the Committee at 1:15 p.m.

Mr. McCurdy called **Rep. Priscilla Giddings** as the next witness. Discussion was held between Rep. Giddings and **Chairman Dixon** regarding the reporter standing behind Rep. Giddings and the reporter was able to move to a different location. Discussion was also held regarding the evidence binder provided for witnesses; Rep. Giddings questioned if she previously had access to the documents. Chairman Dixon explained she had not requested them from the Committee, but the documents are already public and accessible by anyone who wants them. Rep. Giddings wanted the record to reflect that House Rule 45 says she should have a full and fair opportunity to obtain or review the evidence and this was the first time she was seeing any evidence. Chairman Dixon stated to Rep. Giddings, the only documents she may not have previously seen is a section of the Idaho Constitution and a section of Idaho Statute which are readily available to the public. **Rep. Crane** reviewed the tabbed sections of the witness binder and gave the description of the document in each section.

Further discussion was held among Committee members and **Rep. Giddings** on whether Rep. Giddings' response to the complaints was a matter of public record and should have been released to the public. House Rule 45 was reread to explain the obligation of the Committee in releasing documents to the public, in that, after a preliminary investigation if the Committee finds probable cause that misconduct has occurred, the written complaint against the member shall no longer be confidential.

Rep. Priscilla Giddings was sworn in to testify before the Committee. In answer to questions from **Mr. McCurdy**, Rep. Giddings recalled some of her background in the Air Force Academy. Discussion was held regarding the relevance of this background and Rep. Giddings questioned who the complainants were in this proceeding and why they had not presented the complaints and evidence according to House Rule 45. **Chairman Dixon** informed Rep. Giddings that this portion of the hearing occurred that morning when she was not present.

In response to questions of her defense to the complaints, **Rep. Giddings** summarized her opening statement. Discussion was held between the Committee members and Rep. Giddings on whether she understood what she was being accused of, whether she had received and read the complaints against her and whether she had given responses to the complaints. Rep. Giddings said she did read the complaints and she believed her responses to the complaints were sufficient. She also referenced previous concerns and questions from the committee during the preliminary investigation and questioned which complaint those concerns and questions were referring to.

Discussion was held regarding referring to the May 3, 2021 complaint as the "Bedke complaint" because **Rep. Scott Bedke** was listed as the first signature on the complaint. **Rep. Crane** said the reason for this was explained thoroughly during the morning portion of the hearing while **Rep. Giddings** was absent. **Chairman Dixon** cautioned the audience in the room against outbursts.

Rep. Giddings answered questions regarding her testimony under oath during the **von Ehlinger** hearing on April 28, 2021 saying she was honest in her responses to the Committee in that hearing. **Mr. McCurdy** continued questions regarding Rep. Giddings' Facebook page posting of the article and whether the article had the name and picture of **Jane Doe**, whether this was available to her followers on Facebook when they clicked on her page and whether she wrote the commentary that went along with the posting of the article.

Rep. Crane continued with questioning **Rep. Giddings** regarding her First Amendment rights, specifically to posting the link to the news article and whether her colleagues can restrict other legislators' First Amendment rights. Discussion was held regarding the release of Rep. Giddings' responses to the complaints and debate was held regarding if the Committee was obligated to release the responses to the complaints in this hearing and in the **von Ehlinger** hearing. Rep. Giddings claimed it may be a violation of the public records statute if the Committee did not release to the public the responses to the complaints in both cases. Rep. Crane reiterated that according to House Rule 45 the complaint is no longer confidential, the rule does not say the Committee is obligated to release the documents to the public, unless a records request is made, and the Committee has followed the rule to the best of its ability.

Rep. Giddings responded to questions from **Mr. McCurdy** regarding the oath of office she took as a Representative. He also asked if she would refer to Article 1, Section 22 of the Idaho Constitution titled as the rights of crime victims and if she was aware of any criminal investigation in the **von Ehlinger** matter at the time of her testimony in the previous hearing. Rep. Giddings questioned if there was victim of a crime in any of the previous hearings and that she was not aware of any charges filed then or currently in that case.

Rep. Giddings answered questions from the Committee regarding the attempts the Committee made to notify her of the Committee's investigation, public hearing, and the subpoena for her to appear and testify. She mentioned she was sent documents by email from the Committee and a delivery service had been to her Ada County property several times to serve her documents during which they had passed the "no trespassing" sign on her property and she called police because she felt they were trespassing. She said she was never "handed" any documents, so she referred to the documents that were emailed to her.

Rep. Crane reviewed all the attempts with dates the Committee tried to communicate with and notify **Rep. Giddings** of the process and progress of the Committee for her appearance in the preliminary private investigation and the public hearing. Rep. Crane questioned if Rep. Giddings understood the Committee was trying to contact her during the private preliminary investigation to have her explain her side of the story. He also reviewed interviews with reporters given by Rep. Giddings and asked if she understood the process the Committee goes through when a complaint is filed and if she has a lack of trust in the process. Rep. Crane and Rep. Giddings debated the nuances of House Rule 45, the terms preliminary investigation or meeting and whether a respondent is required to attend any preliminary investigation or meeting of the Ethics Committee.

Rep. Horman expressed to **Rep. Giddings**, the audience, and the public the reason for the Committee's diligence in trying to contact Rep. Giddings as trying to give her due process and the Committee's due diligence in wanting to hear her side. Rep. Giddings reiterated her concerns with House Rule 45 regarding confidentiality, and due process regarding her full and fair opportunity to obtain and review all the evidence in support of the complaints. Rep. Giddings explained in response to a question from Rep. Horman that she deleted the Facebook post on her page after the Committee requested **Jane Doe's** appearance and identity be private during the hearing on April 28, 2021.

Mr. McCurdy reviewed **Rep. Giddings** testimony from the **von Ehlinger** hearing and asked questions regarding her answers to questions from the Committee during that testimony. Rep. Giddings responded her testimony in the hearing was not relevant to the complaints she is facing now. **Rep. Crane** took over questioning, pointed out where these questions were referred to in the May 3, 2021 complaint and asked Rep. Giddings to just be candid with the Committee, to tell the Committee yes or no and to not play semantics and games. He asked her to just answer the counsel's questions, because it is spelled out very clearly in the complaint. Debate was held regarding accusations of playing games and evasive answers to questions, **Chairman Dixon** asked Rep. Giddings to answer questions that are relevant to the proceedings.

Rep. Gannon questioned **Rep. Giddings** regarding how and when she knew anything about **Jane Doe** and what a relationship between an intern and a legislator might consist of and is there an expectation of protection for an intern if there is a claim of misconduct by a legislator. Rep. Giddings argued whether Jane Doe was actually an intern or a volunteer and if she was enrolled in any college classes that would classify her as an intern and if she was a volunteer it was a lot different than being an intern, a volunteer is not an employee. Rep. Giddings also questioned the term "sexual harassment".

Mr. McCurdy asked questions regarding **Rep. Giddings** being the only person to make changes to her Facebook page of which Rep. Giddings said she made the post to her Facebook page on April 16, 2021.

Rep. Giddings answered questions from the Committee saying she does not follow people's social media sites and she is aware that the article was read by more than 5,700 people and it was shared more than 25 times from one area. She said it could have been shared multiple times and in multiple reiterations anywhere else. Rep. Giddings answered questions from Rep. Horman regarding her submission of a list of witness she would want to call to testify and asked for subpoenas for the witnesses and if she was successfully able to deliver the subpoenas. Rep. Giddings reviewed the list of witnesses she wanted subpoenaed and said she was only able to send a few by email. **Rep. Horman** asked if the Committee could be provided with an affidavit of service to those she was able to get the subpoenas issued to of which Rep. Giddings could not provide.

Chairman Dixon gave **Rep. Giddings** the opportunity to question the witnesses called by the Committee earlier in the day even though she was allotted time previously to return to the Committee room to question those witnesses. Chairman Dixon said it was then time for Rep. Giddings to call any witnesses she wanted as provided on her witness list.

Rep. Giddings said she did not want to waste any more of the taxpayer's money, so she was done for the day and did not call any witnesses. **Chairman Dixon** excused Rep. Giddings as a witness.

Chairman Dixon said there was time for Committee discussion if it was needed.

MOTION: **Rep. Crane** made a motion to adjourn the Committee until 10:00 a.m. the next morning to give the Committee time to process the testimony given today and review the complaints and responses. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the Committee the meeting adjourned at 3:03 p.m.

Representative Dixon
Chair

Susan Werlinger
Secretary

AGENDA
HOUSE ETHICS AND HOUSE POLICY COMMITTEE
10:00 A.M.
Room EW42
Tuesday, August 03, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
	Committee Deliberation	

COMMITTEE MEMBERS

Chairman Dixon
Rep Horman
Rep Crane
Rep Davis
Rep Gannon

Rep Barbieri
Rep Young
Rep McCrostie
Rep Chew

COMMITTEE SECRETARY

Susan Werlinger
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MINUTES
HOUSE ETHICS AND HOUSE POLICY COMMITTEE

DATE: Tuesday, August 03, 2021
TIME: 10:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Dixon, Representatives Horman, Crane, Gannon, McCrostie
**ABSENT/
EXCUSED:** None
GUESTS: Bill Myers, Chris McCurdy, Holland & Hart, LLP

Per Joint Rule 19, these minutes have been prepared in summary fashion. They are not a verbatim transcription of the proceedings on August 3, 2021.

Chairman Dixon called the meeting to order at 10:02 a.m.

Chairman Dixon made a statement, reviewing and explaining some questions that were posed in the hearing the day before regarding House Rule 45 and the respondent's opportunity to obtain and review all evidence in the support of the complaint. He said the rule does not put the burden of sharing evidence on the Committee and this was also made clear in the Hearing Rule IX. Chairman Dixon reviewed the multiple attempts the Committee made giving **Rep. Giddings** the opportunity to ask for any documents she wanted and sending her the hearing rules explaining her rights during this process. He said all evidence used in the hearing was either widely available public documents, information previously sent to Rep. Giddings and in her possession or her own words.

Chairman Dixon opened the hearing for Committee discussion.

Rep. Gannon said there is nothing easy about this case or about a decision like this. He said in the end he must look at the evidence and the law and rules in this case and set aside some of the personalities. He said in his view, this is a basic personnel matter whether **Jane Doe** was an intern or a volunteer, what rights they have when they file a complaint and what are the obligations of a legislator.

Rep. Gannon said in summary, the issue is the rights of an employee intern to make a claim of violation of law and improper conduct and whether the response by a person in power, in this case a legislator, is or is not conduct unbecoming a member of the legislature. He said there is no rape shield law in Idaho but there is a whistleblower statute which provides protection for public employees and prohibits adverse action against an employee.

Rep. Gannon also referred to the Human Rights statute and sections in Mason's Manual regarding custom, usage, and precedence in determining the standard of conduct. He reviewed points in the testimony of witnesses from the previous day regarding this type of situation in public and private employment. He reviewed each of these points saying the evidence doesn't show this type of conduct as appropriate for a person in authority. He said this is important because we should want people to come forward and make good faith complaints if they see misconduct and not be deterred from doing it for fear their identity may be exposed.

Rep. Gannon went on to say there is a concern for legal liability, the actions of state officials can result in lawsuits and legal actions. He said the fact that 24 legislators filed a complaint and that they felt there was a need to do something, and the evidence indicated that what was done was improper.

Rep. Horman opened her comments by saying she will recommend dismissal of the April 19, 2021 complaint filed by **Rep. Chaney**. She said the Committee is not the appropriate body to evaluate criminality and all the other allegations stated in that complaint are fully covered in the May 3, 2021 complaint. Rep. Horman said regarding the May 3, 2021 complaint, it expressed two primary concerns of 24 House members. They signed it because they believe the actions of **Rep. Giddings** constituted conduct unbecoming which is detrimental to the integrity of the House.

Rep. Horman reviewed the points in the May 3, 2021 complaint saying the first point was that **Rep. Giddings** disseminated the photo and identity of **Jane Doe**, she believed Rep. Giddings does have a free speech right to do this, but the question is Rep. Giddings' judgement and intent in doing this and just because someone has the right to do this, doesn't mean they should. She said the second point of the May 3, 2021 complaint is regarding misrepresentations and the appearance of dishonesty while under oath. Witnesses the day before testified under oath they believed Rep. Giddings did not tell the whole truth under oath, she was less than forthcoming, she was elusive and evasive in her responses in the **von Ehlinger** hearing. Rep. Horman said her concern was she saw that pattern repeated yesterday and she reviewed several false statements in Rep. Giddings' testimony from the day before.

Rep. Horman continued with her concerns over **Rep. Giddings** wanting to save taxpayer money, but then requesting the Chairman issue subpoenas, prepared by attorneys all day Friday, that were never served. She shared her concern over the fact that Rep. Giddings is fundraising as a result of this hearing to pay for legal counsel that she does not seem to have. Rep. Horman expressed her concern regarding claims made by Rep. Giddings protection from and trial by public opinion and that the accusations were made by the House Ethics Committee. She reminded everyone that the Ethics Committee has made zero allegations of retaliation or whistle blowing, accusations were made by 24 of Rep. Giddings' colleagues.

Rep. Horman also expressed her concern about the lack of civility, respect, and basic sense of decency toward other House members and the process. She said the lack of regard for her colleagues who took the time to explain why they signed the ethics complaint shows a pattern of lack of respect for the dignity of other human beings. Which is a standard many would say are below any citizen, including a member of the House of Representatives. Rep. Horman said the phrase that stands out to her is not even conduct unbecoming, she believed that has been proven beyond reasonable doubt. She said in her opinion **Rep. Giddings'** behaviors were detrimental.

Rep. McCrostie began his statement saying he could honestly say he never expected to be part of the Committee during an ethics hearing, let alone have two within a matter of months. He said the facts are indisputable, **Rep. Giddings** posted a link on her Facebook page to a website and disseminated the name, photo and identity of **Jane Doe** and she posted the same link to her newsletter using the state provided GovDelivery system. Rep. McCrostie said while distasteful, this part of both complaints, the actual posting of distasteful information that further victimizes Jane Doe, in a state that lacks a rape shield law is protected speech. But just because it can be said doesn't mean it's prudent to say it and it doesn't mean there aren't consequences.

Rep. McCrostie also said the other item that needs to be determined are concerns regarding **Rep. Giddings'** conduct during the **von Ehlinger** ethics hearing. Rep. Giddings appeared in that hearing in support of the former Representative and appeared on her own accord and voluntarily swore an oath to tell the truth. Yesterday there was testimony from five of the 24 co-signers on the May 3, 2021 complaint stating they found her testimony in the hearing to be some form of half-truth, less than truth or not the whole truth.

Rep. McCrostie continued saying the Committee must determine if **Rep. Giddings'** conduct in the prior hearing constitutes conduct unbecoming. He said based on her conduct the day before in this hearing, the prior hearing was not an outlier, but part of a pattern. He went on to say, the half-truths, misinformation, and incomplete facts given by Rep. Giddings both yesterday and during the prior hearing harms the integrity of the House as a legislative body as well as this Ethics Committee, whoever comprises its membership now or in the future. He said to ignore the respondent's conduct is impossible without simultaneously harming the House as an institution and he finds Rep. Giddings' conduct to be unbecoming.

Rep. Crane said the assignment given to the Committee is very difficult, to sit in a seat of judgment of a fellow colleague is weighty. He said he does not take it lightly. He said 24 colleagues put forward a complaint of belief of conduct unbecoming in the **von Ehlinger** hearing and concern of doxing a 19-year-old volunteer after her claim of misconduct by a Representative. He said he agreed wholeheartedly that **Rep. Giddings** has a First Amendment right to say what she said and understands the desire to have fairness in the previous ethics hearing, but maybe should have released the person's response to the Committee and not linked to the article.

Rep. Crane said this may have damaged the reputation of the House, but the real damage to the integrity of the House was while under oath and when asked about releasing the photo, posting the link and the administration of the Facebook page, **Rep. Giddings** was not forthright with the Committee. Rep. Crane commented on many statements made by the respondent during the hearing yesterday that were incorrect and other statements and claims regarding the reasons for the complaint, the Committee process and due process that were false along with other false statements made in interviews leading up to this hearing. Rep. Crane again reviewed the many times the Committee attempted to contact Rep. Giddings with no response, to give her information about the proceedings, the evidence or to have her come talk to the Committee.

Rep. Crane said **Rep. Giddings** has been combative and has still refused to directly answer any questions from the Committee. He said he had hoped yesterday she would have been forthright and answered questions so the issue could be resolved, but that did not happen. He said the behavior in the **von Ehlinger** hearing and the previous day of this hearing, to not listen to colleagues explain why they filed the complaint and what could have been done to resolve the complaint was problematic.

Rep. Crane concluded by saying he hoped this would be a learning opportunity for **Rep. Giddings**, that current and future legislators will look to the actions of this Committee as hopefully a guiding light as to what conduct is expected of legislators. He said when a legislator repeatedly tells half-truths, outright lies, fails to answer questions or to be honest with the Committee, this type of behavior will not be tolerated. Rep. Crane said the Ethics Committee expects better conduct of its members of the House of Representatives and the citizens of Idaho deserve better conduct from their legislators.

Chairman Dixon said most of his thoughts has already been stated by his colleagues. He said the Committee heard strong testimony from five of the Representatives who signed the complaints expressing their concern with **Rep. Giddings'** behavior and why they felt it was detrimental to the House and conduct unbecoming. He said they heard that it's not just conduct unbecoming a legislator but of everybody and legislators should expect more from each one of themselves.

Chairman Dixon said the legitimacy that is given to certain statements when it comes from a legislator, when a government form of communication is used, projects a sense it must be truth because this person is elected to represent their constituents, to fight on their behalf. He said Representatives are accountable for what they say regardless of the First Amendment and if the conduct is owned, if there is some contrition, if there is a bit of remorse or repentance on behalf of what had happened, he thought it all would have been forgiven.

He said there will naturally be a mistrust of government and there should be from citizens to keep it in check, but legislators should not be responsible for perpetuating that mistrust by misleading the public. He said the role of the Committee is to determine whether a member's conduct is detrimental to the House of Representatives as a whole. **Chairman Dixon** said in being less than truthful during a public hearing while under oath, abridges the trust in both the public and fellow members of the House and can justly be construed as conduct unbecoming and detrimental to the House of Representatives.

Chairman Dixon stated the role of the Committee is to protect the body, they've been elected by their peers to do this, it's not something that was sought out and they take that role very seriously. In protecting the body their goal is to let a member know they have stepped outside the parameters of what the body feels is appropriate and how it reflects itself to the public.

MOTION: **Rep. Horman** made a motion to dismiss the complaint dated April 19, 2021, submitted by **Rep. Chaney**, because the allegations contained in that complaint are fully addressed by the complaint brought later by 24 members of the Idaho House of Representatives. **Motion carried by voice vote.**

MOTION: **Rep. Horman** made a motion that the Committee finds by clear and convincing evidence that **Rep. Giddings** has conducted herself in a manner unbecoming a Representative, which is detrimental to the integrity of the House as a legislative body and that the Committee recommends to the full House of Representatives that Rep. Giddings be censured with the condition that she be removed from her seat on the House Commerce and Human Resources Committee. **Motion carried unanimously by voice vote.**

ADJOURN: There being no further business to come before the Committee the meeting adjourned at 10:48 a.m.

Representative Dixon
Chair

Susan Werlinger
Secretary

AGENDA
HOUSE ETHICS AND HOUSE POLICY COMMITTEE
11:00 A.M.
Room EW42
Monday, December 06, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
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Review and Revision of House Rule 45

Meeting will be Audio Streamed Only and
No Public Testimony will be taken.

COMMITTEE MEMBERS

Chairman Dixon
Rep Horman
Rep Crane
Rep Davis
Rep Gannon

Rep Barbieri
Rep Young
Rep McCrostie
Rep Chew

COMMITTEE SECRETARY

Susan Werlinger
Room: EW45
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Email: hethics@house.idaho.gov

MINUTES
HOUSE ETHICS AND HOUSE POLICY COMMITTEE

DATE: Monday, December 06, 2021
TIME: 11:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Dixon, Representative(s) Horman, Crane, Gannon, Davis, Barbieri, Young, McCrostie, Chew
**ABSENT/
EXCUSED:** Representative Chew
GUESTS: None

Chairman Dixon called the meeting to order at 11:05 a.m.

Chairman Dixon said the purpose of these meetings is to review ideas and edits that came before to improve House Rule 45. He said this is not a formal discussion, but there will be discussion.

Rep. Barbieri said it is important to recognize the precepts of the language in the rule, to ensure fairness and there is a question of due process. He also mentioned the rules of evidence may need to be modified, and there is a question about resources and fairness in resources. He said the question of confidentiality needs to be addressed. Rep. Barbieri said this is an internal matter, and possibly all members of the committee should be brought in on the process. Censure should be limited or defined, and there is a question of mandatory participation.

Rep. Gannon commented on the due processes and evidence saying they have established a mechanism of due process, which can be improved.

Rep. Crane said the rule shows clear rules of evidence, and those were followed in the previous hearings. He said maybe those portions of the rule should be looked at on a case-by-case basis, he said the rules were stated and followed. He said he agreed with **Rep. Barbieri** on changing the selection of the chairman.

Rep. Horman agreed with the comments made by **Rep. Crane** because each complaint is unique. She said she did think the rules of procedure for public hearings could be added to the rule. She said she could agree with having a larger committee rather than alternates and is open to the conversation of due process, but she didn't think it was denied and she is fine with the committee selecting the chairman.

Rep. Young mentioned the concern about confidentiality in the rule and the engagement in the process is for the most part an internal issue. She said she would like to maintain the confidentiality and the focus of the work that needs to be done.

Rep. Crane said he would agree with the complaint and response being released to the public.

Committee members discussed the change in chairman selection and possibly taking out the committee election process and adding it to caucus rules. The number of members was in question and if the alternates should sit in on the meetings initially if there is a complaint to deal with.

Rep. Horman expressed concern with the size of the committee because it is intense work and in protecting the confidentiality of the committee's work. She said the more members there are the harder it is to remain confidential.

Carrie Maulin, Chief Clerk of the House clarified that committees cannot reprimand an individual or privately reprimand a member, she said the committee does not have the authority. **Rep. Crane** said private sanction and public sanction needs to be clarified in the rule.

Committee members discussed defining the term conduct unbecoming, **Rep. Horman** said the term is defined by how the House votes as a whole, in a public setting on the recommendation of the committee. She said the term is defined by each new sitting body of legislators and she would not be opposed to further definition, but it is the House that defines the term when they vote. The committee uses the probable cause standard.

Discussion was held around the rule not saying anything about a conviction for a felony and the committee not being a criminal investigative body. If there is conduct that has been adjudicated a felony, then the burden should be put on the court process. This issue was flagged for further discussion.

The committee discussed the requirement of evidence. **Rep. Crane** said if the committee is doing its due diligence the evidence will be brought forward in the investigation. He said the more descriptive it is in the rule, it makes the work of the committee more difficult. It was discussed that the rule should have more than only two qualifications for dismissal and the committee should have the ability to dismiss a complaint outright.

Discussion was held regarding the transparency of the process and if that should be modified in the rule. It was questioned if transparency was so paramount that the committee should need to go through the public process. **Rep. Crane** said it is important the matters of government be in the public view.

Rep. Gannon agreed to the need to keep the public aspect of the process and expressed his concern with the process of not having any counsel available for the person accused.

Committee members discussed the requirements for the notification of a complaint, requiring participation from the respondent in the private preliminary investigation and the standard for the term probable cause.

The committee recessed at 1:06 p.m. **Chairman Dixon** reconvene the committee at 2:16 p.m.

The committee continued discussion on the definition of terms in the rule and changing the vote requirement for the vote in the House.

Rep. Crane said he would like to see some parameters around reprimand and censure, the differences, and the definitions. He said currently there are no limitations to what the sanctions can be when recommending a censure.

Discussion was held regarding the language around expulsion, the committee making a recommendation or not within the 30-days after a public hearing and the outcome if a respondent doesn't participate in the preliminary investigation.

Rep. Gannon mentioned language could be added to allow a respondent to have access to the Attorney General's staff in order to promote fairness in the process. It was suggested both the committee and the respondent could have access to the same resources and that this is a legislative matter, and the legal part should be left out of the process.

Questions were raised regarding testimony given in private or in public during the process and what happens to that testimony if there are potential criminal charges. It was explained the documented testimony is public, but the state statute gives protection to the respondent during the process; the member is required to testify but then the testimony could not be used against them.

Chairman Dixon said he would prefer to not use legal counsel because it is an internal issue and should be dealt with by the body, but the rule should still include the provision. **Rep. McCrostie** mentioned he did do a draft of the rule which included the rules of procedure for a public hearing if the committee was interested in incorporating those into the rule.

Committee members discussed the potential revision of parts of the current Respectful Workplace Policy and how that could possibly be incorporated into a rule for adoption.

Ms. Maulin mentioned the Respectful Workplace Committee is reviewing the process again to define changes that may need to be made for improvement. She said House staff is governed by the current Respectful Workplace Policy and do adhere to the guidelines and training.

ADJOURN: The meeting adjourned at 3:04 p.m.

Representative Dixon
Chair

Susan Werlinger
Secretary

AGENDA
HOUSE ETHICS AND HOUSE POLICY COMMITTEE
9:00 A.M.
Room EW42
Tuesday, December 07, 2021

Limited public seating will be available in the committee room. For members of the public to observe the meeting, please click on the following link:

<https://www.idahoptv.org/shows/idahoinsession/>

SUBJECT	DESCRIPTION	PRESENTER
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Review and Revision of House Rule 45

Meeting will be Audio Streamed Only and
No Public Testimony will be taken.

COMMITTEE MEMBERS

Chairman Dixon
Rep Horman
Rep Crane
Rep Davis
Rep Gannon

Rep Barbieri
Rep Young
Rep McCrostie
Rep Chew

COMMITTEE SECRETARY

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MINUTES
HOUSE ETHICS AND HOUSE POLICY COMMITTEE

DATE: Tuesday, December 07, 2021
TIME: 9:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Dixon, Representatives Horman, Crane, Gannon, Davis, Barbieri, Young, McCrostie, Chew
**ABSENT/
EXCUSED:** None
GUESTS: None

Chairman Dixon called the meeting to order at 9:04 a.m.

The committee began with discussion on keeping the Speaker and House Leadership out of the ethics process, making a strong protection for confidentiality because any disclosure of an ethics complaint is a violation of the ethics rule and the procedure if a complaint is dismissed in the investigatory stage of the process.

Chairman Dixon began to review the current rule by section with suggestions from the committee. He said the first paragraph refers to how the committee is organized. The committee suggested organizing on the second day of session after leadership and chairmen are chosen with cautions of electing the ethics committee too early in the session.

Members discussed having a time line in the rule and having a separate committee for reviewing policies or have the House Judiciary, Rules & Administration Committee review the policies. The committee agreed on the number of members in the committee, keeping nine total with five active and the other four as alternates. **Rep. Horman** suggested it be spelled out in the rule that the caucus votes to fill in the alternate when needed or to vote a new member into the seat or to fill the seat in with an alternate and elect a new alternate. The committee agreed to have the committee members elect the chairman and how it would be spelled out in the rule.

Committee members discussed who could bring a complaint to the Ethics Committee especially in regard to a personnel matter where confidentiality is extremely important. They discussed limiting the number of people on a complaint to only one as the confidentiality of the complaint could be compromised if multiple people sign a complaint and requiring that the complaint be signed under oath.

The committee reviewed the section of the rule referring to what may constitute a felony but wanted the language to refer to a conviction of a felony. Discussion was held on leaving the judicial aspect out of the rule. A point was made that the committee does have a quasi-judicial function because they are being asked to judge the behavior of a colleague. The committee agreed on the time line that is laid out in the rule.

Carrie Maulin, Chief Clerk of the House gave clarification on the list of options on the complaints. She said some of the information comes from statute and disclosure of information is also in statute, she said the reference to a felony is not necessarily criminal but refers more to bribery. Ms. Maulin said there is more clarification available in the ethics handbook.

Committee members discussed how records of complaints would be maintained especially those complaints that may have been dismissed in the preliminary stage. Points were made regarding the safekeeping of the records during the confidential portion being paramount and there could be some wisdom in retaining those records. **Rep. Crane** raised the question that if the committee doesn't have access to the records of the previous complaints, then they would not be of value to the committee. The committee discussed creating the role of a secretary to provide the ability to retain records and records should be kept until the death of the Representative in question. The committee agreed if this is done it should be written into the rule. Rep. Horman mentioned the committee is thinking of complaints as a reflection of the accused, but complaints filed without merit can reflect on the complainant.

The committee recessed at 11:47 a.m. **Chairman Dixon** called the committee back to order at 1:00 p.m.

The committee discussed keeping the process confidential until probable cause is found, and the confidentiality should be maintained to that point by all parties. Once that point has been reached add the response and evidence to the documents that will be public. Suggestions were discussed regarding requiring two forms of contact for the respondent, a physical address and electronic email address and if the respondent should be required to appear before the committee within 14-days of notification of the complaint.

Committee members discussed **Rep. Young's** suggestion of keeping the process private until a report is issue by the Ethics Committee, then the members of the House will vote on the report. Members did not support the idea of the process remaining private until the very end and having such a significant change to the ethics process.

There was committee discussion regarding the opportunity to provide defense to the respondent. Suggestions were made about the respondent having the ability to consult the Attorney General's Office and inquire about how the process works which may promote some fairness in the process. Suggestions were made regarding eliminating counsel all together or to have unbiased counsel available if only to just advise on the process.

Members discussed and suggestions were made for raising the bar of voting on the House floor, that it could be raised to 60%. Points were made regarding protecting the integrity of the body and not trying to destroy someone's political career The House as a body should be making the determination at a lower standard except in the case of expulsion. It should be easier to protect the integrity of the House.

The committee discussed putting some limitations on censure along with definitions for reprimand and censure but there are different remedies that could be added to censure and it should remain flexible and the remedies unrestricted.

It was agreed that if the committee retains counsel the same resources should be available to the respondent but there should be limitations on what those resources are and those resources would be basic.

The committee members agreed it would be a good idea to adopt the rules of procedure for a hearing into the rule which would let everyone know ahead of time what the rules will be. It was suggested the committee still have the ability to review the rules and the ability to adopt their own rules depending on the circumstances.

Ms. Maulin said the rules of the committee can be adopted as an addendum to the House rules in order to keep the institutional knowledge for future Ethics Committees and would be amendable. She said once the committee is organized it can adopt the rules of procedure at the beginning of a session and they would be housed in the Chief Clerk's Office.

Discussion was held on approving a process that a victim of sexual harassment or assault would not be identified in any way. Especially during the investigatory and public hearing phases.

ADJOURN: There being no further business to come before the committee the meeting adjourned at 3:19 p.m.

Representative Dixon
Chair

Susan Werlinger
Secretary