

MINUTES
HOUSE ETHICS AND HOUSE POLICY COMMITTEE

DATE: Thursday, March 10, 2022

TIME: 3:00 P.M.

PLACE: Room EW41

MEMBERS: Chairman Dixon, Representatives Horman, Crane, McCrostie, Gannon, Barbieri, Young, Green, Chew

**ABSENT/
EXCUSED:** None

GUESTS: The sign-in sheet will be retained in the committee secretary's office; following the end of the legislative session the sign-in sheet will be filed in the Legislative Library.

Chairman Dixon called the meeting to order at 3:07 p.m.

MOTION: **Rep. Crane** made a motion to approve the minutes of Tuesday, February 22, 2022 and Thursday, February 24, 2022. **Motion carried by voice vote.**

Chairman Dixon explained the different documents available to the committee. (see attachment)

Rep. Crane mentioned on page 3, lines 29 through 34 to re-insert the original five conditions, but romanette (i) may not be applicable. **Rep. Horman** said under the current rule romanette (i) says if a complaint is not dismissed it leads to the public hearing phase. Committee members discussed several scenarios for needing to go to a public hearing including if a respondent does not participate in the preliminary investigation. It was reiterated that probable cause must exist that misconduct has occurred and probable cause is such that there is a need to go to a public hearing. **Rep. Green** said it would be better to retain the decision to not have a public hearing if there isn't enough evidence whether a respondent participates or not. **Rep. Horman** stated the ruminates should only state the reasons for going to a public hearing and this statement should stand on its own.

Rep. Horman mentioned a trigger is needed in the rule for when the documents become public. She said this needs further review because this section is a very difficult deliberation in the process.

Rep. Young said she has heard concerns from a member of the body regarding language, about the threshold being the only trigger for a public hearing without the severity of the action being considered. She explained her intent for wanting a change in the language of the current rule. **Rep. Crane** said he felt the language in the working draft is creating another fork with a predetermined path. He said this language is already assigning punishment before a hearing. **Rep. Young** explained she was asking the committee to not only consider if the behavior has taken place, but also the seriousness of the behavior.

Rep. McCrostie mentioned on page 3 the threshold is if probable cause exists or does not exist and at that point of the investigatory process the committee is deciding to go forward to a public hearing or not. He explained there needs to be clear and convincing evidence that conduct unbecoming has occurred. If this language is added it seems the committee is pre-casting judgement, he said the process should move in such a manner that there is not a rush to judgment and predetermination. **Rep. McCrostie** said he is uncomfortable with the proposed language.

Rep. Horman agreed saying in the current rule, the trigger is a "may" and she would be open to language concerning serious discipline, rather than censure or expulsion but she is not comfortable with the proposed language. **Chairman Dixon** and **Rep. Crane** agreed the language was not needed and the consideration of severity of the action was already a part of the process. **Rep. Young** reiterated she would like the rule to reflect how the committee can determine in executive session if the behavior is warranted enough to put the respondent through a public hearing.

The committee moved on to notification and determining when documents become public, **Rep. Horman** said from previous examples a vote was taken by the committee and they determined it was at this moment the documents are public. She said she wants to make sure the committee first makes notifications before anything is released and wants to put in time frames depending on whether the legislature is in session or not in session. She suggested on line 39, insert "within 72 hours of the respondent's notification the documents become public". **Rep. Gannon** said this would be consistent with public records laws and members agreed with this suggestion. **Rep. Horman** also suggested having consistent language with notifying the complainant and the respondent then all association documents are no longer confidential and become public. Committee members discussed using the 72 hours to allow for the redaction of names and the public records law is specific on whose names can be redacted and the need for specific reasons under public records law to redact names.

Rep. Horman mentioned having "all associated records" becoming public and the documents had to be released per the public record law. Discussion was held regarding what documents are a part of the deliberations and do not need to be released.

Committee discussion was held regarding the review of line 46, and if rules of procedure and rules of evidence should be added as part of the rule. Members considered adding some rules of procedure for the public hearing

MOTION: **Rep. Crane** made a motion to include the original language on page 3 line 37, concluding at page 4 line 4 and adding amended language on line 16, concluding on line 19.

Rep. Horman agreed with having clarification on the last sentence regarding putting the burden on the respondent to obtain and review the documents, and not on the committee to provide the documents and the respondent shall provide their documents to the committee.

VOTE ON MOTION: **Motion carried by voice vote.**

MOTION: **Rep. Horman** made a motion to adopt the suggested language on page 4, lines 4 and 5 with **Rep. Chew's** recommended language. **Motion carried by voice vote.**

MOTION: **Rep. Crane** made a motion to strike lines 6 and 7 on page 4. **Motion carried by voice vote.**

Committee members discuss the language on page 4 lines 8, 9, and 10 on the working draft with suggestions to strike some language in subsection 6 at the bottom. **Rep. Gannon** thought this sentence was appropriate to give the committee the ability to call a recess during the public hearing if new evidence comes forward. Discussion regarding giving the Chairman the discretion to pause the hearing giving either side the ability to review new information. **Rep. McCrostie** mentioned using the word "may" might be discretionary enough. Committee members expressed concern a recess may delay the process and if this is in the rule the privilege should be given to all parties.

MOTION: **Rep. McCrostie** made a motion to add the language discussed on page 4, lines 9, and 10. **Motion carried by voice vote.**

Discussion regarding line 11 on page 4 revealed an issue with "subject to approval of the speaker".

MOTION: **Rep. Gannon** made a motion to accept paragraph (f), with the two suggested additions and to strike "procedure only".

The committee discussed lines 16, 17 and 18 in this section, not wanting to tie the hands of the committee regarding consulting with council. Several members were uncomfortable with the suggested language and agreed flexibility needs to stay with the committee to have witnesses questioned by experts. **Rep. Horman** suggested this be specific to third party witnesses or more specific to alleged sexual assault victim because the committee does not want to re-traumatize a victim. **Rep. Green** said she was hesitate to go into too much detail and not take into context the situation. **Rep. Young** said there is a problem when there is a state funded Deputy Attorney General assuming the role of a prosecutor. She said if the state isn't providing legal council for the respondent and not actively advocating for the them in a persecutory role it gives the appearance they are on the other side. **Rep. Crane** said there could be a perception of a political overtone but the committee is sitting in judgement and having someone else ask questions is necessary because committee members still need to work with the person who is the respondent.

UNANIMOUS CONSENT REQUEST: **Rep. Gannon** asked unanimous consent to amend the motion to revise the last two sentences and delete "subject to approval by the speaker" and delete "procedure only" on page 4 line 12 ending on 15.

VOTE ON MOTION: **Motion carried by voice vote.**

Chairman Dixon reviewed lines 16, and 17 on page 4 regarding the attorney general may assist with the final report. Committee members discussed the committee having the ability to ask questions and having someone else conduct the hearing or examine the witnesses. The committee also discussed how they are examining their peers and may have different questions than the attorneys. **Rep. Horman** said if the respondent has the ability to use an attorney to question their peers it only seems fair for the committee to have the right to an attorney to question their peers also. **Rep. Green** said she was hesitant to put limiting language in the rule for future committees. Some committee members agreed they liked the ability to bring in council if it was needed and still have the ability to ask questions and if the respondent has the ability to have council, the committee should have it also.

MOTION: **Rep. Crane** made a motion to adjourn the committee. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee the meeting adjourned at 5:09 p.m.

Representative Dixon
Chair

Susan Werlinger
Secretary