

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