



VERMONT HOUSE OF REPRESENTATIVES

House Ethics Panel

ETHICS TRAINING
FRIDAY, JANUARY 7, 2022

House Ethics Panel



Rep. John Gannon,
Chair



Rep. Brian Cina



Rep. Larry Cupoli



Rep. Kimberly Jessup



Rep. Laura Sibilias

Panel staff: House Clerk BetsyAnn Wrask and Deputy Chief Counsel Michael O'Grady

Overview of Training Topics

- The Vermont Constitution's principles of representative government
- Specific House Rules, *Mason's*, and statutory ethics provisions
- Regulation of chamber integrity, generally
- The Panel and its procedure

The Vermont Constitution's Principles of Representative Government

The Vt. Const. created a government for the common benefit of the people, and Representatives take an oath to act on their behalf as faithful, honest guardians.

Common Benefits Clause:

[Vt. Const. Ch. I, Art. 7](#)

“That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community[.]”

Prohibition on fees for advocating bills:

[Vt. Const. Ch. II, § 12](#)

“No member of the General Assembly shall, directly or indirectly, receive any fee or reward, to bring forward or advocate any bill, petition, or other business to be transacted in the Legislature; or advocate any cause, as counsel in either House of legislation, except when employed in behalf of the State.”

Re: Vt. Const. Ch. II, § 12's use of "counsel"

Example of term "legislative counsel" used in the law at least until mid-1970s to mean what is today known as a paid "lobbyist."

(b) Said superior judge shall appoint three disinterested persons from an adjoining county or counties who together with the county clerk shall count the votes. Said disinterested persons shall be paid from county funds the sum of \$10.00 each per day plus their reasonable and necessary expenses.

(c) Upon completion of the recount the superior judge shall certify the result thereof by appropriate order which shall be binding on the candidates without right of other recount, review or appeal.

Sec. 2. 17 V.S.A. § 792(c) is added to read:

(c) When the same number of persons are nominated for the position of justice of the peace as there are positions to be filled, a municipality may declare the whole slate of candidates elected without making individual tallies, providing each person on the slate has more votes than the largest number of write-in votes for any one candidate.

Approved: April 7, 1976.

NO. 230. AN ACT TO AMEND 2 V.S.A. §§ 251, 252 AND 255 AND TO ADD 2 V.S.A. §§ 256-258 RELATING TO PUBLIC DISCLOSURE BY LEGISLATIVE COUNSEL OR AGENTS.

(H. 254)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 2 V.S.A. § 251 is amended to read:

§ 251. Definitions

As used in this chapter:

(1) "Legislative counsel" means any person who for compensation appears at any public hearing before committees of the legislature with the purpose of influencing any legislative action.

(2) "Legislative agent" means any person who for compensation does, directly or indirectly, any act with the purpose of influencing any legislative action, except to appear before committees of the legislature but excluding his employees doing work unrelated to the influencing of legislative action and excluding his employees whose indirect activity is only routine clerical support at his office.

Legislators' Oaths of Office:

Vt. Const. Ch. II, §§ 16 and 17

Before proceeding to legislative business, legislators are required to take the following oaths of office:

- “You do solemnly swear (or affirm) that as a member of this Assembly, you will not propose, or assent to, any bill, vote or resolution, which shall appear to you injurious to the people, nor do nor consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State; but will, in all things, conduct yourself as a faithful, honest Representative and guardian of the people, according to the best of your judgment and ability. (In case of an oath) So help you God. (Or in case of an affirmation) Under the pains and penalties of perjury.”
- “You do solemnly swear (or affirm) that you did not at the time of your election to this body, and that you do not now, hold any office of profit or trust under the authority of Congress. So help you God. (Or in the case of an affirmation) Under the pains and penalties of perjury.”

House's exclusive authority to judge member qualifications and to expel members:

Vt. Const. Ch. II, § 14

“The Representatives so chosen . . . shall have power to . . . judge of the elections and qualifications of their own members; they may expel members, but not for causes known to their constituents antecedent to their election . . .”

- In Brady v. Dean, 173 Vt. 542 (2001), the Supreme Court of Vermont (SCOV) acknowledged that “our constitution does not define, nor have we previously addressed, the precise scope of the legislative prerogative over members’ ‘qualifications,’” but held that this “exclusive constitutional prerogative” “encompasses the authority to determine whether a member’s personal or pecuniary interest requires *dis* qualification from voting on a question before it.” Id. at 544.
- “Indeed, the House has adopted rules addressed to this very problem [citing House Rule 75 (prohibiting members from voting on questions of immediate or direct interest) and House Rule 88 (adopting *Mason’s Manual of Legislative Procedure* to supplement House Rules)].” Id.
- “We further conclude that, as a policy matter, a proper regard for the independence of the Legislature requires that we respect its members’ personal judgments concerning their participation in matters before them.” Id. at 545.

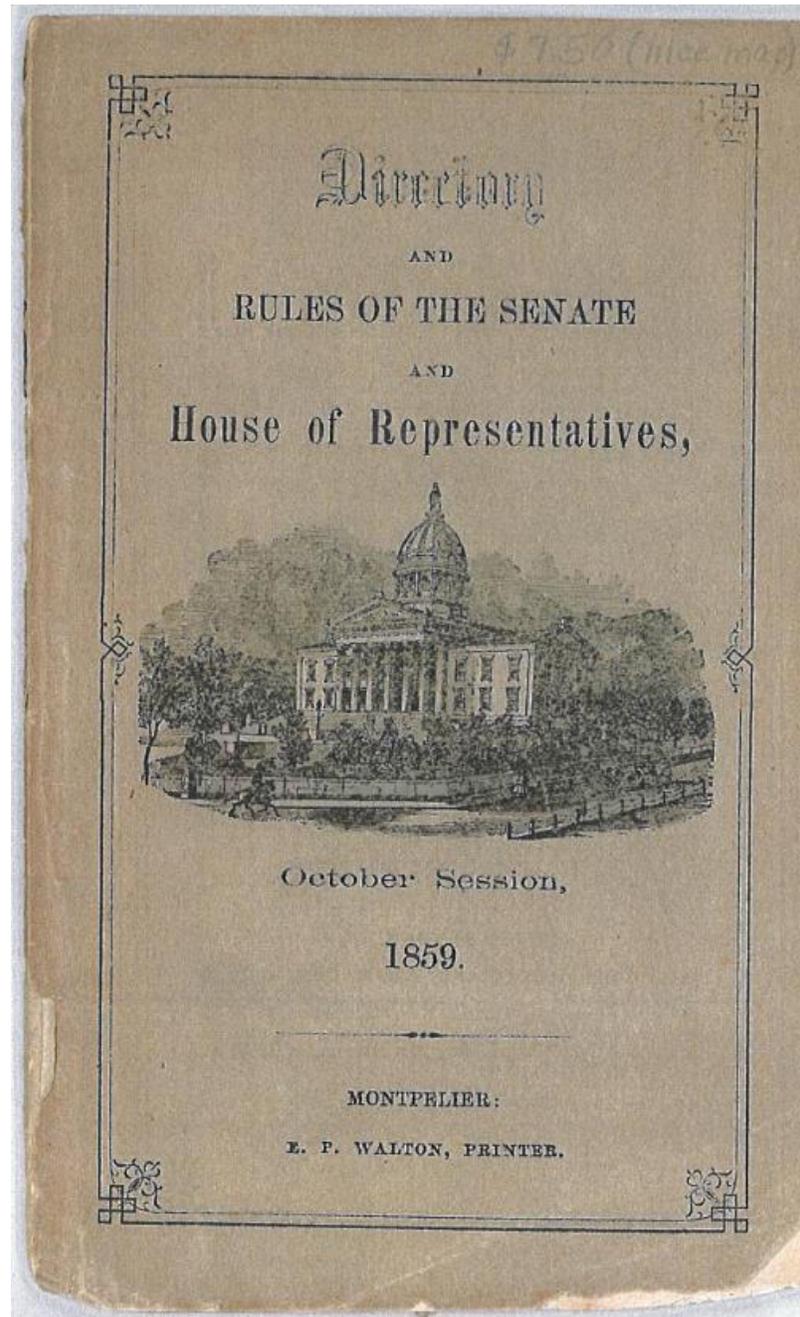
Specific House Rules, *Mason's*, and Statutory Ethics Provisions

The following provisions address specific conduct required of House members regarding conflicts of interest and disclosures and interaction with lobbying entities.

Conflicts of Interest

- [House Rule 75](#): “Members shall not be permitted to vote upon any question in which they are immediately or directly interested.”
- [Mason’s Sec. 522-1](#): “It is the general rule that no members can vote on a question in which they have a direct personal or pecuniary interest. The right of members to represent their constituencies is of such major importance that members should be barred from voting on proposals of direct personal interest only in clear cases and when the proposal is particularly personal. This rule is obviously not self-enforcing and, unless a vote is challenged, members may vote as they choose. A member may vote on a proposal when other members are included with that member in the motion, even though that person has a personal or pecuniary interest in the result . . .”
- *See also Cushing’s Secs. 1784, 1789, and 1790*, providing that a question is not of direct personal interest if it is not in regard to a legislator personally (such as a motion to censure the legislator), and a question is not of direct pecuniary interest if it involves a matter of general public interest.

1859,
House Rule 13



propound to him the question,—“Were you within the bar of the House when your name was called?” Nor shall any member be permitted to vote on any question in which he is immediately or directly interested.

SEC. 14.

In all cases of ballot by the House, the Speaker shall vote; in other cases he shall not be required to vote, unless the House be equally divided, or unless his vote, if given to the minority, will make the division equal; and in case of such equal division the question shall be lost. And no member, or other person, shall visit or remain by the Clerk's table, while the yeas and nays are being called, or the ballots are being counted.

SEC. 15.

No member in the minority, or who did not vote on any question, shall have a right to move a reconsideration thereof, nor shall a motion for reconsideration be in order, unless made before the close of the next day of actual session after that on which the vote was taken.

SEC. 16.

Every member on presenting a resolution, shall state, shortly, the object of it, and shall be held responsible for the propriety of expression therein used.

SEC. 17.

Every motion shall be reduced to writing by the mover, if required by the Speaker, or any other member.

SEC. 18.

The Speaker shall have a right to call upon any member to discharge the duties of the chair, whenever, from indisposition or other cause, he shall find it necessary temporarily to retire from it; and when the House shall have resolved to

Conflicts of interest (cont.)

- Cushing's Sec. 1791: "Interest in a question pending in the house, is good cause for disallowing a vote; but such an interest must be a direct pecuniary interest, belonging to a separate description of individuals, and not such as also belongs to all the citizens, arising out of any measure of state policy. Generally speaking, it applies only to private bills, or bills relating to individuals, such as estate bills, inclosure bills, canals, joint-stock companies . . . wherein only the individual profit or loss is concerned . . . but does not apply to questions of interest arising out of public measures, such as tax bills, colonial regulations, domestic trades, and the like."
- Especially as a citizen legislature, members of the General Assembly will at times face votes that may impact themselves individually as well as their legislative district and the State.
 - See Cushing's Sec. 1784: "As members of the house are also members of the body politic, and connected with their fellow-citizens in all the ordinary relations of life and of business, it may, of course, sometimes happen, that they are themselves personally interested in the questions the come before them in their capacity of legislators."

Conflicts of interest (cont.)

Accordingly, House Rule 75 has generally been interpreted so that if a vote would affect both a legislator and a larger group of people, the legislator is not required to recuse themselves because the vote is not of “immediate or direct interest.”

- That said, transparency is a best practice: “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient police [officer].” Buckley v. Valeo, 424 U.S. 1, 64 (1976) (citing L. Brandeis, *Other People’s Money* 62 (National Home Library Foundation ed. 1933)).
 - Members are encouraged to disclose before a vote on a question what impact the vote may have on them, if they will vote on the question as a matter of public interest.
- Mason’s Sec. 231-6: “The proper time to raise a point of order questioning the right of a member to vote because of a direct personal or pecuniary interest is after the vote has been recorded and before the result is announced.”

Without an “immediate or direct interest,” members are required to vote!

- The converse of House Rule 75 are [House Rule 14](#) (“it shall be the duty of a member to vote upon all questions”) and [House Rule 73](#) (when a vote is taken, “every member present shall vote unless excused by the House”).
 - Exceptions are made under House Rule 73 (*member cannot be compelled to vote if absent when the question was stated by the chair*) and under House Rule 74 (*member not permitted to vote if not present when their name was called the second time on a roll call, except with leave of House*).
- In House practice, members have abstained under House Rule 75 without first being excused.
 - Compare to Senate practice, where Senators first seek permission to be excused from voting.
 - See also [Mason’s Sec. 521-3](#): “It is the practice in the state legislatures to excuse a member from voting when that member has a personal interest in the proposal voted upon or for other good cause. Ordinarily, no question is raised when a member fails to vote, but especially when a particular number of votes are required or a certain proportion of the votes of members elected are required, one member may raise the question and insist that another member vote or state the reason for not voting and be excused.”
- Members are encouraged to seek guidance from Panel members or the House Clerk on whether House Rule 75 may apply.

Disclosures

- [17 V.S.A. § 2414](#): Legislative candidates must file a disclosure ([posted online](#)) providing:
 - Sources of personal income over \$5,000 of themselves and their spouse or domestic partner;
 - Entities on which they serve that are regulated by law or receive State funding, and their position;
 - Companies that they and/or their spouse or domestic partner own more than 10%;
 - Leases or contracts with the State; and
 - Disclosure of the spouse or domestic partner's lobbying, if applicable.
- [House Rule 14a](#): By the 10th day of session, members are required to submit a disclosure ([posted online](#)) providing:
 - Entities on which they serve that are regulated by law or receive State funding, their position, and whether they are paid; and
 - Their employer.

Interactions with lobbying entities

- [2 V.S.A. § 266\(a\)\(2\)](#): Prohibits legislators from **soliciting gifts** from lobbying entities (other than charitable or campaign contributions).
- [2 V.S.A. § 266\(a\)\(3\)](#): Prohibits legislators **from soliciting or receiving campaign contributions** from lobbying entities during the biennium, **until adjournment *sine die***.
- 2 V.S.A. §§ [264\(b\)\(1\)\(C\) and \(3\)](#) and [264b\(b\)\(1\)\(C\) and \(3\)](#): Lobbying entities disclose **contracts over \$100/year or direct business relationships** with legislators, their spouses, and dependent household members, as well as **itemized gifts over \$15** to legislators or their immediate family.
- 2 V.S.A. §§ [264\(b\)\(3\)](#) and [264b\(b\)\(3\)](#): Lobbying entities are prohibited from giving legislators **monetary gifts**, other than campaign contributions.
- [2 V.S.A. § 266\(b\)](#): Legislators are prohibited from lobbying **for one year after leaving office**.

Regulating chamber integrity, generally

A chamber has the right to regulate its members as an inherent power of self-protection, in order to uphold chamber integrity.

Legislative discipline is an inherent legislative authority for the purpose of self-protection

➤ Mason's Sec. 561-1 and -2:

- “A legislative body has the right to regulate the conduct of its members and may discipline a member as it deems appropriate, including reprimand, censure[,] or expulsion.”
- “A state legislative body possesses inherent powers of self-protection.”

➤ SCOTUS: “Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member[.]” Powell v. McCormack, 395 U.S. 486, 548 (1969).

➤ 2nd Cir.: “It is fundamental that a legislature has an important interest in upholding its reputation and integrity.” Monserate v. New York State Senate, 599 F.3d 148, 155 (2010) (citing In re Chapman, 166 U.S. 661, 668 (1897) (other citations omitted)).

Legislative discipline is an inherent legislative authority (cont.)

➤ CA S. Ct.:

- “It has been held by high authority that, even in the absence of an express provision conferring the power, every legislative body in which is vested the general legislative power of the state has the implied power to expel a member for any cause which it may deem sufficient.” French v. Senate of State of Cal., 146 Cal. 604, 606 (1905).
- “The power to expel is given to enable the legislative body to protect itself against participation in proceeding by persons whom it judges unworthy to be members thereof[.]” Id. at 610.

➤ MA S. Ct.: “The power of expulsion is a necessary and incidental power, to enable the house to perform its high functions, and is necessary to the safety of the State. It is a power of protection.” Hiss v. Bartlett, 3 Gray 468, 473 (1855).

➤ PA S. Ct.: “In expelling a member, the Legislature seeks to punish the member for misconduct and to protect the integrity of the legislative process” . . . There is an “overriding need for the Legislature to protect its integrity through the exercise of the expulsion power[.]” Sweeney v. Tucker, 473 Pa. 493, 525 (1977).

Aside from constitutional rights, legislative discipline is a policy decision

- Courts will review legislative discipline if it violates 1st Am. speech rights or basic due process.
- In addition, by [Vt. Const. Ch. II, § 14](#), the House is prohibited from expelling members “for causes known to their constituents antecedent to their election.”
- Otherwise, there is no known caselaw that places limits on the type of legislator conduct that may be disciplined. This judicial restraint is based on constitutional separation of powers.
- See SCOTUS:
 - “[W]e express no view on what limitations may exist on Congress’ power to expel or otherwise punish a member once he has been seated.” [Powell v. McCormack](#), 395 U.S. 486, FN27 (1969).
 - “An accused Member is judged by no specifically articulated standards and is at the mercy of an almost unbridled discretion of the charging body that functions at once as accuser, prosecutor, judge, and jury from whose decision there is no established right of review.” [U.S. v. Brewster](#), 408 U.S. 501, 519 (1972) (other citations omitted).
 - “The right to expel extends to all cases where the offense is such as in the judgment of the senate is inconsistent with the trust and duty of a member.” [In re Chapman](#), 166 U.S. 661, 669 (1897).

Legislative discipline is a policy decision (cont.)

➤ CA S. Ct.:

- “There is no provision authorizing courts to control, direct, supervise, or forbid, the exercise by either house of the power to expel a member. These powers are functions of the legislative department, and therefore in the exercise of the power thus committed to it the senate is supreme. An attempt by this court to direct or control the legislature, or either house thereof, in exercise of the power, would be an attempt to exercise legislative functions, which [under separation of powers] it is expressly forbidden to do.” French v. Senate of State of Cal., 146 Cal. 604, 606-607 (1905).
- “The oath of each individual member of the senate, and his duty under it to act conscientiously for the general good, is the only safeguard to the fellow-members against an unjust and causeless expulsion.” Id. at 43. This case is cited as precedent for the same principle set forth in *Mason’s* Sec. 562-5.

➤ MA S. Ct.: “A member may be physically, mentally or morally, wholly unfit; he may be afflicted with a contagious disease, or insane, or noisy, violent and disorderly, or in the habit of using profane, obscene and abusive language. It is necessary to put extreme cases, to test a principle. If the power exists, the house must necessarily be the sole judge of the exigency, which may justify and require its exercise . . . any attempt to express or define it would impair, rather than strengthen it.” Hiss v. Bartlett, 3 Gray 468, 473-475 (1855).

Examples of legislative discipline

- VT, 2016: VT Senate **suspended** a Senator for sexual assault-related criminal charges “**until all criminal proceedings currently pending against him have been dismissed.**” The charges were not adjudicated by the Judicial Branch before the end of the biennium; the Senator did not resign and remained suspended through the remainder of the biennium. See [2016, S.R. 8](#) and [1/6/16 Senate Journal](#).
- Congress, 2010: U.S. House censured a Member for failing to report income on federal tax returns and on House financial disclosure forms, failing to pay certain taxes, making inappropriate campaign expenditures, and engaging in improper solicitation of donations. Some of the tax violations occurred over a period of 17 years, and at times when he also served as Chair and ranking member of the Ways and Means Committee. **The resolution ordering his censure also required him to pay restitution to the appropriate taxing authorities and to provide proof of payment to the House Committee on Standards of Official Conduct.** See [156 Cong. Rec. H7891-99](#) (daily ed. Dec. 2, 2010).

Examples of legislative discipline (cont.)

➤ CA, 1905: CA Senate expelled members on the basis of bribery. However, the members were not convicted of that crime at the time of their expulsion, and they challenged their expulsion in court.

- “It is obvious that [the criminal bribery statute] was not intended to have any effect whatever upon the power to expel members of the Legislature . . . [The bribery statute and legislative expulsion authority] are entirely different, and are made for different objects and purposes. The power to expel is given to enable the legislative body to protect itself against participation in its proceedings by persons whom it judges unworthy to be members thereof, and affects only the rights of such persons to continue to act as members. The [bribery statute] defines a certain crime, and prescribes the effect of a judgment of conviction thereof upon the subsequent status as a citizen of the person found guilty. A resolution of the Senate expelling a member, whether for bribery or for some other offense, or improper conduct, is not the equivalent of the conviction of the person of the crime set forth in the charges against him.”

French v. Senate of State of California, 146 Cal. 604, 610 (1905).

Examples of legislative discipline (cont.)

- SD, 2007: The SD Senate censured a member after determining he engaged in inappropriate sexual conduct with a Senate page in the preceding biennium. Prior to the censure, the member challenged the legislative investigation in court, arguing in part that he should not be disciplined for conduct alleged to have occurred prior to the current session.
 - After citing the SD Const. provision that grants each chamber the power to judge member qualifications and its prior caselaw describing the Legislature's "inherent authority" as including "the power to superintend its internal management and carry out its constitutionally-mandated duties[,]" the Court found the Judicial Branch "had no jurisdiction to halt a legislative disciplinary process[.]" Gray v. Gienapp, 727 N.W.2d 808, 813-14 (2007).
- NY, 2010: The NY Senate expelled a member based on his battery of a woman that occurred after the election, but before he took office, and the member challenged the expulsion in court.
 - The 2nd Cir. upheld the expulsion, stating there is "historical acceptance of an extremely broad standard for legislatures' decisions about the fitness of their members," Monserate v. New York State Senate, 599 F.3d 148, 158 (2010), and quoted portions of the Senate resolution finding that the member's behavior "brought disrepute" on the body and "damaged [its] honor, dignity[,], and integrity[,]" id. at 153.

The Panel and its procedure

The Panel is created by [House Rule 90\(b\)](#)

- Five House members appointed by the House Rules Committee.
- Panel elects its Chair and adopts its own procedures.
- “The Panel shall advise individual members and provide training to all members on ethical conduct, including compliance with House Rule 75.”
- “The Panel shall receive and investigate complaints of alleged ethical violations made against members of the House” and “may recommend to the House disciplinary action against a member for an ethical violation.”
- The House Rules “prohibit retaliation against a person who complains, reports, or cooperates in an investigation of an ethics violation.”
- The Panel is required to annually report to the House “the number of complaints filed, the disposition of those complaints, and the number of member requests for ethical advice.”

Panel's relation to the State Ethics Commission

- The State Ethics Commission was created in [3 V.S.A. § 1221](#) as an independent Executive Branch entity “to accept, review, make referrals regarding, and track complaints of alleged violations of governmental conduct regulated by law, of the Department of Human Resources Personnel Policy and Procedure Manual, and of the State's campaign finance law set forth in 17 V.S.A. chapter 61; to provide ethics training; and to issue guidance and advisory opinions regarding ethical conduct.”
- In recognition of each chamber's constitutional authority to regulate its members, [3 V.S.A. § 1223\(b\)](#) provides that if the Commission receives a complaint about a legislator, the Commission refers the complaint to that legislator's Ethics Panel and requests a report back regarding that Panel's final disposition of the complaint.
 - However, if the complaint alleges that the legislator committed a crime, the Commission also refers the complaint to the Attorney General and the State's Attorney of jurisdiction.
- Pursuant to [3 V.S.A. § 1223\(c\)](#), complaints and related documents in the custody of the Commission are confidential and exempt from public inspection and copying under the Public Records Act.

Overview of the Panel Procedure for Handling Ethics Complaints

- **Complaints.** Complaints must be in writing and must be in regard to alleged unethical conduct committed by a member during the current biennium.
- **Response.** Panel provides Respondent with copy of complaint. Respondent may file a response, a copy of which the Panel provides to the Complainant.
- **Panel determination.** Panel determines whether there are reasonable grounds to believe that an ethical violation occurred.
 - *If no*, complaint is closed and remains confidential. Panel sends notice to Complainant and Respondent.
 - *If yes*, Panel proceeds with an investigation.

Overview of Panel Procedure (cont.)

➤ Investigation.

- Includes interviewing witnesses and collecting documents.
- Confidential.
- Potential outcomes:
 - *If Panel determines no ethical violation occurred, one occurred but it is minor in nature, or there is not enough evidence to support a charge, Panel closes complaint and it remains confidential. However, Panel may reopen a closed complaint in the future if Respondent demonstrates a pattern of unethical behavior.*
 - *If Panel determines there are reasonable grounds to believe an ethical violation occurred and complaint is not closed:*
 - Panel may enter into confidential stipulation with Respondent that may include a warning or reprimand. Panel advises Complainant that appropriate action was taken, unless Respondent consents to Panel informing them of the stipulation's specifics.
 - Panel may draft charges and set the matter for a hearing. Panel provides Complainant and Respondent with copy of charges and hearing information. If Respondent files an answer to the charges, Panel provides a copy to Complainant.

Overview of Panel Procedure (cont.)

➤ **Hearings.**

- Respondent can present their position; present evidence; and call witnesses and question witnesses called by the Panel.
- Chair presides and Panel may hire independent counsel. Respondent may hire their own counsel at their own expense.
- Closed to public, unless Respondent asks that it be open.
- Panel not bound by technical rules of evidence and may admit evidence it considers reliable, material, and relevant. However, Panel decision cannot be based solely on hearsay evidence.
- Burden of proof is clear and convincing evidence.

➤ **Findings.** If Panel finds:

- *An ethical violation did not occur*, Panel will dismiss. Dismissal is confidential; Panel sends to Complainant and Respondent.
- *An ethical violation did occur*, Panel will introduce for House's consideration a House Resolution containing the evidence presented, the Panel's findings, and its recommendations for disciplinary action.

Overview of Panel Procedure (cont.)

➤ Confidentiality and maintenance of records.

- Except for the House Resolution described in the previous section, Panel members and staff shall keep confidential any information received and any records produced or acquired in accordance with the Procedure.
- All records produced or acquired in accordance with the Procedure are not subject to the Public Records Act.
- Panel staff maintain all records associated with handling an ethical complaint under the Procedure.
- So long as the State Ethics Commission is required to keep confidential complaints and related documents in its custody in accordance with [3 V.S.A. § 1223\(b\)](#), the Panel may provide to the Commission notice of the final disposition of a complaint that the Commission referred to the Panel.

Thank you!

House members are encouraged to reach out to Panel members with any questions regarding legislative ethics.

As the House's official ethics resource, the Panel welcomes any member requests for ethical advice.

