

NORTH CAROLINA LEGISLATIVE ETHICS COMMITTEE INVESTIGATIONS: A PRIMER

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The Legislative Ethics Committee (“Committee”) has jurisdiction to investigate alleged violations of the State Government Ethics Act (G.S. 138A), the Legislative Ethics Act, and alleged violations of criminal law by legislators *while acting in the legislator’s official capacity as a participant in the lawmaking process*.

Generally, the process starts with a complaint, which can be initiated upon the Committee’s own motion or upon receipt of a referral from the North Carolina State Ethics Commission.

After a complaint has been initiated or referred, the Committee will call a meeting to consider whether it will accept or further investigate the conduct. This meeting will be open to the public unless the majority of members present and voting order the meeting into closed session.

The Committee may decline to accept or further investigate a complaint if it determines that (1) the complaint is frivolous or brought in bad faith, (2) the conduct was the subject of a prior complaint, or (3) the conduct is more appropriately addressed by other agencies or authorities. (G.S. 120-103.1(b)). Also, if the Committee finds that other authorities are investigating, the Committee may stay its complaint investigation pending a final resolution of the other investigation.

Within ten business days of receiving a complaint, the Committee must do one or more of the following: (1) dismiss the complaint, (2) initiate a preliminary investigation, or (3) refer the complaint for a hearing (thereby skipping the preliminary investigation). Or, if the complaint is a referral from the State Ethics Commission, the Committee may make recommendations to the house in which the legislator serves without further investigation.

The Committee may only initiate a preliminary investigation “if it determines that the complaint alleges facts sufficient to constitute a violation of matters of which the Committee has jurisdiction” (G.S. § 120-103.1(c1)).

If it chooses to initiate a preliminary investigation, the Committee must provide written notification to the legislator being investigated that an investigation has been initiated, , within ten days. Either the SBI or an independent investigator may conduct the preliminary investigation, and any investigator must provide the accused legislator with evidence that will be presented to the Committee and exculpatory evidence. This preliminary inquiry must be concluded within 20 business days of the decision to initiate the investigation.

After conducting the preliminary investigation, if the Committee determines that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction it shall dismiss the complaint (and provide written notice of such action to both the complainant and the investigated legislator). (G.S. 120-103.1(g)). However, if the Committee determines that probable cause exists to conduct further investigation, which requires the affirmative vote of seven members, it shall schedule a hearing. The hearing can occur no sooner than 30 days from the probable cause determination, unless the accused requests a hearing sooner, and may occur no more than 90 days from the date of the determination. It will also provide written notice to the legislator of the specific charges being investigated.

The accused legislator, or his or her counsel, shall have the right to inspect and copy all evidence that is intended to be presented at the hearing as well as evidence that a reasonable person would believe might exculpate the accused.

The hearing will be public, except for matters that could otherwise be considered in closed session under G.S. 143-318.11,¹ which include matters involving minors or personnel records.² All proceedings will be transcribed, but deliberations will not. At the hearing, all witnesses must be sworn, and the legislator being investigated has the right to be represented by counsel; present evidence and introduce exhibits; and call, examine witnesses, and cross-examine witnesses.

The accused may also submit motions to the presiding co-chair of the Committee, who may rule on said motions, and his or her ruling shall be sustained unless overruled by a majority vote of the Committee members present and voting at the next Committee meeting. (Rule C.8.1). The accused may also have the Committee issue testimonial and documentary subpoenas on his or her behalf. (Rule C.9).

The Committee will determine, by majority vote of members present and voting, which witnesses shall be heard. The Committee shall notify the accused of all witnesses who may appear at the hearing at least 20 days prior to the hearing, "unless waived by the Committee." The accused must notify the Committee co-chairs of the names of the witnesses the accused desires to have appear at least 10 days prior to the hearing. Parties must also make available to the opposing side either an affidavit or summary description of the matters about which the witness may testify. For the Committee to consider a written statement, it must be a sworn affidavit.

At the hearing, the Committee is to decide by a vote of at least seven members, (1) whether a violation has been shown by clear and convincing evidence, and if so (2) what action the Committee should take. If the alleged violation was not established by clear and convincing evidence, the Committee shall dismiss the complaint. Moreover, if the Committee finds by the preponderance of the evidence that the accused should be exonerated, the co-chairs shall submit such a finding in writing to the accused and the

¹ http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_143/gs_143-318.11.html. G.S. 143-318.11 appears to provide a basis for holding closed sessions for many Committee investigations.

² http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_162A/GS_162A-6.1.html

complainant. If the Committee finds by clear and convincing evidence that the accused committed a violation, the Committee must (1) issue a public or private admonishment, (2) refer the matter to the Attorney General and district attorney for possible prosecution, and/or (3) refer the matter to the appropriate house for appropriate action, which may include censure or expulsion .

If the Committee dismisses a complaint or issues a private admonishment prior to commencing a hearing, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that the legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier private admonishment and the records and findings related to it.

If the complaint is dismissed prior to a hearing, the complaint, response, records, and findings of the Committee connected to any inquiry under this section shall be confidential and not matters of public record. However, once a hearing on a complaint commences all related documents shall become public records. Further, when the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall become public records. Finally, the legislator under inquiry may request in writing that such documents be made public.

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This article is for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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