

HOUSE RULE 49 - COMMITTEE ON ETHICS
January 2012

Procedure Set Out in HR 49	How Staff Can Help
<i>Preliminary Determination by Speaker, Majority and Minority Leaders</i>	
<ul style="list-style-type: none"> ● Any person may file a complaint with the Speaker alleging misconduct involving legislative duties by a member of the House. ● The fact that a complaint has been filed and any related documents must be kept confidential. 	<ul style="list-style-type: none"> ● OLLS staff can assist Speaker with understanding the process, timelines, and confidentiality requirements in the rule once a complaint is filed.
<ul style="list-style-type: none"> ● Complaint must: <ul style="list-style-type: none"> • Be in writing • Be signed • Specify facts constituting alleged misconduct • Specify statutes, rules, const'l provisions, ethical principles alleged to have been violated. 	<ul style="list-style-type: none"> ● OLLS staff can assist Speaker/Leadership in determining whether a communication should be treated as a complaint under the rule and whether the complaint meets the requirements of the rule and was properly filed.
<ul style="list-style-type: none"> ● Speaker must provide copy of the complaint to the member complained against. 	<ul style="list-style-type: none"> ● OLLS staff can assist Speaker by preparing written communications and transmittals.
<ul style="list-style-type: none"> ● To assist Leadership with preliminary determination, Speaker may ask member to provide an explanation of his/her understanding of the issues raised in the complaint. 	<ul style="list-style-type: none"> ● OLLS staff can assist Speaker by: <ul style="list-style-type: none"> • Communicating with member who is the subject of the complaint • Developing possible questions for the Speaker's use in conversation with member • Being present at a meeting between the Speaker and the member who is the subject of the complaint.
<ul style="list-style-type: none"> ● Speaker must consult with Majority and Minority Leaders re: whether the complaint appears to be meritorious. 	<ul style="list-style-type: none"> ● OLLS staff may assist Leadership with applicable law in the constitution, statutes, legislative rules, and general ethics principles as they determine whether complaint appears to be meritorious.
<ul style="list-style-type: none"> ● If at least 2 of the 3 determine the complaint does not appear to be meritorious, it must be dismissed. ● If dismissed, matter shall remain confidential. 	<ul style="list-style-type: none"> ● OLLS staff may assist the Speaker in preparing correspondence to the complainant and the member regarding the dismissal.

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<ul style="list-style-type: none"> ● If at least 2 of the 3 determine the complaint appears to be meritorious, Speaker must appoint committee on ethics as follows: <ul style="list-style-type: none"> • 5 - 7 members • Party representation in proportion to relative number generally of members of the 2 major political parties in the House <ul style="list-style-type: none"> • Majority party members selected from among chairs of House committees of reference • Minority party members selected, <i>after considering recommendations from Minority Leader</i>, from among those who are senior in service and experience • Speaker designates chairman and vice chairman. 	<ul style="list-style-type: none"> ● OLLS staff may assist the Speaker by providing advice regarding requirements of the rule re: composition of the committee. ● OLLS staff may assist the Speaker by preparing correspondence to the complainant, member complained against, and Chief Clerk regarding the determination by Leadership and the appointment of a committee on ethics.
<i>Procedures for the Committee on Ethics</i>	
<ul style="list-style-type: none"> ● Committee members appointed and chair/vice chair determined. 	<ul style="list-style-type: none"> ● OLLS staff may assist the chair and other committee members by: <ul style="list-style-type: none"> • Helping chair develop a work plan and timeframes for committee's use • Helping committee understand its charge and the procedures and timelines as set out in the rule. • OLLS staff can prepare a proposed written timeline for committee's use
<ul style="list-style-type: none"> ● Member who is subject of complaint may submit a written response within 10 days after appointment of committee 	<ul style="list-style-type: none"> ● OLLS staff can assist by distributing submissions such as the response and by providing interface with the media regarding public records. ● OLLS staff can work directly with the attorney representing the member who is subject of complaint, if any, regarding process, deadlines, communications, etc.
<ul style="list-style-type: none"> ● Committee conducts a <i>preliminary investigation</i> of the complaint as follows: <ul style="list-style-type: none"> • Examination of complaint, answer (if any), and any other evidence compiled pursuant to committee's request • Committee shall <i>not</i> receive testimony or other evidence from other sources at this stage • Preliminary investigation to be completed within 30 days after appointment of committee • Committee determines whether there is <i>probable cause</i> to determine whether a violation occurred 	<ul style="list-style-type: none"> ● OLLS staff can assist committee in understanding its duties and limitations in conducting its preliminary investigation. ● OLLS staff can help committee by providing legal information relative to their charge as follows: <ul style="list-style-type: none"> • Memo on how open meetings and open records laws apply to the proceedings • Memo explaining legal standard of probable cause • Information re: the sources of law on ethics that may be pertinent to the complaint • Memo explaining other law that may be implicated by the allegations in the complaint. ● OLLS staff can assist in identifying possible sources of evidence relevant to the preliminary investigation and preparing requests for production of such evidence. ● LCS staff can work with chair and members to schedule meetings, provide notice of public meetings, and prepare

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	<p>written agendas for meetings.</p> <ul style="list-style-type: none"> ● LCS staff can prepare notebooks for committee members' use in process.
<ul style="list-style-type: none"> ● If committee determines that <i>no violation</i> occurred, the complaint is dismissed. 	<ul style="list-style-type: none"> ● OLLS staff can assist committee chair in preparing communications to Speaker, complainant, and member re: committee's determination and dismissal of complaint.
<ul style="list-style-type: none"> ● If committee determines probable cause exists to find that a violation may have occurred, it must notify the member who is the subject of the complaint. 	<ul style="list-style-type: none"> ● OLLS staff can assist committee chair in preparing communication notifying parties re committee's determination.
<ul style="list-style-type: none"> ● Member who is the subject of complaint may request a hearing within 7 days after notice. ● Hearing must start within 14 days after receipt of the request for a hearing. ● At the hearing, the subject of the complaint may appear, present evidence, cross-examine witnesses, and be represented by counsel. ● Committee has power to take testimony under oath and to issue subpoenas and subpoenas duces tecum. 	<ul style="list-style-type: none"> ● OLLS staff can help guide the committee and even develop a list of possible sources and types of written evidence that the committee may wish to consider and witnesses the committee may wish to hear from on issues relating to the complaint. ● OLLS staff can help the committee by preparing and arranging for service of subpoenas and subpoenas duces tecum pursuant to JR 33. ● LCS staff can help the committee by scheduling meetings and copying evidence for notebooks.
<ul style="list-style-type: none"> ● All proceedings of the committee are governed by the open meetings laws and the Colorado open Records Act. ● Committee may retain counsel and may hire such investigators as it deems necessary for the performance of its duties. (All such expenditures shall be approved by the Speaker.) ● Committee may adopt rules of procedure for orderly conduct of its meetings, investigations, and hearings. 	<ul style="list-style-type: none"> ● OLLS staff can advise committee members re: the requirements of open meetings and open records laws. ● OLLS staff can assist the committee chair and members with the process for retaining counsel or with hiring an investigator. ● OLLS staff can advise the committee chair re: recommended rules of procedure for committee. ● OLLS staff can work with the media and interested persons who request access to public records resulting from the committee's proceedings.
<ul style="list-style-type: none"> ● After the hearing, the committee may: <ul style="list-style-type: none"> • Dismiss the complaint; or • If it finds action should be taken against the member, make appropriate recommendations to the House of Representatives (eg: reprimand, censure, expulsion). 	<ul style="list-style-type: none"> ● OLLS staff can provide committee with a confidential memorandum for use in applying the facts gleaned from the complaint, answer, evidence, and testimony to the elements of the law in order to assist the committee in reaching its conclusion. ● OLLS staff can provide the committee with a memorandum describing the range of possible penalties and their ramifications, if necessary.
<ul style="list-style-type: none"> ● Committee needs to communicate its findings and determination to the Speaker. 	<ul style="list-style-type: none"> ● OLLS staff can draft all correspondence that the committee chair directs to communicate findings and recommendations to the Speaker and/or House of Representatives regarding the matter. ● OLLS staff can advise the Speaker and other members of the House of Representatives re: range of possible penalties and the procedures/ramifications related to each.