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Colorado General Assembly



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MEMORANDUM

To: House Committee on Ethics
From: Office of Legislative Legal Services
Date: May 20, 2026
Subject: Evidentiary Hearing Procedures¹

At its meeting on May 11, 2026, the House Committee on Ethics (Ethics Committee) found probable cause that an ethics violation may have occurred and notified Representative Lindsay of its findings and her right, under House Rule 49 (d), to request a hearing within seven days after the notice. On May 18, 2026, Representative Lindsay timely submitted a request for a hearing. House Rule 49 (d) states that:

- The member requesting the hearing is “entitled to appear, present evidence, cross-examine witnesses, and be represented by counsel;”² and
- The committee is empowered to:
 - Take testimony under oath; and

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

² Several states’ rules include similar rights of the members complained against. See, e.g., Arkansas Senate Code of Ethics Rule 10.0 (3)(a) and (3)(b); Hawaii House Rules for the Select Committee on Standards of Conduct Rule 6.8. (a); Iowa Senate Code of Ethics Rule 19.e.; New Hampshire Procedural Rules of the Legislative Ethics Committee Rule 7.IV.(b) and 9.IV.; Utah Joint Rule 6 Legislative Ethics and Adjudication of Ethics Complaints Joint Rule 6-2-301; Vermont House Ethics Panel Procedure 5.A.; and Vermont Senate Ethics Panel Procedure 5.A. See footnote 4, below, for links to these rules.

- Issue subpoenas and subpoenas duces tecum in the manner provided by Joint Rule 33 (b), (c), and (d); and
- The hearing must “commence within fourteen days after receipt of the request for a hearing.”³

The rule does not include any other information about the hearing, but House Rule 49 (i) authorizes the Ethics Committee to “adopt rules of procedure for the orderly conduct of its meetings, investigations, and hearings, which rules shall be consistent with this rule and other applicable rules and statutes.” While House Rule 49 sets forth some requirements for a hearing, the rule does not address the format of the hearing and various aspects of hearing procedure.

The House Committee on Ethics that met earlier in the 2026 legislative session, after considering hearing procedures from other states’ ethics committees and the rules of the Colorado Independent Ethics Commission, adopted a schedule and rules of procedure for a hearing. The schedule and procedures are included below for the Ethics Committee’s consideration, as adapted for the current complaint, and were determined based on the information in a memorandum prepared by the Office of Legislative Legal Services that is included in Appendix A to this memorandum. The Ethics Committee may modify the schedule and procedures for the current matter. Also note that the procedures adopted by the previous Ethics Committee allowed for remote witness testimony but did not address remote participation by Representative Lindsay, her counsel, if any, or members of the Ethics Committee. The Ethics Committee may wish to address that matter when considering procedures for this evidentiary hearing.

Proposed House Ethics Committee Operating Rules & Procedures

I. Hearing Schedule

May __, 2026 (must be no later than June 1)	Ethics Committee to commence the House Rule 49 (d) hearing requested by Representative Lindsay. This hearing will consist of the Ethics Committee adopting the hearing procedures and discussing its potential witnesses and evidence; no evidence
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³ Given that Representative Lindsay submitted the hearing request on May 18, 2026, the Ethics Committee must begin the hearing by June 1, 2026.

presentation or witness testimony will take place at this meeting.

June __, 2026 Ethics Committee and Representative Lindsay to share witness and evidence lists with each other. The Ethics Committee may meet on this day to finalize its witness and evidence list if not completed at the May __ meeting, but no evidence presentation or witness testimony will take place at this meeting.

June __, 2026* Ethics Committee to resume the hearing, which will consist of opening and closing remarks, witness testimony, and presentation of evidence as outlined in the Hearing Procedures, Order of Proceedings.

*This hearing may continue over multiple days, as necessary, to complete the process.

II. Hearing Procedures

A. Notice of Hearings. In addition to public notice, staff shall provide notice of any ethics hearing regarding the complaint by Representative Bob Marshall against Representative Mandy Lindsay to both representatives.

B. Scope. The scope of the hearing is limited to the allegations in the complaint that relate to the Ethics Committee's finding that probable cause exists that an ethical violation by Representative Lindsay may have occurred under breach of fiduciary responsibility and negligence but not at a criminal level.

C. Order of Proceedings

This is the order of the hearing, to the extent possible:

1. Representative Lindsay⁴ is allowed up to 10 minutes for opening comments.
2. Representative Lindsay presents her evidence and witnesses.
3. The Ethics Committee will hear from any additional witnesses and consider any other evidence.
4. Representative Lindsay is allowed up to 15 minutes for closing remarks.

D. Witnesses.

1. The Ethics Committee may request witnesses to voluntarily attend a hearing to testify or produce records. Representative Lindsay may request the Ethics Committee to request witnesses to voluntarily attend a hearing to testify or produce records. Representative Lindsay shall provide the Ethics Committee with her evidence and witness list at least [two/three/four/five] days before the date of the hearing at which witness testimony will begin. The Ethics Committee shall provide a witness and evidence list to Representative Lindsay at least [two/three/four/five] days before the date of the hearing at which witness testimony will begin.
 - a) Under the hearing schedule specified by the Ethics Committee, the deadline for sharing witness and evidence lists is _____.
 - b) The Ethics Committee Staff shall coordinate the witnesses' attendance.
2. Witnesses should be treated respectfully and should not be badgered, harassed, or treated in an unprofessional way.
3. Witnesses may testify remotely or in person.
4. Witnesses must testify under oath. The Ethics Committee Chair shall administer the oath.

⁴ With regard to presenting opening or closing remarks, examining witnesses, or presenting evidence or other information to the Ethics Committee, references to Representative Lindsay include her attorney, if she obtains one, who may be acting on her behalf.

5. Representative Lindsay first asks questions of any witness who is on her witness list, then the Ethics Committee may ask follow-up questions, and Representative Lindsay may conclude with redirect or rebuttal questions of the witness. The Ethics Committee first asks questions of any witness on its witness list that was not also on Representative Lindsay's list, then Representative Lindsay may cross-examine those witnesses, followed by redirect or rebuttal questioning by the Ethics Committee.

E. Subpoena. The Ethics Committee will issue a subpoena in accordance with Joint Rule 33 to compel a witness's attendance at the hearing if:

1. In the case of a witness from the Ethics Committee's witness list, a witness refuses or fails to appear or produce requested records and the Ethics Committee determines that their testimony or records are relevant and necessary; or
2. In the case of a witness whose attendance is requested by Representative Lindsay, a witness refuses or fails to appear or produce requested records and the Ethics Committee determines that their testimony or records are relevant and necessary.

F. Rules of Evidence.

1. The Rules of Evidence do not apply to an Ethics Committee hearing.
2. Evidence must be germane, relevant, and probative to the allegations in the complaint and not be repetitive.
3. Leading questions of any witness are permissible, and questions on cross-examination are not limited to the scope of the questions posed to a witness on direct examination. Cross-examination may include questions for the purpose of impeaching a witness.
4. The Chair (or another member of the Ethics Committee) will decide whether any questions do not comply with the Ethics Committee's standards for evidence.

G. **Prohibited Communications.** Prior to making its final determination under House Rule 49 (f), the members of the Ethics Committee are prohibited from having any communications about the complaint or the hearings with Representative Lindsay or any witness appearing before the committee.

H. **Amending Procedures.** The Ethics Committee may amend the Hearing Procedures by a majority vote of the members of the Ethics Committee.

APPENDIX A

The above procedures were adopted based on a memorandum prepared by the Office of Legislative Legal Services (OLLS), at the prior Ethics Committee's request, and was based on a review of hearing procedures for other state's ethics committees and the rules of the Colorado Independent Ethics Commission (IEC).⁵ The memorandum provides options for hearing procedures, based on examples from other states and the IEC, that the prior Ethics Committee considered in adopting procedures for an evidentiary hearing in the prior matter. Options appearing in **bold type** reflect OLLS's recommendations, which were informed by the prior Ethics Committee's comments at a meeting on February 27, 2026.

Discussion

1. Scope of Hearing

The Ethics Committee found probable cause that a violation may have occurred with regard to the following allegations in the compliant:

- Allegations regarding inappropriate sexual comments directed at Representative Bradley and inappropriate sexual comments made during a gathering at the Brown Palace on May 7, 2025, in violation of the General Assembly's Workplace Harassment Policy;⁶ and
- Allegations regarding taking and using a master key to gain access to unauthorized areas within the Capitol building.

After finding probable cause, the Ethics Committee held a meeting on February 27, 2026, at which the Ethics Committee discussed the scope of a hearing, if requested, and indicated an intent to confine the hearing to the allegations in the complaint for which probable cause was found.

Procedure options for the Ethics Committee:

⁵ To prepare this memorandum, we reviewed ethics hearing procedures from [the Arkansas Senate Code of Ethics \(Arkansas Senate Code\)](#), [the Hawaii House Rules for the Select Committee on Standards of Conduct \(Hawaii House Rules\)](#), [the Iowa Senate Code of Ethics \(Iowa Senate Code\)](#), [the Missouri House Ethics Committee Rules of Procedure \(Missouri House Rules\)](#), [the New Hampshire Procedural Rules of the Legislative Ethics Committee \(New Hampshire Rules\)](#), [Utah Joint Rule 6 Legislative Ethics and Adjudication of Ethics Complaints \(Utah JR\)](#), [the Vermont House Ethics Panel Procedure \(Vermont House Procedures\)](#) and [the Vermont Senate Ethics Panel Procedure \(Vermont Senate Procedures\)](#) and from the [Colorado Independent Ethics Commission Rules of Procedure \(IEC Rules\)](#).

⁶ When making the probable cause determination on these allegations, the Ethics Committee combined these two separate allegations into a single allegation.

Formally adopt a written statement that the scope of the hearings is limited to the allegations in the complaint for which probable cause was found. Consider your discussion at your February 27, 2026, meeting as the statement of the scope of the hearing and condense it to a written statement to share with and share it with:

- a. **Representative Weinberg;** or
- b. Representative Weinberg and all witnesses.

2. Notice of Hearing

House Rule 49 (d) requires the Ethics Committee, upon finding probable cause that a violation may have occurred, to “notify the person complained against” of the finding. In the event a hearing is requested, the rule does not address providing notice of the hearing. Under ordinary House rules of procedure and the requirements of the Open Meetings Law,⁷ any meeting of a committee of the House is noticed in the House calendar and on the General Assembly website.

Unlike House Rule 49 (d), which provides for an evidentiary hearing only upon the request of the member against whom the complaint was filed, most states’ ethics procedures direct that the ethics committee determines whether to proceed to a formal hearing. So, in this context, most of the rules in those states include a requirement that the committee send formal notice of the hearing. For example, New Hampshire Rules 7.I. and 7.III require the committee, at least 21 days before the hearing, to “serve the respondent by certified mail, postage prepaid, with a copy of the formal statement of charges together with a notice of hearing” that includes the date, time, and place of the hearing. Additionally, New Hampshire Rule 7.V. requires the committee to “give notice to the complainant of the date, time, and place of the hearing.”

Iowa Senate Code Rule 19.a. states “notice of the hearing date and time shall be given to the complainant and respondent in writing . . .” Similarly, Hawaii House Rule 6.2 states, in pertinent part:

The Committee shall give written notice to the Representative who is the subject of an adjudicatory review. The notice shall be sent to the Representative against whom the complaint has been made no later than five working days after the Committee has voted to conduct an

⁷ Part 4 of article 6 of title 24, C.R.S.

adjudicatory review. The notice shall include a statement of the nature of the possible violation and description of the evidence indicating that a possible violation occurred.

Additionally, Hawaii House Rule 6.6 requires that “[a] copy of the public announcement of an adjudicatory hearing [sic] be furnished together with a copy of this Part to all witnesses at the time that they are subpoenaed or otherwise summoned to testify.” Finally, IEC Rule 7. (B)(2) states “The IEC shall send the complainant and Respondent a notice of the hearing date.”

Procedure options for the Ethics Committee:

1. Rely on public notice of hearings in the House calendar and on the General Assembly website (public notice).
2. Public notice and send notice of hearings to Rep. Weinberg.
- 3. Public notice and send notice of hearings to Rep. Weinberg and Rep. Bradley.**
4. Public notice and send notice of hearings to Rep. Weinberg and Rep. Bradley and to all witnesses requested to appear at the hearing.

3. Subpoenas

House Rule 49 (d) specifically authorizes the Ethics Committee to issue subpoenas and subpoenas duces tecum in the manner specified in Joint Rule 33 (b), (c), and (d). Under Joint Rule 33, a subpoena issued by the committee must:

- State the name of the issuing body, the authority under which it is issued, and the subject of the inquiry;
- Direct the person to attend and testify at the time and place stated in the subpoena and, if applicable, to produce requested documentary evidence; and
- Be approved by a majority of the Ethics Committee and signed by the Chair.

A subpoena may be served:

- By a sheriff, deputy sheriff, or any person who is at least 18 years of age and not interested in the matter; and
- By delivering a copy to the person at least 48 hours before the person is to appear before the Ethics Committee or within a shorter period if a majority of the Ethics Committee approves based on good cause.

Witnesses who are subpoenaed are to be paid fees for attendance and mileage in the amount allowed by law for witnesses in civil cases. A subpoenaed witness may have legal counsel present and may be excused if the witness requests in writing based on the belief that their testimony is a trade secret, is irrelevant, or is privileged or that disclosure would be illegal or unduly oppressive or burdensome.

House Rule 49 (d) does not indicate whether the Ethics Committee could issue subpoenas on behalf of Rep. Weinberg. IEC Rules,⁸ New Hampshire Rules,⁹ and Hawaii Rules¹⁰ authorize a party to request that subpoenas be issued on their behalf.

Procedure options for the Ethics Committee:

1. For witnesses on the Ethics Committee's witness list:
 - a. Request witnesses to attend the hearing or produce records voluntarily and do not issue subpoenas.
 - b. **Request witnesses to attend the hearing to testify or produce records voluntarily and issue a subpoena only if a witness refuses or otherwise fails to appear or produce requested records and the Ethics Committee determines that their testimony or records are relevant and necessary.**
 - c. Issue subpoenas to all witnesses the Ethics Committee wants to testify or produce records.
2. For witnesses on Representative Weinberg's witness list:
 - a. Request witnesses to attend the hearing or produce records voluntarily and do not issue subpoenas.
 - b. **Request witnesses to attend the hearing to testify or produce records voluntarily and issue a subpoena only if a witness refuses or otherwise fails to appear or produce requested records and Representative Weinberg requests that the Ethics Committee issue a**

⁸ IEC Rule 7. (C)(8)(a) states, in pertinent part, "Commissioners may subpoena documents or witnesses upon their own motion or upon the request of any party . . ."

⁹ New Hampshire Rule 8.V. states, "The subpoena powers of the committee shall be exercised on behalf of the respondent upon his or her written request or the written request of his or her counsel. The chairperson shall determine whether the request is relevant to the investigation or hearing."

¹⁰ Hawaii Rule 6.8. (b) states: "A Representative responding to a complaint may apply to the Committee for the issuance of subpoenas for the appearance of witnesses or the production of documents on the Representative's behalf. An application shall be approved upon a concise showing by the responding Representative that the proposed testimony or evidence is relevant and appropriate, as determined by the Chair and Vice Chair."

subpoena and shows that their testimony or evidence is relevant and necessary.

- c. Request witnesses to attend the hearing or produce records voluntarily and issue a subpoena only if a witness refuses to appear or produce requested records and Representative Weinberg requests that the Ethics Committee issue a subpoena.
- d. Issue subpoenas to all witnesses for which Representative Weinberg has requested a subpoena and for whom he has shown that their testimony or evidence is relevant and appropriate.
- e. Issue subpoenas to all witnesses for which Representative Weinberg has requested a subpoena.

4. Witnesses & Evidence Disclosures

Rule 49 does not address disclosure of witnesses or evidence to be presented at the hearing, but the IEC rules and other states' rules provide some examples.¹¹ Given the time frame within which the Ethics Committee must start the hearing under House Rule 49 (d), the Hawaii House Rules seem the most helpful. Hawaii House Rule 6.7. provides, in pertinent part:

6.7. Adjudicatory Hearings; Preparation.

- (a) At least two working days prior to the commencement of an adjudicatory hearing, the Committee shall provide the following information and documents to the Representative responding to the complaint, if any:
 - (i) A list of proposed witnesses to be called at the hearing;
 - (ii) Copies of all documents expected to be introduced as exhibits at the hearing; and
 - (iii) A brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.
- (b) At least two working days prior to the commencement of an adjudicatory hearing, the respondent, if any, shall provide the information and documents described in paragraph (a) to the Committee.

¹¹ See, e.g., IEC Rule 7.(C)(3), which requires disclosure of exhibits and witness lists within 30 days after notice of the hearing; Missouri House Rule 11.G., which requires each party to notify the committee and all other parties, within ten calendar days before the hearing, of the witnesses that will appear and, within five calendar days before the hearing, of any proposed rebuttal witnesses, and authorizes the chair to allow or deny requests to add witnesses after these deadlines based on whether the request is made in good faith; and New Hampshire Rule 8.I., which allow the respondent, upon request, to review witness and evidence lists and requires the respondent, upon request, to share specified material that would be discoverable in a civil proceeding.

Arkansas Senate Code Rule 10.0 is also helpful:

10.0 Hearing Procedures – Senate Ethics Committee Investigation and Hearing

(3) Witnesses and Exhibits.

(d) The Chair shall establish a deadline prior to the start of the hearing by which the parties shall submit a list of all witnesses he or she intends to call to testify at the hearing and copies of all exhibits he or she intends to refer to in his or her presentation to the committee.

Procedure options for the Ethics Committee:

1. With regard to the Ethics Committee's witnesses and evidence:
 - a. Do not share witness and evidence list in advance of the hearing.
 - b. Share witness and evidence list upon request from Representative Weinberg.
 - c. Share witness and evidence list upon request from any person.
 - d. **Provide witness and evidence list to Representative Weinberg at least [two/three/five] days before the date of the hearing. (Ethics Committee to determine the deadline)**
2. With regard to Representative Weinberg's witnesses and evidence:
 - a. Do not require him to share his witness and evidence list in advance of the hearing.
 - b. Require him to share his witness and evidence list upon request from the Ethics Committee.
 - c. **Require him to provide his witness and evidence list to the Ethics Committee at least [two/three/five] days before the date of the hearing. (Ethics Committee to determine the deadline)**
3. If adopting procedure options 1.d. and 2.c.:
 - a. **Require the Ethics Committee and Representative Weinberg to share witness and evidence lists by the same deadline.**
 - b. Require Representative Weinberg to share his witness and evidence list with the Ethics Committee first, with the Ethics Committee sharing its list with Representative Weinberg within [one day/two days] after receiving Representative Weinberg's list.
 - c. Require the Ethics Committee to share its witness and evidence list with Representative Weinberg first, with Representative Weinberg sharing his list with the Ethics Committee within [one day/two days] after receiving the Ethics Committee's list.

5. Evidence Rules

House Rule 49 does not address whether the Rules of Evidence apply to proceedings of the Ethics Committee. Most states specify in their ethics rules that the committee is not bound by the rules of evidence and may admit evidence that it considers “reliable, material, and relevant;”¹² “relevant and probative;”¹³ or “relevant evidence, subject to limitations on repetitiveness.”¹⁴

At its meeting on February 27, 2026, the Ethics Committee discussed whether the evidence rules would apply and indicated an intent that the Ethics Committee not be bound by the rules of evidence. That said, Ethics Committee members stated that:

- Evidence must be germane and relevant to the allegations on which probable cause was found;
- Neither the Ethics Committee nor Representative Weinberg should be limited, on cross-examination, to the scope of the questions posed to a witness on direct examination;
- Leading questions would be permissible; and
- Witnesses should be treated respectfully and should not be badgered, harassed, or treated in an unprofessional way.

Procedure options for the Ethics Committee:

1. Formally adopt the procedures discussed at the February 27, 2026, meeting, as listed above.
2. **Formally adopt the procedures discussed at the February 27, 2026, meeting, with modifications to specify that:**
 - a. Evidence must also be:
 - i. Material;
 - ii. Reliable;
 - iii. **Probative;**
 - iv. **Not repetitive;** or
 - v. Combinations of the above options as determined by the Ethics Committee.
 - b. Cross-examination:
 - i. Should be limited to the scope of the direct examination.
 - ii. **May include impeaching the witness.**

¹² New Hampshire Rule 9.V. and Vermont House and Senate Procedure 5.C.

¹³ Missouri House Rule 10.A. and Hawaii House Rule 6.9.(a).

¹⁴ Iowa Senate Code Rule 19.a.

- c. Leading questions should not be permitted.
- d. **The Chair (or another member of the Ethics Committee) will decide whether any questions do not comply with the Ethics Committee’s standards for evidence.**

6. Questioning Witnesses

House Rule 49 (d) empowers the Ethics Committee to “take testimony,” which presumably means the Ethics Committee may question witnesses on direct and cross-examination. The rule also grants Representative Weinberg the right to “present evidence” and “cross-examine witnesses,” which also suggests that he may present evidence through direct examination of witnesses he calls and may cross-examine witnesses called by the Ethics Committee.

Iowa Senate Code Rule 19.e. provides, in pertinent part:

[Q]uestioning of witnesses shall be conducted by the members of the committee, by independent special counsel, or by a senator. The chairperson shall also permit questioning by legal counsel representing the complainant or respondent.

Similarly, Hawaii House Rule 6.8. (a) states:

In adjudicatory hearings, respondents and any other persons upon obtaining the permission of the Committee, may personally or through counsel cross-examine witnesses called by the Committee and may call witnesses on their own behalf.

Some states allow both the complainant and the respondent, as well as the committee, to call witnesses to testify.¹⁵

At its February 27, 2026, meeting, the Ethics Committee outlined a “tribunal proceeding” in which the Ethics Committee panel would question its witnesses and allow Representative Weinberg to cross-examine the witnesses. Then, Representative Weinberg would be able to call additional witnesses to question and present evidence, and the panel could ask follow-up questions.¹⁶

There was no discussion of allowing Representative Bradley to call or cross-examine witnesses or otherwise present evidence to the Ethics

¹⁵ See, e.g., Arkansas Senate Rule 10.0 (3) and Utah JR 6-2-305 (3).

¹⁶ It’s unclear whether the Ethics Committee intended this to mean “cross-examination.”

Committee. Other than when filing the initial complaint under House Rule 49 (a), the person who files the complaint is not otherwise mentioned in House Rule 49 and has not typically been part of the preliminary investigation, except to the extent an ethics committee requests documentary evidence from that person. While the Ethics Committee may call the complainant to testify at the hearing, under House Rule 49, it does not appear that the complainant has an active role in presenting evidence or testimony to the Ethics Committee or cross-examining witnesses.

Procedure options for the Ethics Committee:

1. Adopt the procedure discussed at the February 27, 2026, meeting as outlined above.
2. Adopt an alternative procedure:
 - a. **Same as option 1., but swap the order to allow Representative Weinberg to proceed with his witnesses and evidence first, with the Ethics Committee asking follow-up questions of his witnesses; then the Ethics Committee questions its witnesses and allows Representative Weinberg to cross-examine those witnesses.**
 - b. Same as option 1., but allow Representative Bradley to also question and cross-examine witnesses.
 - c. Same as option 2.a., but also allow Representative Bradley to question and cross-examine witnesses (and specify the order).
 - d. **Follow the proposed order “to the extent possible.”**

7. Form of Witness Testimony

House Rule 49 is silent on the form of witness testimony. Generally, House Committees permit witnesses to testify on legislation or other matters remotely or in person and to submit written testimony.

Procedure options for the Ethics Committee:

- A. **Allow witnesses to testify in person or remotely.**
- B. Require in-person testimony only.
- C. Allow witnesses to submit a written affidavit in lieu of in-person or remote testimony.

8. Oaths

House Rule 49 (d) states that the Ethics Committee may take testimony “under oath.” Section 2-2-315, C.R.S., also authorizes the chair of any House, Senate, or joint committee to administer oaths and affirmations to witnesses regarding any matter under consideration or investigation of the committee.

If an oath is administered, under which a witness swears to provide truthful testimony, a witness who makes a materially false statement under oath could be subject to criminal perjury charges under section 18-8-502, C.R.S.¹⁷

Most states¹⁸ require witnesses to swear an oath before testifying.

The form of the oath under Missouri House Rule 9.D. is

"Do you solemnly swear (or affirm) that the testimony you will give before this Committee in the matter now under consideration will be the truth, the whole truth, and nothing but the truth (so help you God)?"

Under Hawaii House Rule 3.7, the form of the oath is:

"Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?"

Hawaii House Rule 9.3 addresses false testimony as follows:

9.3. Perjury. Any person who knowingly and willfully swears falsely to a sworn complaint or any other sworn statement to the Committee does so under penalty of perjury. The Committee may refer any such case to the State Attorney General for prosecution.

Procedure options for the Ethics Committee:

1. Do not swear in witnesses.
- 2. Swear in all witnesses.**
3. Use the following oath:

¹⁷ **18-8-502. Perjury in the first degree.**

(1) A person commits perjury in the first degree if in any official proceeding he knowingly makes a materially false statement, which he does not believe to be true, under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his statement was not material is not a defense, although it may be considered by the court in imposing sentence.

(3) Perjury in the first degree is a class 4 felony.

¹⁸ See, e.g., Arkansas Senate Rule 10.0 (4); Hawaii House Rule 3.7; Iowa Senate Rule 19.a.; Missouri House Rule 9.D.; and Utah JR 6-2-305 (2).

- a. **Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?**
- b. Do you solemnly swear or affirm under penalty of perjury that the testimony that you will give before the Committee will be the truth, the whole truth, and nothing but the truth?"

8. Communication with Committee Members

IEC Rule 9.(A) provides:

Communications between a party appearing before the IEC and any commissioner concerning any matter before the IEC (also known as ex parte communications) are strictly prohibited.

Utah JR 6-2-306 also prohibits communications concerning an ethics complaint between a committee member and anyone who is not a member of the committee or committee staff. The rule permits a person to communicate in writing to the committee if the communication is to all members of the committee and to the committee staff.

Upon the creation of the Ethics Committee and appointment of its members, the Chair sent a communication to all members of the House to request that members not speak to Ethics Committee members about the ethics matter before the Ethics Committee.

Procedure options for the Ethics Committee:

1. Consider the Chair's communication to all House members sufficient.
2. Send another communication to all House members.
- 3. Formally adopt a procedure to restrict communications about the ethics complaint with Ethics Committee members and post the procedure on the Ethics Committee webpage.**

9. Hearing Proceeding

Section 6 of this memorandum, "Questioning Witnesses," addresses the order of witness testimony. The Ethics Committee may need to establish more procedures regarding the overall operation of the hearing.

For example, Utah JR 6-2-301 outlines the precise order of the proceedings as follows:

- 1) In conducting a hearing on a complaint, the Independent Legislative Ethics Commission or the Senate or House Ethics Committee shall comply with the following process in the order specified:
 - (a) introduction and instructions for procedure and process, at the discretion of the chair;
 - (b) complainants' opening argument, to be presented by a complainant or complainants' counsel;
 - (c) complainants' presentation of evidence and witnesses in support of allegations in the complaint;
 - (d) consideration of motions to dismiss the complaint or motions for a directed verdict, as applicable;
 - (e) respondent's opening argument, to be presented by the respondent or respondent's counsel;
 - (f) respondent's presentation of evidence and witnesses refuting allegations in the complaint;
 - (g) presentation of rebuttal evidence and witnesses by the complainants, at the discretion of the chair;
 - (h) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;
 - (i) complainants' closing argument, to be presented by a complainant or complainants' counsel;
 - (j) respondent's closing argument, to be presented by the respondent or respondent's counsel;
 - (k) deliberations by the commission or committee; and
 - (l) adoption of the commission's or committee's findings.
- (2) The commission or an ethics committee may, in extraordinary circumstances, vary the order contained in Subsection (1) by majority vote and by providing notice to the parties.
- (3) The chair may schedule the examination of a witness or evidence subpoenaed at the request of the chair or the committee under JR6-2-303 at the chair's discretion.

Similarly, Arkansas Senate Rule 10.0 (6) establishes the following order of proceedings:

- (6) Committee Hearing Proceedings. The hearing shall proceed as follows:
 - (a) The Chair shall administer the oath to the claimants and respondent.

(b) The claimants shall be permitted to present an opening statement to the committee.

(i) The claimants shall state why they asked for the hearing, including presentation of the allegations in the petition, and a statement regarding the section of the Code of Ethics they believe has been violated.

(ii) The committee members may ask questions of the claimants upon conclusion of the claimants' presentation of the opening statement. If the respondent wants to ask a question of the claimants, he or she shall ask the Chair for permission to ask the question, stating what the question will be. It will be the Chair's discretion, on a question by question basis, whether to allow the respondent's question.

(c) The respondent shall be permitted to present an opening statement to the committee.

(i) The respondent shall be asked by the presiding officer to answer any and all allegations in his or her opening statement. The respondent may decline to answer any allegations and his or her refusal to answer shall not be used against him or her in the proceedings.

(ii) If the respondent chooses to provide an opening statement, the committee members may ask questions of the respondent upon conclusion of the respondent's presentation of the opening statement. If the claimants want to ask a question of the respondent, he or she shall ask the Chair for permission to ask the question, stating what the question will be. It will be the Chair's discretion, on a question by question basis, whether to allow the claimant's question.

(d) (i) Upon conclusion of the presentation of opening statements and questions related to the opening statements, witnesses shall be called in the following order: claimant witnesses; respondent witnesses; additional witnesses called by the committee.

(ii) The Chair shall administer the oath to each witness prior to his or her testimony.

(iii) If the claimants or respondent ask to call a witness that was not included on the witness list provided by the parties prior to the hearing, the determination as to whether to allow the witness will be at the discretion of the Chair.

(e) At the end of the hearing, the claimants and respondent may make closing statements. Committee members may ask any remaining questions of the claimants or respondent following presentation of the closing statements.

Yet another option is found in Missouri House Rule 9.C., which provides:

- C. The order of the formal hearing shall be as follows:
 - (1) The Chair shall open the hearing by stating the Committee's authority to conduct the investigation, the purpose of the investigation and its scope.
 - (2) The complainant and the respondent or counsel for the complainant and respondent shall be permitted to make opening statements. Such opening statements shall not exceed fifteen minutes each.
 - (3) Testimony from witnesses and other evidence pertinent to the matter under investigation shall be received in the following order:
 - (a) Witnesses and other evidence offered by the complainant;
 - (b) Witnesses and other evidence offered by the respondent;
 - (c) Witnesses and other evidence offered by the Committee; and
 - (d) Rebuttal witnesses.
 - (4) The Chair, or his designee, and the Committee members may question any witness.

Procedure options for the Ethics Committee:

1. Do not adopt a specific order of the proceedings.
2. As adjusted to account for the procedure decisions adopted under Section 6 of this memorandum:
 - a. Adopt a specific and detailed order of proceedings, similar to the examples from Utah and Arkansas.
 - b. Adopt a more general order of proceedings, similar to the Missouri example.

OLLS does not necessarily have a recommendation about the order of proceedings.