

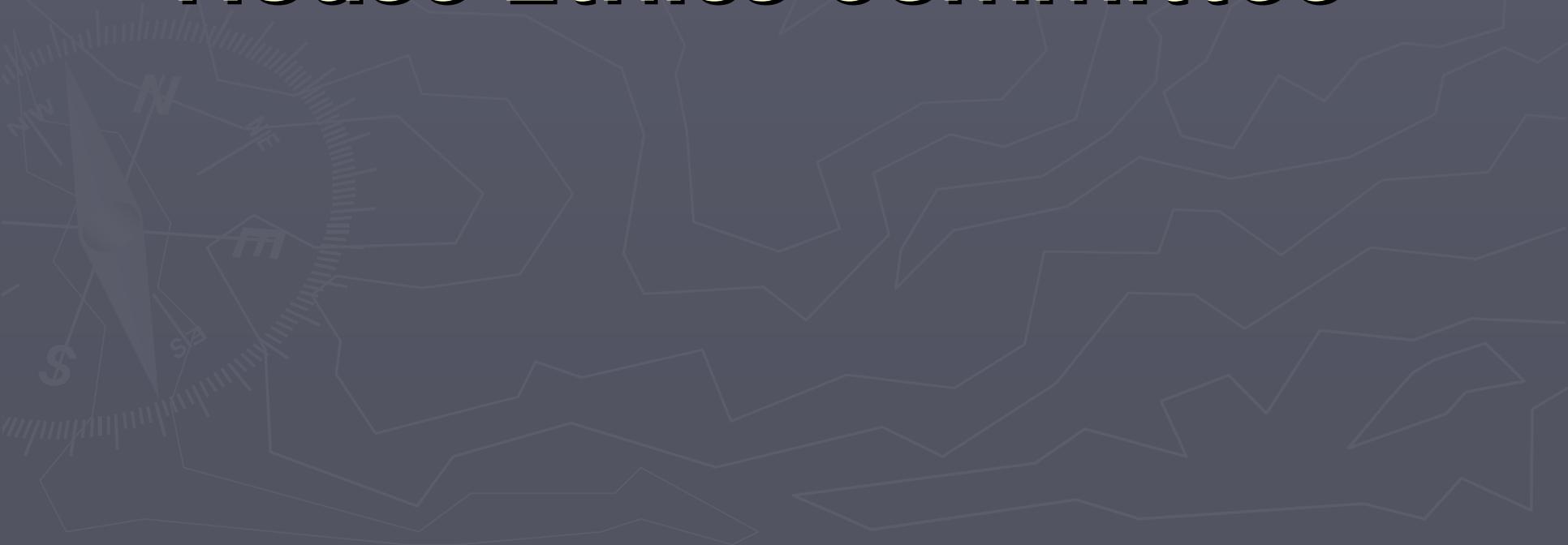


**HOUSE ETHICS
COMMITTEE**
December 5, 2011

“The process of disciplining a Member in Congress is not without countervailing risks of abuse since it is not surrounded with the panoply of protective shields that are present in a criminal case. 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 to review.”

- U. S. v. Brewster 408 U.S. 501, 519, 92 S.Ct. 2531, 2541 (1972)

Oklahoma Constitutional Provisions Related to the House Ethics Committee



Art. 5, § 30

- ▶ Oklahoma Constitution, Art. 5, § 30, *Judges of election of members - Quorum - Rules - Disorderly behavior – Journal*, provides:
 - Each house shall be the judge of the elections, returns and qualifications **of its own members**, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, **in such manner and under such penalty as each House may provide**.
 - Each House may determine the rules of its proceedings, **punish its members** for **disorderly behavior**, and, with the concurrence of two-thirds, **expel a member**.

PROTECTION OF THE INSTITUTION

- ▶ The separate houses of legislature necessarily possess “the inherent power of self-protection”. *In re Chapman*, 166 U.S. 661, 668, 17 S.Ct. 677, 680 (U.S.1897)
- ▶ “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 1148, 155-156 (2d Circ. 2010) citing *In re Chapman*, 166 U.S. 661 (1897).
- ▶ The power to punish members as a legislative power “is the primary power by which legislative bodies preserve their ‘institutional integrity’ without compromising the principle that citizens may choose their representatives”.
Whitener v. McWatters, 112 F. 3d 740, 743 (4th Circ. 1997).

“Disorderly behavior” standard:

- ▶ Not unique to Oklahoma
- ▶ Standard used in the United States Constitution.
- ▶ Standard used by 20 other states.
- ▶ Numerous other state’s have similar language (“Disorderly conduct” or “Disorderly and contemptuous conduct”).

“Disorderly Behavior” defined as:

- ▶ Any conduct which, in the judgment of the legislative body:
 - is inconsistent with the trust and duty of a member; and/or
 - threatens the legislative body’s institutional integrity.

Broadly interpreted

- ▶ The “self-protection” power inherent to each house “has a broad reach, extending to all cases where the offence is such as in the judgment of the (House or) senate is inconsistent with the trust and duty of a member.” *In Re Chapman*, 166 U.S. 661, 668.
- ▶ 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 to review. *U. S. v. Brewster*, 408 U.S. 501, 519, 92 S.Ct. 2531, 541 (U.S.Dist.Col. 1972).
- ▶ “This Clause gives both Houses broad official powers to hold investigations “for violations of statutory law, including crimes; for violations of internal congressional rules; or for ... even purely private conduct by a Member that, in the House's opinion, reflects badly on it as an institution.” *In re Grand Jury Subpoenas*, 571 F.3d 1200, 1204, (C.A.D.C. 2009)
- ▶ While this standard is hardly precise, it is difficult to see how a legislature's “inherent power of self-protection,” [] can be reduced to a more predictable formula. *Monserate v. New York State Senate*, 599 F.3d 148, 157 -158 (C.A.2 (N.Y.) 2010)

Disciplinary Options:

- ▶ Fines or restitution;
- ▶ Loss of certain privileges:
 - committee membership,
 - chairmanship,
 - office displacement, etc.
- ▶ Committee rebuke or letter of reprimand.

DISCIPLINARY OPTIONS (cont.)

- ▶ **Reprimand** – the resolution is adopted by the members, either with the subject member “standing in his/her place” or by adopting the committee’s report, but the resolution is *not* read out loud.
- ▶ **Censure** – generally understood to be a formal vote by a majority of members present and voting on a resolution disapproving a member’s conduct, with generally the additional requirement that the member stand at the “well” of the chamber to receive a verbal rebuke and reading of the censure resolution by the Speaker.
- ▶ **Expulsion** — the removal of the subject member from the House by a 2/3 vote of the members.

Okla. Const. Art. 5, § 42

- ▶ “In any **legislative investigation**, either House of the Legislature, or any **committee** thereof, duly authorized by the House creating the same, shall have power to punish as for contempt, disobedience of process, or contumacious or disorderly conduct...”
- ▶ Provides the House itself and any of its Committees
- ▶ Investigatory power and tools. *Id.* and 74 O.S. § 771 *et seq.*
 - Administer Oaths §772
 - Committees and the House have the power to summon witnesses and documentary evidence. §773
- ▶ “punish as for contempt” Similar to the contempt power of a Court of law which is essential to protect “the due and orderly administration of justice and in maintaining the authority and dignity of the court”.
 - *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980)
- ▶ “disobedience of process” –power to punish for failure to comply with the subpoena of witnesses or documentary evidence
- ▶ “contumacious or disorderly conduct” – power to punish for persons who appear before the committee but act inappropriately and are disruptive to the committee proceedings through personal actions. Contumacious literally means “stubbornly perverse or rebellious; willfully and obstinately disobedient.”

Okla. Const. Art. 5, § 22

Speech or Debate Clause

Considerations important to the Committee:

- ▶ 1. Personal Privilege from answering from their legislative actions in any other forum necessarily gives the expectation that they can, and should, be questioned by their respective Chamber for questionable acts.
- ▶ 2. This privilege cannot be asserted against the House itself, and is not waived as to outside actions by any other investigatory body.

Art. 5, § 19

Expelled member ineligible, punishment not to bar an indictment

- ▶ A member of the Legislature, expelled for corruption shall not thereafter be eligible to membership in either House. Punishment for contempt or disorderly conduct, or for any other cause, shall not bar an indictment for the same offense.
- ▶ The U.S. Constitution does not have a similar provision and consequently a U.S. House member who is expelled can immediately run for office and be seated.
- ▶ The use of the phrase “a member...expelled for corruption” means what?
 - A member can be expelled for any number of reasons but will only be barred from future service if the expulsion was based upon corruption.
 - It provides insight to the mindset of the framers of our constitution. They clearly believed that legislator corruption is the most serious threat against the legislative process and the institution itself.
- ▶ “shall not bar an indictment for the same offense” reinforces the idea that disciplinary action taken by the House against its members is nothing more than an internal disciplinary action and establishes that even the imposition of the most severe punishment by the House, expulsion, will not bar other forums from reviewing certain Legislative member conduct.

Okla. Const. Art. 5, § 18

Ineligibility - Federal and state officers - Conviction of felony:

► *Dual office holding concerns*

No person shall serve as a member of the Legislature who is, at the time of such service, an officer of the United States or State government, or is receiving compensation as such; nor shall any person be eligible to election to the Legislature who has been adjudged guilty of a felony

1. Clear restriction that legislator must only serve Oklahoma and only serve Oklahoma as a legislator;
2. Individuals who have committed felonies are a threat to the integrity of the institution and as such are banned from service.

Oklahoma Constitution, Art. 5, § 23, *Ineligibility to appointment to office - Interest in contracts*

Self interest:

No member of the Legislature shall, during the term for which he was elected, be appointed or elected to any office or commission in the State, which shall have been created, or the emoluments of which shall have been increased, during his term of office, nor shall any member receive any appointment from the Governor, the Governor and Senate, or from the Legislature, during the term for which he shall have been elected, nor shall any member, during the term for which he shall have been elected, or within two years thereafter, be interested, directly or indirectly, in any contract with the State, or any county or other subdivision thereof, authorized by law passed during the term for which he shall have been elected.

Oklahoma Constitution, Art. 5, § 24,
Disclosure of personal or private business:

Disclosure:

A member of the Legislature, who has a personal or private interest in any measure or bill, proposed or pending before the Legislature, shall disclose the fact to the House of which he is a member, and shall not vote thereon.

Scope:

- ▶ Jurisdiction is the power to act. Under the Constitution, the House has extensive power to act in order to preserve its institutional integrity.
- ▶ Scope references the extent to which the Committee will exercise its jurisdiction.

Scope Considerations:

- ▶ Code of Conduct to establish expectations
- ▶ Concerns raised in the constitution regarding self interest, disclosure, dual office holding, corruption.
- ▶ Additionally, sexual harassment (member to member, member and house staff), ethics training, advisory opinions, etc.
- ▶ Ethics Commission in Oklahoma.