



Brief Overview of State Ethics Committees

**Oklahoma House of Representatives
House Ethics Committee**

Overview

- “Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.”
- Henry Clay
- Internal Oversight of Ethics Laws, NCSL Legisbrief (March 2008):
 - Challenge – Legislative ethics committees must solidify their credibility with the public.
 - Because legislators handle issues of public trust – legislative committees that review ethics violations face a higher level of public scrutiny.
 - “We must hold ourselves to a high standard of behavior. For the public’s sake, when a violation occurs, we, as a body must act quickly, fairly and responsibly.”
- HI Rep. Kirk Caldwell

Components of Other States Ethics Committee Rules



- ❑ Official Code of Conduct for Legislators
- ❑ Jurisdiction of Legislative Ethics Committees
- ❑ Powers and Duties of Ethics Committees
- ❑ Complaint Process
- ❑ Investigation/Hearings
- ❑ Disciplinary Action for Misconduct
- ❑ Maintenance and Retention of Records
- ❑ Ethics Training

Official Code of Conduct for State Legislators

- ❑ Speaker Steele has charged Committee with establishing a code of conduct for members, to include at a minimum, Oklahoma Constitutional provisions.
- ❑ Some states have no formal code, but are required to adhere to state constitutional provisions and applicable statutes.
- ❑ Some states have conduct for legislators and other government officials codified in statute.
- ❑ Some states' legislatures have an official code of conduct, code of ethics or other set of standards in their houses' standing rules.

Official Code of Conduct for State Legislators: What is Covered

- ❑ Conflict of interest provisions
 - Require disclosure of personal financial interest
 - Require abstention from votes that may affect personal financial situation
 - Prohibit use of office for personal gain
- ❑ Restrictions on sharing confidential information
- ❑ Prohibitions on gifts that may influence decisions
- ❑ Prohibition on discrimination
- ❑ Maintaining integrity of the office and house represented
- ❑ Prohibit misconduct, neglect of duty or any ethical lapse
- ❑ Sexual harassment provisions

Oklahoma Constitution, Article 5, Section 24:

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.

Jurisdiction and Scope of Conduct Subject to Ethics Committees' Review

- Define misconduct:
 - Restricted to performance of legislative duties
 - Legal wrong that impairs ability of member to perform duties of office
 - Impairs confidence in legislature
 - Intentional violation of standing rules
 - Violation of state ethics law
 - Sexual harassment in the workplace
 - May include filing frivolous and/or false complaints
-

Oklahoma Constitution, Article 5, Section 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, and this provision shall also apply to joint sessions of the Legislature, and also to joint committees thereof, when authorized by joint resolution of both Houses.

Jurisdiction and Scope of Conduct Subject to Ethics Committees' Review

- ❑ Violation of public trust or dishonor House/Senate
- ❑ Commission or conviction of a felony, or malfeasance or gross misconduct in office, or disorderly conduct or contempt
- ❑ General decorum
- ❑ Prohibition on distribution of false or misleading material
- ❑ Prohibition on using coercion before state agencies
- ❑ Requirements for member travel
- ❑ Lobbying violations

Powers and Duties of Ethics Committees

- ❑ Propose and adopt a code of conduct/ethics as part of rules
- ❑ Responsible for administering Code of Conduct
- ❑ Accept, review and investigate alleged complaints of misconduct and charges against members
- ❑ Issue advisory opinions or recommendations
 - Formal, written opinions (binding vs. not binding)
 - Informal, verbal opinions, sometimes in the form of a warning
 - Upon request only or at committee's decision
- ❑ Recommend rule changes, as applicable
- ❑ Repository for disclosure forms & other required documentation
- ❑ Publish an ethics handbook for legislators and employees
- ❑ Provide ethics training

Complaint Process

Nearly all states with an ethics committee require complaints to be submitted in writing.

□ **Who can file a complaint varies:**

- Any person,
- Any person accompanied by the signature of a legislator,
- Any legislator or legislative employee, or
- Any member of the respective house

□ **Complaint must include:**

- Name of legislator accused of misconduct;
- Nature of misconduct:
 - Must cite provisions in rules, code of conduct, or law violated,
 - Facts supporting allegation – including dates, times, and locations, and
 - Documents relevant to allegation;
- Name, address, and signature of complainant;
 - A sworn complaint may require:
 - A sworn attestation to the facts, and/or
 - Acknowledgement that submitting false information is considered perjury and subject to penalties under the law
 - Notary

Complaint Process

□ **Confidentiality:**

- Nearly all states treat filed complaints as confidential
- Some states treat all ethics complaints as confidential throughout the process
- Some states treat complaints as confidential until the committee determines reasonable cause exists to proceed to a hearing
- Some states require hearings to be closed unless at the request of the respondent
- Some states allow for consideration of complaints to be heard in executive session, though other meetings or parts of meetings are open
- Some states require members of the ethics committee to take an oath attesting to confidentiality of information and proceedings
 - The U.S. House requires officials to sign the following oath before given access to classified information:

"I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its Rules."

Complaint Process

□ **Time Limit:**

- Many states impose a time limit on when a complaint may be filed:
 - Some require complaint to be filed within a year or as long as up to 3 years from date of occurrence of alleged violation or knowledge violation occurred
 - Some states allow for complaints to be filed against former members, with a time limitation of within one year they leave office.
- Some states limit when an ethics committee will accept complaints:
 - Some states will allow complaint process to continue despite recess or adjournment of legislature
 - Some states prohibit the filing of complaints during an election cycle, i.e. from the date of candidate filing through the day following the general election

Complaint Process

□ **Due Process provisions:**

- Nearly every state requires immediate notification to the respondent of the alleged complaint filed against him/her, and
- Provides a time period for the respondent to respond to the allegation with his/her own supporting documentation and facts.
 - Some states make clear that a lack of response from the respondent does not indicate guilt or innocence and the respondent is still provided time for hearing and participation in any examination.
- Notification of the respondent prior to any meetings or hearings is required
- Allow respondent to attend any meetings or hearings with or without legal counsel of his/her choosing or be represented by legal counsel in his/her absence

Complaint Process

□ **Notifications:**

- Besides notifications to the respondent, some states require the complainant to be notified for parts or all steps in the process
- Notification may occur:
 - Through the Office of the Chief Clerk or by the Chief Clerk
 - By the Sergeant-at-Arms
 - By the Chair or Committee
 - By certified mail

Investigation/Hearings

- ❑ Most states with provisions regarding an ethics committee do not have a detailed outline of their investigatory process
- ❑ Many states require a preliminary investigation or examination of the complaint and supporting evidence to determine if it is necessary to proceed or if a hearing or investigation is unnecessary and the complaint should be dismissed
- ❑ Some states require committee members to, verbally or in writing, take an oath swearing or affirming their intent to be unbiased and support the constitution and laws of the state and U.S.
- ❑ Some states require open meetings
- ❑ Some states require public hearings on complaints, once reasonable cause is determined by the Speaker, Chair, Chair and Vice Chair jointly, or entire committee
- ❑ Some states allow for the hiring of a special or independent counsel

Investigation/Hearings

- ❑ Most states generally provide for or specifically provide for due process to be followed throughout the process, such as:
 - Allowing the respondent and other parties to be represented by counsel at any time,
 - Allowing the respondent to present testimony, call and question witnesses and cross-examine opposing witnesses, or
 - At the very least, allow the respondent to respond to validity or facts of complaint
- ❑ Some states include a detailed outline for each step, with time limits on notification regarding complaint to respondent, time for response, time for scheduling first hearing, deadline for dismissal or recommendation to full house, etc.
- ❑ Some states require the committee to adopt a resolution outlining the scope of a particular investigation before proceeding.
- ❑ **Things to Consider:**
 - Requirement of meeting notices and other issues that will coincide or be need to be different from standing House Rules.

Disciplinary Action for Misconduct

- ❑ Committees typically have the right to dismiss a complaint
- ❑ Some states also allow the full house to dismiss charges once presented to the full legislative body
- ❑ **Disciplinary action includes:**
 - Removal of privileges or appointments to leadership positions and/or committees
 - Fines or other payment of restitution
 - Reprimand, may include:
 - ❑ A private or public letter of admonishment,
 - ❑ Advice to cease conduct and take caution in future,
 - ❑ Issue cease and desist order of conduct
 - Censure
 - Expulsion

Disciplinary Action for Misconduct

- ❑ Only a few states allow the committee to issue punishment, some limit committee's power of punishment to letters of reprimand or admonishment
- ❑ Most states require the Ethics Committee to recommend to the full house a punishment
 - Some require complete disclosure of facts for give supporting evidence, in the form of a resolution
- ❑ Most punishments require a majority vote of members elected to the house
- ❑ Most states require severe punishments such as censure or expulsion to receive a 2/3rds majority vote of the members elected to the House
- ❑ Subject to appeal
 - Some states allow disciplinary actions to be subject to appeal, handled in the same manner, as an "Appeal from the Decision of the Chair" but with different provisions for time limit for presentation and debate
 - Action is final and not subject to court review

Oklahoma Constitution, Article 5, Section 30 (part):

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.

Maintenance and Retention of Records

- ❑ Nearly all states require the maintenance and retention of records, whether confidential or open for public record
- ❑ Some states allow the Committee to maintain and retain records
- ❑ Some states require the Office of the Chief Clerk to maintain, retain and protect records in perpetuity
- ❑ Some require a written transcript of all proceedings
- ❑ Some require a record of committee activity and decisions
- ❑ In Oklahoma, the House Journal would include a record of any action of the full House

Ethics Training

- ❑ A few states require the ethics committee to conduct or provide ethics training to legislators and legislative staff
- ❑ California conducts an orientation course on official conduct once a year & members and staff are required to attend at least one a year
- ❑ Colorado requires legislators to attend a legislative ethics training program at least once a legislature

Conclusion

- ❑ “No free government, nor the blessings of liberty, can be preserved to any people, but by . . . a frequent recurrence to fundamental principles.”
 - George Mason (1776)
- ❑ “Thoughtful discussion and action on ethics issues is always worthwhile for those of us in government. This committee allows us to have those discussions in a consistent manner under established procedures that are fair to all.”
 - Speaker Kris Steele (November 8, 2011)
House Press Release, “House Ethics Committee formed”