

House Ethics Panel Procedure for Handling Ethics Complaints

1. Complaints must be in writing and identify the Complainant. A complaint may be made by any person, the Panel, or the House by resolution, but it must be in regard to alleged unethical conduct committed by a member during the current biennium. Any Panel member may accept a complaint on behalf of the Panel. The Complainant may submit additional information with leave of the Panel.
2. The Panel provides the Respondent a copy of the complaint. The Respondent may hire his or her own counsel at the Respondent's expense. The Respondent may file a response with the Panel, a copy of which the Panel shall provide to the Complainant.
3. The Panel determines whether there may be reasonable grounds to believe that an ethical violation pertaining to the Vermont Constitution or House Rules has occurred, which may include judging the qualifications of a member.
 - A. If this criterion is not met, the complaint is closed and remains confidential. Notice is sent to the Complainant and the Respondent.
 - B. If this criterion is met, the Panel proceeds with an investigation.
4. Investigations.
 - A. General.
 - i. An investigation includes interviewing witnesses and collecting any available documents.
 - ii. The Panel may hire an independent investigator to conduct the investigation.
 - iii. The Panel or the independent investigator may request that the Respondent or other witnesses provide documents or other information. The Panel may subpoena or authorize the independent investigator to subpoena the attendance and testimony of witnesses and the production of documents and other items as it deems necessary to conduct an investigation.
 - B. Confidentiality. The investigation is confidential.
 - C. Outcome of investigation.
 - i. If the Panel determines that no ethical violation occurred; an ethical violation occurred but it is minor in nature; or there is not enough evidence to support a charge of an ethical violation, the complaint is closed and remains confidential.
 - I. Notice of the Panel's decision is sent to the Complainant and the Respondent.
 - II. The Panel may reopen a closed complaint in the future if the Respondent demonstrates a pattern of unethical behavior.

The Panel may request that Panel staff provide the Panel with prior complaints made against the Respondent, including those from prior bienniums, to enable the Panel to determine whether such a pattern exists.

- ii. If the Panel determines there are reasonable grounds to believe the Respondent committed an ethical violation and the complaint is not closed as provided in subdivision (i) of this subdivision (C), the Panel may:
 - I. Issue to the Respondent a confidential warning, which shall dismiss the complaint. A confidential warning is intended to alert the Respondent that the alleged conduct might rise to the level of an ethical violation requiring action if it occurs on multiple occasions and may provide suggestions for improvement, when appropriate. The Panel advises the Complainant only that the Panel reserves the ability to reopen the complaint in the future, if necessary. Conduct that has been the subject of a confidential warning may later be used as the basis for a complaint if further complaints against the Respondent are filed, and the fact that a Respondent has previously been issued a confidential warning may be considered in determining the disposition of any subsequent complaint that is not closed.
 - II. Enter into a confidential stipulation with the Respondent that may impose an alternative to discipline, such as education, counseling, or monitoring. The Panel advises the Complainant only that appropriate remedial action was taken, unless the Respondent consents to the Panel informing the Complainant of the specifics of the stipulation. Upon successful completion of all terms and conditions, the complaint shall be dismissed. A Respondent's failure to comply with a material term or condition of the confidential stipulation, without just cause, may result in the revocation of the stipulation and further disciplinary action and may constitute an independent basis for discipline separate from the underlying complaint.
 - III. Draft charges and set the matter for a hearing. The Complainant and the Respondent shall receive a copy of the charges and the details regarding the time, date, and location of the hearing. The Respondent may file an answer to the charges, a copy of which the Panel shall provide to the Complainant.

5. Hearings.

- A. General. The Panel conducts a hearing in which the Respondent can present his or her position, present evidence, call witnesses, and question

witnesses called by the Panel. The Chair of the Panel shall preside and the Panel may hire independent counsel.

- B. Confidentiality. The hearing is closed to the public, unless the Respondent asks that it be open to the public.
- C. Rules of procedure and evidence. The Panel is not bound by technical rules of evidence and may admit evidence that the Panel considers to be reliable, material, and relevant. The Chair makes evidentiary rulings, which may be overruled by a majority of the Panel present at the hearing. The decision of the Panel cannot be based solely on hearsay evidence.
- D. Burden of proof. Burden of proof that an ethical violation occurred is clear and convincing evidence. This standard indicates that the alleged ethical violation is highly probable or reasonably certain. Evidence is “clear” if it is certain, unambiguous, and plain to the understanding; and it is “convincing” if it is reasonable and persuasive. However, if the Respondent admits to a count or stipulates to a fact, the Panel does not need to present evidence.
- E. Waiver. The Respondent may waive the right to a hearing. Such a waiver shall be in writing.

6. Findings.

- A. If the Panel finds an ethical violation did not occur, it will dismiss the complaint. This dismissal is confidential. Notice of dismissal is sent to the Complainant and the Respondent.
- B. If, after a hearing or admission, the Panel finds an ethical violation occurred, it will introduce for the House’s consideration a House resolution containing the evidence presented, the Panel’s findings, and its recommendations for disciplinary action.

7. Confidentiality and maintenance of records.

- A. Confidentiality. Except as provided in House Rule 90(b) and this Procedure:
 - i. Members of the Panel and Panel staff shall keep confidential any information received and any records produced or acquired in accordance with this Procedure, including any information received from the House Discrimination Prevention Panel or the House Sexual Harassment Prevention Panel that either of those panels provided to the Panel to inform a Panel investigation.
 - ii. All records produced or acquired in accordance with this Procedure are not subject to the Public Records Act.
- B. Maintenance of records. Panel staff shall maintain all records associated with handling any ethical complaint under this Procedure.
- C. State Ethics Commission. So long as the State Ethics Commission is required to keep confidential complaints and related documents in its

custody in accordance with 3 V.S.A. § 1223(d), the Panel may consult with the Commission on any application of the State Code of Ethics to a complaint, and provide to the Commission notice of the final disposition of a complaint that was referred to the Panel by the Commission.

8. Voting Thresholds. Except as otherwise provided in this Procedure:
 - A. For purposes of determining whether an ethics violation has occurred, issuing a subpoena, issuing a confidential warning, or entering into a confidential stipulation, the Panel by a vote of at least four of its members shall vote in favor of that action.
 - B. For all other business, a majority of the Panel members shall vote in favor of an action.
9. Amendments and Special Procedures.
 - A. This Procedure may be modified, amended, or repealed by a vote of the majority of the Panel members.
 - B. When the interest of justice so requires, a majority of the Panel members may vote to adopt any special procedures, not inconsistent with this Procedure, deemed necessary to resolve a particular matter before it. The Panel shall provide a copy of these special procedures to all parties in the matter.