

MINUTES
HOUSE ETHICS AND HOUSE POLICY COMMITTEE

DATE: Tuesday, August 03, 2021
TIME: 10:00 A.M.
PLACE: Room EW42
MEMBERS: Chairman Dixon, Representatives Horman, Crane, Gannon, McCrostie
**ABSENT/
EXCUSED:** None
GUESTS: Bill Myers, Chris McCurdy, Holland & Hart, LLP

Per Joint Rule 19, these minutes have been prepared in summary fashion. They are not a verbatim transcription of the proceedings on August 3, 2021.

Chairman Dixon called the meeting to order at 10:02 a.m.

Chairman Dixon made a statement, reviewing and explaining some questions that were posed in the hearing the day before regarding House Rule 45 and the respondent's opportunity to obtain and review all evidence in the support of the complaint. He said the rule does not put the burden of sharing evidence on the Committee and this was also made clear in the Hearing Rule IX. Chairman Dixon reviewed the multiple attempts the Committee made giving **Rep. Giddings** the opportunity to ask for any documents she wanted and sending her the hearing rules explaining her rights during this process. He said all evidence used in the hearing was either widely available public documents, information previously sent to Rep. Giddings and in her possession or her own words.

Chairman Dixon opened the hearing for Committee discussion.

Rep. Gannon said there is nothing easy about this case or about a decision like this. He said in the end he must look at the evidence and the law and rules in this case and set aside some of the personalities. He said in his view, this is a basic personnel matter whether **Jane Doe** was an intern or a volunteer, what rights they have when they file a complaint and what are the obligations of a legislator.

Rep. Gannon said in summary, the issue is the rights of an employee intern to make a claim of violation of law and improper conduct and whether the response by a person in power, in this case a legislator, is or is not conduct unbecoming a member of the legislature. He said there is no rape shield law in Idaho but there is a whistleblower statute which provides protection for public employees and prohibits adverse action against an employee.

Rep. Gannon also referred to the Human Rights statute and sections in Mason's Manual regarding custom, usage, and precedence in determining the standard of conduct. He reviewed points in the testimony of witnesses from the previous day regarding this type of situation in public and private employment. He reviewed each of these points saying the evidence doesn't show this type of conduct as appropriate for a person in authority. He said this is important because we should want people to come forward and make good faith complaints if they see misconduct and not be deterred from doing it for fear their identity may be exposed.

Rep. Gannon went on to say there is a concern for legal liability, the actions of state officials can result in lawsuits and legal actions. He said the fact that 24 legislators filed a complaint and that they felt there was a need to do something, and the evidence indicated that what was done was improper.

Rep. Horman opened her comments by saying she will recommend dismissal of the April 19, 2021 complaint filed by **Rep. Chaney**. She said the Committee is not the appropriate body to evaluate criminality and all the other allegations stated in that complaint are fully covered in the May 3, 2021 complaint. Rep. Horman said regarding the May 3, 2021 complaint, it expressed two primary concerns of 24 House members. They signed it because they believe the actions of **Rep. Giddings** constituted conduct unbecoming which is detrimental to the integrity of the House.

Rep. Horman reviewed the points in the May 3, 2021 complaint saying the first point was that **Rep. Giddings** disseminated the photo and identity of **Jane Doe**, she believed Rep. Giddings does have a free speech right to do this, but the question is Rep. Giddings' judgement and intent in doing this and just because someone has the right to do this, doesn't mean they should. She said the second point of the May 3, 2021 complaint is regarding misrepresentations and the appearance of dishonesty while under oath. Witnesses the day before testified under oath they believed Rep. Giddings did not tell the whole truth under oath, she was less than forthcoming, she was elusive and evasive in her responses in the **von Ehlinger** hearing. Rep. Horman said her concern was she saw that pattern repeated yesterday and she reviewed several false statements in Rep. Giddings' testimony from the day before.

Rep. Horman continued with her concerns over **Rep. Giddings** wanting to save taxpayer money, but then requesting the Chairman issue subpoenas, prepared by attorneys all day Friday, that were never served. She shared her concern over the fact that Rep. Giddings is fundraising as a result of this hearing to pay for legal counsel that she does not seem to have. Rep. Horman expressed her concern regarding claims made by Rep. Giddings protection from and trial by public opinion and that the accusations were made by the House Ethics Committee. She reminded everyone that the Ethics Committee has made zero allegations of retaliation or whistle blowing, accusations were made by 24 of Rep. Giddings' colleagues.

Rep. Horman also expressed her concern about the lack of civility, respect, and basic sense of decency toward other House members and the process. She said the lack of regard for her colleagues who took the time to explain why they signed the ethics complaint shows a pattern of lack of respect for the dignity of other human beings. Which is a standard many would say are below any citizen, including a member of the House of Representatives. Rep. Horman said the phrase that stands out to her is not even conduct unbecoming, she believed that has been proven beyond reasonable doubt. She said in her opinion **Rep. Giddings'** behaviors were detrimental.

Rep. McCrostie began his statement saying he could honestly say he never expected to be part of the Committee during an ethics hearing, let alone have two within a matter of months. He said the facts are indisputable, **Rep. Giddings** posted a link on her Facebook page to a website and disseminated the name, photo and identity of **Jane Doe** and she posted the same link to her newsletter using the state provided GovDelivery system. Rep. McCrostie said while distasteful, this part of both complaints, the actual posting of distasteful information that further victimizes Jane Doe, in a state that lacks a rape shield law is protected speech. But just because it can be said doesn't mean it's prudent to say it and it doesn't mean there aren't consequences.

Rep. McCrostie also said the other item that needs to be determined are concerns regarding **Rep. Giddings'** conduct during the **von Ehlinger** ethics hearing. **Rep. Giddings** appeared in that hearing in support of the former Representative and appeared on her own accord and voluntarily swore an oath to tell the truth. Yesterday there was testimony from five of the 24 co-signers on the May 3, 2021 complaint stating they found her testimony in the hearing to be some form of half-truth, less than truth or not the whole truth.

Rep. McCrostie continued saying the Committee must determine if **Rep. Giddings'** conduct in the prior hearing constitutes conduct unbecoming. He said based on her conduct the day before in this hearing, the prior hearing was not an outlier, but part of a pattern. He went on to say, the half-truths, misinformation, and incomplete facts given by **Rep. Giddings** both yesterday and during the prior hearing harms the integrity of the House as a legislative body as well as this Ethics Committee, whoever comprises its membership now or in the future. He said to ignore the respondent's conduct is impossible without simultaneously harming the House as an institution and he finds **Rep. Giddings'** conduct to be unbecoming.

Rep. Crane said the assignment given to the Committee is very difficult, to sit in a seat of judgment of a fellow colleague is weighty. He said he does not take it lightly. He said 24 colleagues put forward a complaint of belief of conduct unbecoming in the **von Ehlinger** hearing and concern of doxing a 19-year-old volunteer after her claim of misconduct by a Representative. He said he agreed wholeheartedly that **Rep. Giddings** has a First Amendment right to say what she said and understands the desire to have fairness in the previous ethics hearing, but maybe should have released the person's response to the Committee and not linked to the article.

Rep. Crane said this may have damaged the reputation of the House, but the real damage to the integrity of the House was while under oath and when asked about releasing the photo, posting the link and the administration of the Facebook page, **Rep. Giddings** was not forthright with the Committee. **Rep. Crane** commented on many statements made by the respondent during the hearing yesterday that were incorrect and other statements and claims regarding the reasons for the complaint, the Committee process and due process that were false along with other false statements made in interviews leading up to this hearing. **Rep. Crane** again reviewed the many times the Committee attempted to contact **Rep. Giddings** with no response, to give her information about the proceedings, the evidence or to have her come talk to the Committee.

Rep. Crane said **Rep. Giddings** has been combative and has still refused to directly answer any questions from the Committee. He said he had hoped yesterday she would have been forthright and answered questions so the issue could be resolved, but that did not happen. He said the behavior in the **von Ehlinger** hearing and the previous day of this hearing, to not listen to colleagues explain why they filed the complaint and what could have been done to resolve the complaint was problematic.

Rep. Crane concluded by saying he hoped this would be a learning opportunity for **Rep. Giddings**, that current and future legislators will look to the actions of this Committee as hopefully a guiding light as to what conduct is expected of legislators. He said when a legislator repeatedly tells half-truths, outright lies, fails to answer questions or to be honest with the Committee, this type of behavior will not be tolerated. **Rep. Crane** said the Ethics Committee expects better conduct of its members of the House of Representatives and the citizens of Idaho deserve better conduct from their legislators.

Chairman Dixon said most of his thoughts has already been stated by his colleagues. He said the Committee heard strong testimony from five of the Representatives who signed the complaints expressing their concern with **Rep. Giddings'** behavior and why they felt it was detrimental to the House and conduct unbecoming. He said they heard that it's not just conduct unbecoming a legislator but of everybody and legislators should expect more from each one of themselves.

Chairman Dixon said the legitimacy that is given to certain statements when it comes from a legislator, when a government form of communication is used, projects a sense it must be truth because this person is elected to represent their constituents, to fight on their behalf. He said Representatives are accountable for what they say regardless of the First Amendment and if the conduct is owned, if there is some contrition, if there is a bit of remorse or repentance on behalf of what had happened, he thought it all would have been forgiven.

He said there will naturally be a mistrust of government and there should be from citizens to keep it in check, but legislators should not be responsible for perpetuating that mistrust by misleading the public. He said the role of the Committee is to determine whether a member's conduct is detrimental to the House of Representatives as a whole. **Chairman Dixon** said in being less than truthful during a public hearing while under oath, abridges the trust in both the public and fellow members of the House and can justly be construed as conduct unbecoming and detrimental to the House of Representatives.

Chairman Dixon stated the role of the Committee is to protect the body, they've been elected by their peers to do this, it's not something that was sought out and they take that role very seriously. In protecting the body their goal is to let a member know they have stepped outside the parameters of what the body feels is appropriate and how it reflects itself to the public.

MOTION: **Rep. Horman** made a motion to dismiss the complaint dated April 19, 2021, submitted by **Rep. Chaney**, because the allegations contained in that complaint are fully addressed by the complaint brought later by 24 members of the Idaho House of Representatives. **Motion carried by voice vote.**

MOTION: **Rep. Horman** made a motion that the Committee finds by clear and convincing evidence that **Rep. Giddings** has conducted herself in a manner unbecoming a Representative, which is detrimental to the integrity of the House as a legislative body and that the Committee recommends to the full House of Representatives that Rep. Giddings be censured with the condition that she be removed from her seat on the House Commerce and Human Resources Committee. **Motion carried unanimously by voice vote.**

ADJOURN: There being no further business to come before the Committee the meeting adjourned at 10:48 a.m.

Representative Dixon
Chair

Susan Werlinger
Secretary