



WISCONSIN LEGISLATIVE COUNCIL

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TO: REPRESENTATIVE MARY HUBLER, CHAIR, ASSEMBLY SPECIAL COMMITTEE
ON ETHICS AND STANDARDS OF CONDUCT

FROM: Jessica Karls-Ruplinger and Scott Grosz, Staff Attorneys

RE: Authority and Procedure Regarding the Reprimand, Censure, or Expulsion of a Member of
the Assembly

DATE: February 16, 2010

This memorandum outlines the authority of the Assembly to reprimand, censure, or expel a member and the procedure for the Assembly's consideration of such a proposal.

Article IV of the Wisconsin Constitution provides authority for each house of the Legislature to punish or expel a member of its house. The text of the constitutional provision is as follows:

Rules; contempts; expulsion. Section 8. Each house may *determine the rules of its own proceedings*, punish for contempt and disorderly behavior, and with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause. [Emphasis added.]

Other than the two-thirds vote requirement for expulsion, the constitutional provision provides no specific procedural requirements for the Assembly's consideration of a proposal to punish or expel a member.

Assembly Rules 21 and 43 (3) outline the procedure for the Assembly's consideration of a resolution to reprimand, censure, or expel an officer or member of the Assembly:

Assembly Rule 21. Ethics and standards of conduct, special committee on.

(1) Any resolution to reprimand, censure, or expel an officer or member of the assembly shall be referred to a special committee on ethics and standards of conduct, convened for the purpose of holding one or more public hearings on the resolution and submitting the committee's recommendation to the assembly. The special committee shall consist of 3

members of the majority party and 3 members of the minority party, appointed as are the members of standing committees.

(2) The hearing shall be scheduled as soon as possible, allowing reasonable time to ascertain the facts of the controversy, to furnish a copy of the detailed written charges to the officer or member cited, and to permit that person to prepare a proper defense.

(3) At the hearing, the officer or member cited may have the advice of counsel, may offer testimony to mitigate or refute the charges, and may cross-examine any witness testifying in support of the charges.

(4) With the consent of the officer or member cited, the committee may vote to close parts of the hearing to the public.

(5) Promptly after the conclusion of the hearing, the committee shall return the resolution to the assembly together with a written report containing the committee's recommendation for action on the resolution.

(6) Following assembly action on the committee's report, by adoption or rejection of the resolution, referral of the resolution to a standing committee, or return of the resolution to its primary author, the special committee on ethics and standards of conduct is discharged.

Assembly Rule 43 (3) Any resolution to reprimand, censure, or expel an officer or member of the assembly shall identify the charges against the officer or member cited and shall be referred to the committee on ethics and standards of conduct for review under rule 21.

Assembly Rule 21 (and Assembly Rule 43 (3)) is of relatively recent origin. See 1989 Assembly Resolution 27. The rule has not been used since its creation and there is thus no precedent to guide the Special Committee.

Referral to and Appointment of the Special Committee on Ethics and Standards of Conduct

“Any resolution to reprimand, censure, or expel an officer or member of the assembly shall be referred to a special committee on ethics and standards of conduct, convened for the purpose of holding one or more public hearings on the resolution and submitting the committee's recommendation to the assembly. The special committee shall consist of 3 members of the majority party and 3 members of the minority party, appointed as are the members of standing committees.” [Assembly Rule 21 (1).]

2009 Assembly Resolution 14, relating to the expulsion of Representative Jeffrey Wood, a representative from the 67th Assembly District, from membership in the Wisconsin State Assembly, was introduced by Representative Nass. On October 27, 2009, pursuant to Assembly Rules 21 and 43 (3), Speaker Sheridan appointed the Special Committee on Ethics and Standards of Conduct, and Assembly Resolution 14 was referred to the Special Committee.

Ascertainment of Facts and Detailed Written Charges

“The hearing shall be scheduled as soon as possible, allowing reasonable time to ascertain the facts of the controversy, to furnish a copy of the detailed written charges to the officer or member cited, and to permit that person to prepare a proper defense. [Assembly Rule 21 (2).]”

Assembly Rule 21 (2) contemplates ascertainment of the facts as the first step in the committee procedure, followed by furnishing a copy of the detailed written charges to the member cited. Assembly Rule 43 (3) requires any resolution to reprimand, censure, or expel a member of the Assembly to identify the charges against the member.

On December 15, 2009, the Special Committee met to ascertain the facts of the controversy and prepare detailed written charges, pursuant to Assembly Rule 21 (2). As a result of this meeting, the Special Committee will consider the following substitute amendments to 2009 Assembly Resolution 14:

- **LRBs0215/1**, relating to the *expulsion* of Jeffrey Wood, a representative from the 67th Assembly District, in accordance with article IV, section 8, of the Wisconsin Constitution and Assembly Rule 21.
- **LRBs0216/1**, relating to the *censure* of Jeffrey Wood, a representative from the 67th Assembly District, in accordance with article IV, section 8, of the Wisconsin Constitution and Assembly Rule 21.
- **LRBs0217/1**, relating to the *reprimand* of Jeffrey Wood, a representative from the 67th Assembly District, in accordance with article IV, section 8, of the Wisconsin Constitution and Assembly Rule 21.

The substitute amendments contain a recitation of the facts of the controversy, as determined by the committee, and the detailed written charges, and were furnished to Representative Wood, as required by Assembly Rule 21 (2), by letter dated December 18, 2009.* Once the detailed written charges are furnished to Representative Wood, Assembly Rule 21 (2) provides for time to permit Representative Wood to prepare a proper defense.

Public Hearing

Assembly Rule 21 contemplates a legislative public hearing on any resolution to reprimand, censure, or expel a member of the Assembly, in which “the officer or member cited may have the advice of counsel, may offer testimony to mitigate or refute the charges, and may cross-examine any witness testifying in support of the charges.” [Assembly Rule 21 (3).] In addition, “[w]ith the consent of the officer or member cited, the committee may vote to close parts of the hearing to the public.” [Assembly Rule 21 (4).] It appears that the rule does not contemplate a judicial proceeding.

*Assembly Rule 21 does not appear to prohibit the introduction or adoption, under standard Assembly rules, of other amendments to Assembly Resolution 14 as alternatives to the substitute amendments being considered by the Special Committee.

Presumably, a public hearing on a resolution to reprimand, censure, or expel a member of the Assembly should follow the standard procedure of a public hearing, with the exception of the procedures outlined in Assembly Rule 21 (3) and (4). During a public hearing, the chair of the Special Committee is the presiding officer and conducts the hearing.

At a public hearing, any person may testify or register for or against the proposals being considered by the Special Committee, and no one is required to testify. Likewise, Representative Wood may offer testimony at the public hearing or may choose to not offer testimony. A person may also submit written testimony, which becomes part of the record of the Special Committee. Following a person's testimony, members of the Special Committee may ask questions of the person. Pursuant to Assembly Rule 21 (3), Representative Wood may also cross-examine any witness who testifies in support of the proposals being considered by the Special Committee.

In addition, Assembly Rule 21 (4) permits the Special Committee to vote to close parts of the public hearing, if Representative Wood consents to such closure.

Committee Recommendation

“Promptly after the conclusion of the hearing, the committee shall return the resolution to the assembly together with a written report containing the committee's recommendation for action on the resolution.” [Assembly Rule 21 (5).]

The rule appears to contemplate an executive session of the committee at some point following the final public hearing. The chair of the Special Committee determines when executive action is scheduled on the resolution. [Assembly Rule 11 (9).] The chair must report the resolution to the Assembly within seven working days after executive action if the Special Committee recommends adoption of the resolution. [Assembly Rule 17m.] The Special Committee may report the resolution with recommendation or without recommendation, pursuant to Assembly Rules 18 and 19.

Discharge of Committee

The Special Committee is discharged “[f]ollowing assembly action on the committee's report, by adoption or rejection of the resolution, referral of the resolution to a standing committee, or return of the resolution to its primary author.” [Assembly Rule 21 (6).]

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

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