

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from January 4, 2006 FULL COMMITTEE MEETING Anchorage LIO, 2nd Floor Conference Room

1. Call the Meeting to Order: The meeting was called to order at 9:37 a.m. by Chair Herman Walker Jr. Members present: Senator Hollis French, Representative Bruce Weyhrauch (by teleconference), Representative Max Gruenberg, Skip Cook (by teleconference) and H. Conner Thomas (by teleconference). Members absent: Senator Ben Stevens, Ann Rabinowitz and Marianne Stillner. Staff present: Joyce Anderson, and Daniel Wayne from LAA Legal (by teleconference).

2. Approval of Agenda: Member Thomas made a motion to approve the agenda. Hearing no objections, agenda approved.

3. Approval of Minutes: Senator French made a motion to approve the minutes from the December 9, 2005 meeting. Hearing no objections, minutes approved.

4. Public Comment: None.

5. Chair/Staff Report:

a. Ethics Training: Staff reported ethics training for staff and legislators is to be conducted on Friday, January 6, 2006 in Juneau. Training will focus on campaign issues since this is a campaign year and an explanation of Advisory Opinion 05-01 addressing legislative contact with hearing officers issued on November 9, 2005.

b. Publication of Advisory Opinions and Public Decisions: One advisory opinion was issued during the period January 1, 2005 through December 31, 2005 and one public decision. These publications were distributed this week to all legislative offices.

c. 2006 Standards of Conduct Handbook: The newly published 2006 handbook was distributed this week to all legislative offices and will be handed out at training as well. Several sections of the Handbook were clarified based on questions from staff and legislators. All changes were approved by the chair. Representative Gruenberg suggested all committee members review changes to the Handbook as well.

d. State Benefit and Loan Programs: Staff reported there were several changes to the list of state benefit and loan programs based on a review by state departments. The committee determined there was no need to audit the changes.

6. Budget:

a. Update on FY06 Budget (07-01-05 through 06-30-06): Available balance December 30, 2005 was \$77,709 out of an authorized budget of \$139,200. Chair Walker informed the committee of the need to hire an hourly on-call temporary employee, called casual labor, to assist the Administrator for the remaining six months of FY06. He stated the duties and responsibilities have increased over the last three years; i.e., number of meetings per year, number of disclosures, number of inquiries for informal advice in addition to paperwork. Ms. Anderson reported there would be no additional cost to set up the office for this person. Furniture from surplus as well as a computer and printer are available. She reported, based on projected expenditures for the last half of FY 06, approximately \$5000 is available for this purpose. Representative Gruenberg made a motion to approve the hire of an hourly on-call temporary employee with an amount to not exceed \$5000 for FY06. Roll call vote taken: Yes – Senator French, Representative Weyhrauch, Representative Gruenberg, Members Cook and Thomas and Chair Herman Walker.

b. Request for FY07 (07-01-06 through 06-30-07): Chair Walker reported the only change to the FY07 budget, other than the usual cost of living increases, is a request for a 40% time seasonal on-call staff person to assist the Administrator. A Range 15 employee for approximately 15 hours per week would be \$19,500. Staff explained there has not been a request for an increase in the Ethics budget at least since 2001 when she was hired. However, the budget has been reduced several times over the past several years. Senator French asked if the committee has reviewed the budget request in the past and if not, why. Staff reported she works with Pam Varni, Executive Director, LAA on the numbers and reviews the budget with the chair of the committee. Pam Varni gave an overview of the budget process. The current request, without the suggested increase, is \$144,100. Representative Gruenberg suggested the full committee approve the budget request yearly by motion thereby making the budget request a more formal process. Senator French indicated he would have liked to see the entire budget outlined in the packet today showing amounts for travel, contracts, staff, etc. Representative Gruenberg made a motion to approve an increase in the FY 07 budget for \$19,500 for casual labor. Roll call vote taken: Yes - Senator French, Representative Weyhrauch, Representative Gruenberg, Members Cook and Thomas and Chair Walker. Motion passed. A copy of the recommended FY 07 budget will be distributed.

Representative Gruenberg asked the committee to consider budgeting additional funds for ethics training in January next year. He is proposing ethics training for the entire legislature and is suggesting a segment for the public as well. He proposed utilizing outside speakers. Chair Walker stated since the committee has not discussed this idea before, it is too premature to allocate funds for this purpose. Representative Gruenberg suggested a note be made with the budget request that the committee is considering this concept. Ms. Varni stated there are other funds that may be able available for this training such as session funds, Legislative Council funds or orientation funds. This item is on the agenda today for discussion under 9(b).

FY 06: Representative Gruenberg requested unanimous consent to reconsider his motion on the FY 06 budget. No objection. He made a motion to allow Ms. Anderson to use any additional surplus funds from the FY 06 budget at her discretion for casual labor.

Discussion held. Representative Gruenberg asked unanimous consent to withdraw his previous motion. No objection. Representative Gruenberg made a motion to approve \$10,000 for casual labor for FY 06. Chair Walker asked Ms. Anderson what were the needs of the office. Ms. Anderson stated \$5000 was a best guess estimate of funds that would be available. Some variables are: the number of committee meetings, if an outside investigator would be needed for a complaint investigation and other unknown factors for the last six months of the year. She stated she would not be comfortable going over that amount based on past experience with the budget. Representative Gruenberg withdrew his motion. Member Cook made a motion to approve the \$5000 for casual labor and if more funds are needed, Ms. Anderson could add the item to the agenda for discussion at another meeting. Hearing no objection, motion passed.

7. Legislation Update: Staff reported amendments are being drafted for SB 187 which were recommended by the committee at previous meetings. Based on advice from the last committee meeting, staff met with Janet Seitz from Representative Rokeberg's office, Rules Chair, to determine the best approach to propose the committee's amendments to SB 187. Ms. Anderson suggested the technical amendments be introduced in House State Affairs and the substantive amendments be introduced in House Judiciary. Representative Coghill has indicated he would be willing to introduce the substantive amendments in House Judiciary. Staff has not contacted a legislator from House State Affairs yet. Ms. Anderson asked for committee input. Representative Gruenberg is on both committees and stated he would like to look at the amendments prior to introduction. The amendments will be forwarded to all committee members when finalized.

8. Committee Rules of Procedure: Chair Walker noted the committee has already reviewed and adopted nine sections of the Rules of Procedure. All involved extensive changes. The next ten sections are less substantive. Section 5(c) was not approved at the last meeting and will be addressed first.

Section 5(c) Executive Sessions – Advisory Opinions. Staff reported current language states the person requesting the advisory opinion is not allowed to be present when an advisory opinion is discussed in Executive Session. Proposed draft language allows the requester to provide clarifying information if requested to do so by the committee during an Executive Session. Member Cook suggested the term 'legal advisor' be clarified as the 'committee's legal advisor'. Representative Gruenberg made a motion to add the word 'committee's' prior to 'legal advisor' and to adopt the language as presented. Hearing no objection, motion passed.

Section 9 Informal Advice. Staff reported this section has major changes. A new section on 'confidentiality' is included as well as new section on 'closure.' Staff gave an overview of the informal advice process for the committee. Staff suggested retaining all informal advice indefinitely and not just for two years six months as stated in the draft. Representative Gruenberg asked to hold this entire section until the next meeting in order to rewrite (a) Confidentiality and (c) Closure based on staff's comments and the complexity of the issues. Chair Walker stated the committee should have their procedures in place prior to the legislative session.

Member Cook suggested language to Section (a) Confidentiality include "the name of the person requesting the informal advice is confidential unless waived by that person."

Representative Gruenberg made a motion to change Section (a) to state: The identity of the person requesting the informal advice and any other identifying information are considered confidential unless waived or compelled by statute or subpoena to release.

Representative Gruenberg questioned who 'waives' confidentiality. There could be several individuals mentioned in the advice. He made a motion to hold this section over until the next meeting to let Ms. Anderson research this issue. Chair Walker asked the committee for their input. Senator French suggested we approve the changes we have now and revisit the issue at the next meeting so we have some procedures in place. Section (a) is tabled and will be revisited at a future meeting.

Senator French made a motion to approve Section (b) Review by Committee as written. Hearing no objection, motion carried.

Member Thomas made a motion to approve Section (c) Closure as drafted. Representative Gruenberg made a motion to amend Section (c) by deleting the words 'and scheduled for destruction 2 years and 6 months thereafter.' Chair Walker stated it is logical and makes sense to keep informal advice on file to reference for a later request with the same fact pattern. Hearing no objection, motion carried.

Representative Weyhrauch left the meeting. (11:00 a.m.)

Section 10 Advisory Opinions: Staff reported Section (a) Format states guidelines will be provided to each person making a request for an advisory opinion. Section (b) Response includes language to also allow outside legal counsel to draft an opinion if LAA or ethics staff has a conflict. Section (c) Request for Extension clarifies some confusing language. Section (d) Extension Denial added the term 'discussion' as the other sections of the Rules of Procedure all mention both 'discussion and deliberation'. Staff explained the clarification changes in section (f) Summary/Publication. No intent was changed. Member Cook made a motion to accept the changes as read. Representative Gruenberg made two technical amendments to the draft language presented. Section (a), he added 'written' to indicate that 'written guidelines' will be provided. In section (f) he suggested retaining the word 'its'. Hearing no objection, motion approved.

Section 11 Disclosures: Staff reported Sections (a) Staff, (b) Record, (c) Publication and (d) Review of Confidential Disclosures contained only technical changes. Section (e) Deliberations/Voting on Advisory Opinions was changed to indicate disclosures will be destroyed after 2 years and 6 months instead of 6 months. Staff felt this was a typo. Reasoning for the 2 years and 6 months is that an ethics complaint may be filed for up two years after a legislator leaves office. Section (f) Late Disclosures also contained some technical changes and a sentence about noting late disclosures in the committee minutes. Member Cook made a motion to accept the changes as presented. Representative Gruenberg made two technical amendments to the motion. In section (b) retain the words

“that are” and in section (d) retain the word ‘the’. Hearing no objection, motion approved.

Section 12 Education: Staff reported sections (a) Handbook, (b) Training, (d) Communication and (e) Newsletter were updated to current practice along with some technical changes. Representative Gruenberg made a motion to approve the changes. Hearing no objection, motion approved.

Section 13 Potential Complaints: Staff reported only technical changes were made to this section. Representative Gruenberg suggested the word ‘its’ be added to the last sentence in Section (c) Informing the Subject of Information Provided under (a) and (b) Above to clarify that the findings of the preliminary examination are those of staff and not the committee. Representative Gruenberg made a motion to approve the suggested language. Hearing no objection, motion approved.

Section 14 Complaints: Staff reported Section (a) Process contained technical changes. Representative Gruenberg made a motion to approve the changes as submitted with the exception of the second comma in subsection (3). Hearing no objections, motion approved.

Staff reported in Section (b) Receipt language was added to clarify what is a complaint. Representative Gruenberg moved the language. He made the following amendments: 1. the word ‘properly’ be deleted as using the word sworn has the same meaning; 2. the second sentence to read “Staff will transmit a copy of the complaint to the subject of the complaint via certified mail, restricted delivery to be signed by the addressee only and also ask the subject to acknowledge, in writing, receipt of the complaint.” Hearing no objection, motion approved.

Staff reported the subsections titled “Process to Determine which Subcommittee” and “Referral” are no longer relevant as new language in AS 24.60.140 covers this possibility. Representative Gruenberg made a motion to delete these sections. Hearing no objection, motion approved.

Staff reported in Section (c) Preliminary Examination of Complaint the word ‘that’ was deleted. Senator French made a motion to approve section (c). Hearing no objection, motion approved. Representative Gruenberg amended the motion to retain the word ‘that’. Hearing no objection, motion approved.

Staff reported in Section (d) Waiver of Confidentiality by Subject of Complaint all language referring to several subjects of a complaint were deleted as language in AS 24.60.170 does not allow for more than one subject to be submitted on one complaint. Representative Gruenberg made a motion to approve paragraphs one through four as drafted with the exception of retaining the word ‘that’ in the second paragraph. Hearing no objection, motion approved.

Staff reported in Section (e) Communication the language addressing when the complaint is known to the public was deleted because new language in 2004 requires the committee to dismiss a complaint that is made public. Discussion held. The current language in this

section is confusing and probably not needed. Member Thomas made a motion to delete this section. Hearing no objection, motion approved.

Section (f) Response by the Subject of a Complaint contained only technical changes. Senator French made a motion to approve the changes. Hearing no objection, motion approved.

Staff reported Section (h) Committee Restrictions is a new section. Member Thomas explained the reasoning behind the new language concerning ex parte communication. Representative Gruenberg posed the question if others should be included in the list of individuals who should not be contacted during the complaint process/proceeding. Senator French made a motion to accept the language as submitted. Hearing no objection, motion approved. Representative Gruenberg will research the issue and may ask for the motion to be reconsidered. He will work with staff on this issue.

Section 15 Complaints – Investigations: Staff reported technical changes to Sections (a) Scope and (b) Investigative Plan. Senator French made a motion to approve the changes. Hearing no objection, motion approved.

Staff reported Section (c) Investigative Interviews is new section. The language is based on past experiences by staff during the complaint interview process. Representative Gruenberg made a motion to move the language for discussion purposes. He then made a motion to include in subsection (1) the language ‘and in the Rules of Procedure’ after the word ‘statute’. Hearing no objection, motion approved.

Subsection (2) Legal Representation. Representative Gruenberg made a motion to have the section read as follows: All parties interviewed shall be informed that they have the right to legal counsel. Hearing no objection, motion approved.

Subsection (3) Telephonic Interviews. Representative Gruenberg made a motion to approve the language as drafted. Senator French made an amendment to change the language to read as follows: If the interview is being conducted through the use of telephonic equipment, the person being interviewed and any legal representative, shall verify for the record no one else is present or on a conference call line. Hearing no objection, motion approved.

Subsection (4) Investigative Materials. Senator French made a motion to approve the language as amended. Hearing no objection, motion approved.

9. Other Business: Chair Walker mentioned this meeting is his last meeting as chair. Staff updated the committee on public member appointments.

a. Informal advice –Personal Use of Legislative Mail Room in Juneau. Tabled.

b. Ethics Training for 2007. Tabled.

10. Adjourn: Member Thomas made a motion to adjourn at 12:09 p.m.