

ARIZONA HOUSE OF REPRESENTATIVES
Fiftieth Legislature – Second Regular Session

HOUSE ETHICS COMMITTEE

Minutes of Interim Meeting
Tuesday, April 10, 2012
House Hearing Room 3 -- 9:30 a.m.

Chairman Vogt called the meeting to order at 9:35 a.m. and roll call was taken by the secretary.

Members Present

Representative Ted Vogt, Chairman
Representative Steve Farley
Representative Eddie Farnsworth
Representative Peggy Judd
Representative Debbie McCune Davis

Members Absent

None

Ethics Matter Regarding Representative Daniel Patterson

Chairman Vogt stated that the Committee is faced with the difficult task of determining whether Representative Daniel Patterson should be expelled from office. If the behavior of a legislator shows an ongoing pattern of disorderly behavior that distracts from the legislative process and the integrity of the Legislature is compromised, appropriate action should be taken. It is his opinion that where evidence of misbehavior appears manifest and repetitive, good judgment warrants humility and resignation, but, if not by resignation, the Legislature needs to take appropriate action to restore public confidence. From actions on the Floor the previous week, he assumes it is the will of the House to consider the findings and recommendations of the Committee. He reviewed the procedural history:

- An ethics complaint was filed by Representative Katie Hobbs on February 27, 2012. A copy is on file in the Chief Clerk's Office; a copy was provided to the Committee Members for review, as well as to Representative Patterson for his review and written response.
- The Committee met on March 13, 2010 and recommended the appointment of special counsel to conduct an investigation and report on the behavior of Representative Patterson; the House retained the law firm of Stinson Morrison Hecker LLP.
- On March 28, 2012, a written response was received from Representative Patterson to the ethics complaint, which is on file in the Chief Clerk's Office and was provided to the Committee Members for review.

- On March 30, 2012, the investigation by special counsel was completed. The written report and exhibits are on file in the Chief Clerk's Office; a copy of the report and exhibits were provided to each Committee Member to review and to Representative Patterson for his review and written comment.
- Representative Patterson was given an opportunity to submit written comments on the report by special counsel by April 10, 2012. His written response was received and will be distributed to the Members and filed in the Chief Clerk's Office.

Chairman Vogt added that at this time, the Committee will recess in order for the Members to review the documents submitted by Representative Patterson.

THE MEETING RECESSED AT 9:39 A.M. UNTIL THE SOUND OF THE GAVEL.

THE MEETING RECONVENED AT 3:45 P.M. ALL MEMBERS WERE PRESENT.

THE MEETING RECESSED AT 3:46 P.M. UNTIL APRIL 11, 2012 AT 9:30 A.M.

THE MEETING RECONVENED ON APRIL 11, 2012 AT 9:35 A.M. ALL MEMBERS WERE PRESENT.

Chairman Vogt stated that Representative Patterson expressed the desire to be heard by the Committee and answer questions any Members may have, for which he will be given one hour. He recommends that the Committee proceed by way of special procedure in that the Members limit any verbal presentation to Representative Patterson's remarks so, without objection, Ethics Committee Rule 15 is suspended. Further, the Committee will consider a report to the House that will likely be reviewed, discussed and adopted.

Chairman Vogt stated that Representative Patterson is not being granted immunity from testimony. He is not under compulsion to be present, give testimony or answer questions, and anything he does or says to the Committee can and will be used against him in a court of law, if it is appropriate. There are proceedings against Representative Patterson in criminal court in Tucson, but nothing Representative Patterson does or says will affect those proceedings.

Representative Daniel Patterson answered that he understands.

Chairman Vogt noted that much evidence by the Committee is based on written declarations from House Members, which Representative Patterson challenged in his written response.

Representative Patterson said he appreciates the opportunity to speak. He did not see the Chairman's email invitation until late last night so he is not as prepared as he would like. He is truly sorry to anyone he offended or intimidated in the House. It was never intentional, and although the position as a representative of the people can often be very stressful, he is attempting to keep a more positive attitude and tone down his rhetoric. He respects everyone in the House and he is not a threat to anyone.

He stated that careful consideration and response to his March 28, 2012 letter to the Committee is very important. He submitted that Representative Hobbs' complaint fails Committee Rule 13

and is not valid because she has no personal knowledge of the alleged incidents in the complaint, and it should be dismissed. If the Committee decides to move for an expulsion, he requests his due process right to a full hearing as provided under Committee Rule 15. The Committee should not proceed until he has an opportunity to clear his name in a court of law, which will not happen until April 26, 2012, at which time he and his attorney are confident he will be completely exonerated.

Representative Patterson opined that the Manning report seems very biased and not very credible. He and his attorney offered up to two full days to meet with Mr. Manning, who refused. He only had a one-hour conference call with Mr. Manning and most of the issues in the report he was not asked about, so he never had a chance to respond before the report was issued. If the Committee will not dismiss the complaint that violates Committee Rule 13, then at least any and all anonymous claims in the report should be dismissed, as well as any and all issues outside those specifically raised in the complaint's statement of facts. The discipline recommendation of the report, which it is not clear to him was even asked for, appears to be largely based on those anonymous complaints and outside issues; the recommendation must be dismissed.

Representative Patterson continued that voters have a right to choose the type of representation they want in the House. There have been no recall efforts against him in his district or clamoring by constituents to throw him out of office, and all of the constituents that he knows of have been very supportive. Although he made some mistakes that he truly regrets and is working to correct, removal from the House would be too severe and a very bad precedent for the State of Arizona. He has already been punished with the loss of his Committee assignments, assistant, office and significant damage to his reputation. Nothing he has done warrants his resignation or removal from the House.

Representative Patterson made the following points in response to questions posed about the basis of his comment that the Manning report is biased.

- Many words in the report describing his character are words used by the lawyers and no one else.
- No effort was made to meet with him, but Mr. Manning complained in the report that he would not meet with him.
- Mr. Manning has political aspirations, his firm has many political connections and it is curious that he would volunteer to do this work.
- The Manning report goes far beyond anything raised in the complaint filed by Representative Hobbs.
- He has no idea who was interviewed because many Members said they were not contacted and one individual's comment that he did not agree with the allegations was not included in the report.
- He would have been more comfortable if the investigation had been referred to the Attorney General, which is accountable to the State of Arizona, whereas Mr. Manning is not accountable to anyone.

Representative Patterson was asked about declarations of his disturbing and disruptive behavior by Members named in the report and corroborated by other Members who witnessed the incidents, occurring as far back as 2010. Representative Patterson submitted that the declarations were not taken under oath or the basic process of a fair investigation. Committee Rule 15 makes it clear that he should be given an opportunity to cross-examine and question accusers in a formal hearing. He was re-elected in 2010 even though voters knew about some of these issues and the decisions of voters should be respected.

In response to questions about incidents of disorderly conduct and violation of House rules on the Floor, Representative Patterson indicated that he does not recall leaving the Floor during a vote without prior permission from the Speaker to pick up his daughter from school a few times. He only left the Floor after the voting board was closed or between votes to go to the lounge or restroom, but he never intentionally left the Floor during votes. He said he regrets some comments he made on the Floor but he does not believe he impugned anyone. He becomes passionate about issues and sits in the back of the chamber where he cannot always hear, especially since he is totally deaf in his right ear, but he would not intentionally disrespect orders from the Speaker to stop talking after the five-minute time limit.

In response to further questions, Representative Patterson addressed specific declarations in the report, corroborated by other Members, involving Representative Farnsworth, Representative Amanda Reeve, former Senator Russell Pearce and Representative Jerry Weiers. He said some of the issues raised are legitimate, but he does not agree with all of the claims. If the Committee decides to proceed with expulsion, he would like to have a public hearing to address the declarations.

Representative McCune Davis brought up the fact that Representative Patterson violated a Tucson City court order by contacting Ms. Escobar, citing a letter from the Tucson prosecutor attached as Exhibit 30 to the investigative report. Representative Patterson responded that simply because a city attorney alleges something does not substantiate the claim. He did not violate that court order, and this discussion is reaching far beyond the scope of the original complaint.

Chairman Vogt respectfully disagreed stating that the complaint was about his behavior, and the Committee is discussing his pattern of behavior. Representative Patterson said he submitted a letter to the Committee on March 28, 2012 and never received a response about the validity of the complaint. Chairman Vogt replied that the Committee did so on March 13, 2012 by voting unanimously that there is good cause to hire independent counsel to investigate the complaint; Representative Patterson's letter was his comment on the complaint and did not pose questions to the Committee.

Representative McCune Davis stated that the basis of the complaint was a public report of domestic violence. She read a statement from an official Tucson Police Department document by a witness to a domestic violence incident involving Representative Patterson. She stated that incident suggests the very same pattern of behavior seen at the Legislature.

Representative Patterson responded that the accuser recanted the allegations and confirmed that to Howie Fischer, a Capitol reporter. Mr. Manning's report states that those incidents will not be

looked into, yet they are mentioned often in the report. That situation is up to a court to decide, not the Legislature, which should not be duplicating the work of the court. He said he pled not guilty to all of the associated charges and expects to be fully exonerated.

Representative Farnsworth stated that he does not believe the efforts of the Committee duplicate the efforts of the court; Ms. McCune Davis mentioned that as a concern to corroborate other things that are going on in the pattern of bad behavior. This is not a court of law or civil or criminal proceeding, but a political body proceeding as duly authorized under the Arizona Constitution and House rules. Incidents that did not occur at the House are relevant, if they are substantiated, because it reflects on the Legislature.

Representative Patterson responded to statements in the report that he was admonished by Democratic Leadership on several occasions for unbecoming and unprofessional conduct and asked to apologize to Members, staff and lobbyists. He indicated that he recalled one meeting with Representative Chad Campbell at his own request to consider some things that were going on, but he does not agree with the characterization that he had to be continually admonished. He was never asked to leave the grounds by any Member, except the prior week when the Speaker asked him to take a few days off so people could calm down.

Representative Farnsworth asked for an explanation of Representative Patterson's comment during a press conference that this would not be happening to him, except that he is a white male. Representative Patterson said that statement was made by Reverend Jarrett Maupin, a civil rights activist and community leader in Phoenix.

Chairman Vogt noted that Representative Patterson's response states that part of this process is racially motivated. Representative Patterson said even though he was elected and re-elected in majority-minority District 29, people in the Democratic Party have said they only want to run Latino candidates in the new District 3. He is one of the more independent Members of the Legislature and he has received pressure over the years from other Democratic lawmakers and Democratic Party officials to "get in line." He opined those are contributing factors in what is going on; he acknowledged that his behavior is also partly a factor.

Chairman Vogt noted the declarations in the report occurred over the course of years and Representative Patterson's behavior has not changed. Representative Patterson respectfully disagreed. He acknowledged there have been incidents, but not recently. He has been a legislator for four years and he was re-elected by voters in November 2010 when voters knew about many of the allegations. He acknowledged that the Committee has the authority to expel a Member, but noted that no legislator was ever expelled because of similar allegations; only because of convictions of crime or indictments such as during AzScam.

Representative Farnsworth noted that two legislators who had no history of bad behavior were expelled in 1948 because of fisticuffs in the Capitol. It was unseemly behavior that occurred on one occasion, but the Members decided it violated the premise of having orderly behavior and expelled the two Members. Representative Patterson said he never came close to starting a brawl in the House, which would be an illegal act.

Representative Farnsworth stated that threatening, intimidating, etc. are also illegal acts. He asked what is meant by “rhetoric” and whether Representative Patterson’s interaction with Representative Weiers in which he was cursing could be seen as threatening or if he was simply engaging in rhetoric. Representative Patterson replied that he had a disagreement with Representative Weiers that was a two-way exchange, but it was resolved; he never intentionally intimidated or offended anyone, but he realizes that has happened, which he regrets. He is referring to rhetoric as to how he might speak in Committees or on the Floor by avoiding making comments that might appear inflammatory to other Members.

In response to questions, Representative Patterson said he never invoked legislative immunity during the incident with Ms. Escobar and no one asked him to waive legislative immunity. He opined that the Tucson City Attorney Mike Rankin disregarded the Constitution by bringing charges against him during the legislative session rather than afterward. It is a bad precedent for lawmakers who live in that jurisdiction. He clarified that he never offered to waive legislative immunity. He said the Committee must allow due process to play out in the courts. If the courts dismiss the charges or deem the charges unconstitutional, the Committee and House could be placed in a difficult position.

Chairman Vogt noted that actions of the Committee will not affect Representative Patterson’s case in Tucson. The purpose of the Committee is to discuss whether or not his behavior violated House rules. Representative Patterson submitted if that case is not being considered by the Committee, it should be taken out of the report. If other Members are going to state these things and if the Committee is going to move for expulsion, there should be a full hearing. He noted that former legislator Carolyn Walker from Phoenix was allowed an entire week to present her side of the story in hearings during AzScam.

Representative Farley referred to the last four pages of the supplemental pleading relating to why Representative Patterson believes his constitutional rights are being violated and stated that it seems to suggest Representative Patterson may sue the State of Arizona for damages. Representative Patterson responded that he would rather not have to consider that but, in all fairness, all possibilities need to be mentioned. He would prefer that the Committee entertain some other type of punishment than expulsion. He does not believe the Committee asked for a recommendation in Mr. Manning’s report, but it is included when it is the Committee’s decision. He said he did the best he could to respond to the report in a very short time frame. He repeated an apology to the other Members and indicated that such incidents will not happen again. He requested that all the anonymous sections be removed from the report.

Chairman Vogt stated that each Member read the investigative report, exhibits and written response, and heard the comments by Representative Patterson. The Members were asked to determine, based on those, if Representative Patterson engaged in disorderly behavior according to Article 4, Part 2, Section 11, of the Arizona Constitution. A draft report was distributed to the Members for consideration (Attachment 1).

Representative Farnsworth moved that the Report of the Committee on Ethics dated April 11, 2012 (Attachment 1) be adopted.

Representative Farnsworth read the report, which states that the Committee finds substantial evidence that Representative Patterson has engaged in a pattern of disorderly behavior and recommends to the House of Representatives that the Committee agrees with the special counsel's recommendation that Representative Patterson should be expelled for disorderly behavior (Attachment 1).

Representative Farnsworth stated that his consideration in this matter has not gone beyond the scope of the statements and declarations of Members. The Report of the Committee on Ethics does not substantiate any of the other actions that are going on, but simply states the Committee is aware that those exist and are not necessarily evidentiary in this hearing. He expressed concern with the statement that the Committee concurs with the recommendation of the investigator, when he does not believe that was the role of the investigator. He said his decision has nothing to do with the investigator's recommendation.

Mr. Farnsworth moved that the Report of the Committee on Ethics dated April 11, 2012 (Attachment 1) be amended in the last paragraph on page 2 to read as follows:

“Based on the above finding of facts, the Committee on Ethics recommends to the House of Representatives that Representative Patterson be expelled for disorderly behavior under Article 4, Part 2, Section 11, Constitution of Arizona”

The motion carried.

Representative Farnsworth commented that he arrived at the meeting not knowing how to vote. The discussion and questioning with Representative Patterson makes it clear that there has been an ongoing pattern that Representative Patterson recognizes, but understates his participation. He personally had an occurrence with Representative Patterson in the past that would not have caused him to recommend expulsion, but such occurrences have been ongoing, and Representative Patterson has been unwilling to accept responsibility for his actions, which is what led him to make up his mind.

Representative McCune Davis stated that as public officials, legislators' behavior in public and at the Capitol matters. Representative Patterson's poor quality of interaction with other Members and his intent to diminish the statements of others are the premise for her opinion that the Committee should move forward with the motion.

Mr. Farnsworth moved that the Committee adopt the Report of the Committee on Ethics dated April 11, 2012 as amended (Attachment 1A). The motion carried by a roll call vote of 5-0-0-0 (Attachment 2).

Chairman Vogt announced that, without objection, the Report of the Ethics Committee (Attachment 1A) will be referred to Speaker Andy Tobin.

Without objection, the meeting adjourned at 11:38 a.m.

Linda Taylor, Committee Secretary
April 13, 2012

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)