

COMMITTEE ON LEGAL SERVICES

Rep. Jeanne Labuda, Chair
 Sen. John Morse, Vice Chair
 Rep. Bob Gardner
 Rep. Daniel Kagan
 Rep. Claire Levy
 Rep. Nathan Roberts
 Sen. [redacted] Brophy
 Sen. [redacted] Morgan Carroll
 Sen. Shawn Mitchell
 Sen. Gail Schwartz

OFFICE OF LEGISLATIVE LEGAL SERVICES
COLORADO GENERAL ASSEMBLY

FACSIMILE: 303-639-4101
 E-MAIL: olls.ga@state.co.us



STATE CAPITOL BUILDING, ROOM 091
 200 EAST COLFAX AVENUE
 DENVER, COLORADO 80203-1782

DIRECTOR
 Charles W. Pike

DEPUTY DIRECTORS
 Dan L. Carlin
 Sharon L. Eubanks

**REVISOR OF
 STATUTES**
 Jennifer G. Gilroy

SENIOR ATTORNEYS
 Gregg W. Fraser
 Deborah F. Haskins
 Bart W. Miller
 Julie A. Pelegrin

**SENIOR STAFF
 ATTORNEYS**
 Jeremiah B. Barry
 Christine B. Chase
 Edward A. DeCecco
 Michael J. Dohr
 Kristen J. Forrestal
 Duane H. Gall
 Jason Gelender
 Robert S. Lackner
 Thomas Morris
 Nicole S. Myers
 Jerry Payne
 Esther van Mourik

**SENIOR STAFF
 ATTORNEY FOR
 RULE REVIEW**
 Charles Brackney

**SENIOR STAFF
 ATTORNEY FOR
 ANNOTATIONS**
 Michele D. Brown

STAFF ATTORNEYS
 Troy Bratton
 Brita Darling
 Kate Meyer
 Jane M. Ritter
 Richard Sweetman

**PUBLICATIONS
 COORDINATOR**
 Kathy Zambrano

MEMORANDUM

TO: House Ethics Committee

FROM: Office of Legislative Legal Services

DATE: January 22, 2010

SUBJECT: Probable Cause¹

The purpose of this memorandum is to provide the members of the House Ethics Committee ("Committee") with an understanding of the probable cause determination that lies before them pursuant to House Rule 49. This memorandum is submitted merely as a tool for the Committee's use in considering the issues before it.

Standards for Finding "Probable Cause"

A. Preliminary Investigation Stage

The Committee is at the "preliminary investigation" stage under House Rule 49 (c) and (d), at which stage the Committee is charged with the responsibility of examining the complaint, the answer (if any), and any other evidence compiled pursuant to the request of the Committee, in order to determine whether probable cause exists to find that a violation may have occurred. It is noteworthy that the Committee is not and cannot be a court of law that determines whether a violation of criminal law has occurred. Pursuant to House Rule 49, if the Committee finds that no ethics violation has occurred, the complaint is to be dismissed. Even were the Committee to determine that there is probable cause to believe that a violation may have occurred, its

¹ This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in its capacity as in-house counsel for the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

or statutory provisions or any legislative rules or other legislative standards of conduct.²

Since the House Rule 49 procedure is not criminal, proof of an ethical violation (as opposed to a breach of fiduciary duty under article 18 of title 24, C.R.S.) probably need not be "beyond a reasonable doubt".³ However, there is nothing in House Rule 49 that indicates an intent to reverse the usual rule that the prosecution must shoulder the burden of proof. It therefore makes sense to assume that the complainant in a House Rule 49 proceeding must prove his or her case. The Committee has discretion to decide whether the burden of proof should be by a preponderance of the evidence, by clear and convincing evidence, beyond a reasonable doubt, or by some other standard.

² This approach is consistent with ethics procedures in other states. Ethics committees in other states consider hearsay evidence. They make preliminary judgments as to whether a complaint has stated an ethical violation, and if it does not, the complaint is dismissed. Other grounds for dismissal may be that the complaint is frivolous or that the violation was inadvertent, unintentional, technical, minor, or has been cured.

³ Even at the preliminary hearing on a criminal charge, the prosecution is not required to produce evidence sufficient to prove the defendant's guilt beyond a reasonable doubt. *People v. Walker*, 675 P.2d 304 (Colo. 1984).