

## MINUTES

# House Select Investigative Committee

March 18, 2010  
Room 159-S, State Capitol

### Members Present

Representative Clark Shultz, Chair  
Representative Carl Holmes, Vice-Chair  
Representative Nile Dillmore, Ranking Minority  
Representative Bob Grant  
Representative Jeff King  
Representative Jerry Henry

### Members Absent

None

### Staff

Raney Gilliland, Kansas Legislative Research Department  
Athena Andaya, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Gary Deeter, Committee Secretary

### Conferees

Representative Paul Davis, Minority Leader, Kansas House of Representatives

### Others Attending

See attached sheet

The Chairman called the meeting to order, noted a search for historical precedents ([Attachment 1](#)), further noted distribution of a document supporting the position of the complainant ([Attachment 2](#)), and welcomed Representative Paul Davis, Minority Leader, Kansas House of Representatives, who presented the Complaint, which was signed by the six leadership members of the minority party ([Attachment 3](#)).

Leader Davis briefly traced the history of the office of Speaker of the House of Representatives, noting that Speaker O'Neal is the 70<sup>th</sup> Representative to hold the office. He stated that the office is to be held in high esteem, but also comes with higher standards of accountability.

Leader Davis reviewed the events that led up to the Complaint, citing the Speaker's

current opposition to the sweep of special fee funds into the State General Fund, even though earlier votes by the Speaker supported such action. He cited a list of clients which, as a private attorney, the Speaker represented; Mr. Davis concluded that a conflict of interest existed when the Speaker represents some of the most influential interest groups in the state.

Further, Leader Davis referenced a letter from the Barton County Attorney Richard Boeckman which made it appear that the Speaker, as a private attorney, was soliciting clients for a class action against the State of Kansas, a lawsuit which, if successful, could bring a significant financial benefit to the Speaker if the contract calls for a contingency fee for the Speaker. Mr. Davis concluded that such relationships and actions constitute misconduct. He said that, although misconduct is not defined by statute or House rules, questions of the Speaker's integrity and the Speaker's pattern of conduct lead to a clear albeit subjective conclusion of misconduct. He concluded by stating that if the Speaker recuses himself from the lawsuit, the Complaint will be withdrawn.

Leader Davis responded extensively to members' questions.

Responding to a question, Leader Davis acknowledged that some of the allegations can be considered ancillary, even though they provide a context for the primary complaint—that the Speaker is using his position to enhance his relation with special interest groups who are his private clients, and that, by filing of a lawsuit against the state while having significant legislative influence on the outcome of the lawsuit, the Speaker stands to profit as a private lawyer.

A member posed a series of questions to ascertain how the Speaker's actions are considered misconduct, to which Leader Davis replied:

- A legislator-lawyer may represent a client when dealing with administrative actions before a state agency unless, as a legislator, the attorney is or was involved in the legislation from which the lawsuit arose. As an example, he cited as inappropriate a legislator-lawyer representing the Schools for Fair Funding, which brought the Montoy case to the Kansas Supreme Court.
- A legislator not in a leadership position could acceptably solicit a client to bring a suit against the state, but legislative leadership should be held to a higher level of integrity.
- It is acceptable for a lawyer-legislator to represent a lobbyist if there is no clear relationship between the legal service and present or future legislation.
- A legislator who receives fees for legal services from a variety of lobbyists or associations, especially if the lobbyists represent powerful special interests, displays a pattern that rises to the level of misconduct.
- The Speaker did not violate any statute, rule of the House of Representatives, or

professional standards, nor is there any case law to act as precedent regarding this Complaint.

- To better establish the validity of the Complaint, further information from the Barton County Attorney may ascertain whether the Speaker's legal fees are hourly or on contingency.
- The appearance of impropriety equals misconduct in the Speaker's case, as evidenced by the contextual pattern of behavior and the media editorials.

Responding to another member's question, Leader Davis replied that the Speaker's conduct reflects poorly on all legislators, but that developing rules or guidelines to define misconduct would limit legislative flexibility in dealing with such cases.

Another member's questions prompted further responses from Leader Davis:

- Although attorney-client privilege is considered sacrosanct, information regarding compensation could be obtained through executive session of the Committee, or the Revisor might view the contract and report pertinent information to the Committee.
- Compensation from the lawsuit is an important consideration; it shows whether or not the Speaker profited privately by using his position as Speaker, especially if compensation is being paid by the special interest groups listed in the lawsuit.
- The Complaint is lodged with the legislature rather than the Ethics Commission because the Ethics Commission does not deal with this kind of situation.
- No statutes address prohibition of contingency fees.
- The Barton County letter, while not stating definitively, appears to indicate a contingency-based fee.

Replying to another series of questions, Leader Davis stated that:

- If Speaker O'Neal were replaced in the lawsuit by another of the firm's attorneys, the complainants would not rescind the Complaint; however, they would rescind the Complaint if the Speaker were to provide assurances that he would receive no remuneration from the lawsuit.
- If the Speaker received remuneration from special interests for non-legislative issues, there would be no reason for the Complaint.
- The charge of misconduct was brought about by a combination of two issues:
  1. The Speaker filed a lawsuit against the state while presiding over legislation that could influence the outcome of the lawsuit; and
  2. The clients in the lawsuit are special interest groups that have business before the legislature.
- The two charges are interrelated and cannot be separated.
- If the Speaker and his law firm withdraw from the lawsuit, the Complaint will be withdrawn. If the investigation goes forward, the Complainants do not wish to

recommend reprimand, censure, or expulsion; that is the Committee's responsibility.

Responding to further questions, Leader Davis replied that compensation is a key issue in the Complaint. Drawing the line on misconduct cannot be decided on one issue; the Committee must consider the collective pattern of the Speaker's position and performance. In so doing, the appearance of impropriety—and, therefore, misconduct—is apparent, since a Speaker must be held to a higher standard. The issue before the Committee is different from that of a teacher-legislator, whose vote for educational funding does not result in specific compensation for one teacher, but retains the arms-length distance between a legislator and a lobbyist. Even if Speaker O'Neal were Legislator O'Neal, there is no arms-length distance in this lawsuit.

The Chair thanked Leader Davis for his testimony and his responsiveness to questions.

Members discussed a mechanism for requesting further documentation. The Chair suggested requests be submitted to him by Friday, March 19, 2010. A member observed that information surrounding the Barton County letter would be a key component in understanding the lawsuit fee structure.

The meeting was adjourned at 4:20 p.m. The next meeting is scheduled for Tuesday, March 23, 2010.

Prepared by Gary Deeter

Approved by the Committee on:

March 30, 2010