

JOINT RULES - ETHICS PROCEDURE AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

Leonard M. Blackham
Joseph L. Hull

Ed P. Mayne
Terry R. Spencer

Michael G. Waddoups

A JOINT RESOLUTION OF THE LEGISLATURE REVISING ETHICS COMMITTEE RULES TO ALLOW A WAIVER OF CERTAIN PROCEDURES; SEPARATING THE DISCIPLINARY PHASE OF AN ETHICS INQUIRY FROM THE PRELIMINARY INQUIRY PHASE; PROVIDING A PREPONDERANCE OF THE EVIDENCE STANDARD OF PROOF IN A WAIVER; AND PROVIDING AN EFFECTIVE DATE.

This resolution affects legislative rules as follows:

AMENDS:

JR-16.04

ENACTS:

JR-16.07

Be it resolved by the Legislature of the state of Utah:

Section 1. **JR-16.04** is amended to read:

JR-16.04. Rules of Procedure for the Senate and House Ethics Committees.

In hearing and processing all complaints, these rules govern the procedures to be followed by the Senate and House Ethics Committees:

(1) (a) No information received by the committees concerning any alleged violation shall be disclosed to the public until the member of the Senate or House charged in the violation has received [~~the Statement of Alleged Violations~~] a Summary of the Preliminary Inquiry provided for under Subsection (4).

(b) No meetings of the committees shall be open to the public except a disciplinary hearing under [~~Subsection (6)~~] JR-16.07.

(2) (a) All complaints submitted to the committees shall be in writing. Each complaint shall

contain the following information:

(i) the name and address of the three Senators, if the respondent is a Senate member, or three Representatives, if the respondent is a House member, who are filing the complaint, who are the complainants;

(ii) the name and position or title of the person alleged to be in violation, who is the respondent;

(iii) the nature of the alleged violation;

(iv) any facts alleged to support the complaint, and when facts are based upon the information and belief of the complainants, the complaint shall state that and give the basis for the information and belief; and

(v) all documents which support the complaint as an attachment to it.

(b) All complaints shall be filed directly with the President of the Senate, if the respondent is a Senator, the Speaker of the House of Representatives, if the respondent is a Representative, and with the appropriate ethics committee chairman.

(3) (a) Within five days after receipt of the complaint, the staff of the committees shall examine each complaint to determine if it is in compliance with Subsection (2). If the complaint is not in compliance, it shall be returned to the complainants with a copy of the legislative rules on ethics. The complainants may resubmit the complaint. If the complaint is in compliance with the rules, it shall be filed with the chairman and the co-chairman of the committee.

Every member of the committee shall be notified of the filing of the complaint and its availability for inspection.

(b) Within 30 days after the complaint is filed, the chairman and co-chairman shall place the complaint on the agenda for consideration at the next committee meeting with the recommendation:

(i) that the complaint be considered; or

(ii) that the complaint be dismissed because it fails to allege facts which constitute a violation.

(4) (a) At the next meeting of the committee, the committee shall determine whether the alleged violation in the complaint is within the jurisdiction of the committee and whether the complaint merits further inquiry. The complainants and respondent shall be notified, in writing, of

the action taken by the committee.

(b) If the committee determines that further investigation into the matter is merited, the committee meeting shall become a preliminary inquiry to determine whether the violation occurred. This preliminary inquiry is not open to the public.

(c) The chairman and the Director of the Office of Legislative Research and General Counsel may require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of any materials the committee considers necessary to the inquiry.

(d) At the beginning of the preliminary inquiry, in order to expedite the committee's investigation and to facilitate a proper resolution of the matter, the committee cochairs and the respondent may agree in writing that the procedural requirements of JR-16.07 are waived.

~~(e)~~ (e) In the preliminary inquiry, the following rules apply:

(i) Scope of Preliminary Inquiry. The scope of the preliminary inquiry is limited to the alleged violations stated in the complaint.

(ii) Attendance of Respondent or Others.

(A) During the testimony and evidentiary stage of the preliminary inquiry, the respondent and his counsel may be present.

(B) Only (Senate, House, or Joint) Ethics Committee members and its staff shall be present during the other portions of the preliminary inquiry.

(iii) Evidence. Only relevant or material evidence is admissible in the hearing. The chairman's determination of admissibility is final and may only be overruled by a majority vote of the committee.

(iv) Record. A record shall be made which includes rulings of the chair, questions of the committee and its staff, the testimony and responses of witnesses, sworn statements submitted to the committee, relevant documents, and such other matters as the committee or its chairman may direct.

Except for the official record, no camera or recording device may be brought in or used in the preliminary inquiry.

(v) Committee Chairman.

(A) The committee chairman is vested with the power to direct the committee in the preliminary inquiry.

(B) If a committee member objects to a decision of the chair, that member may appeal the decision to the committee by stating: "I appeal the decision of the chair." This motion is nondebtable. The chairman shall direct a roll call vote to determine if the committee membership supports the decision of the chair. A majority vote of the committee is necessary to overrule the decision of the chairman.

(C) The chairman may set time limitations on any part of the preliminary inquiry.

(vi) Testimony.

(A) At the direction of the committee chairman and co-chairman the committee may hear the testimony of the complainants, the respondent, and witnesses.

(B) If a witness desires, the witness shall be permitted to make a brief opening statement.

(C) Examination of a witness shall be under the direction of the committee chairman. After the witness's presentation, committee members shall question the witness, after which the respondent shall be given an opportunity to question the witness. Further examination by the committee, committee staff, or the respondent shall be as directed by the committee chairman.

(D) The witness's disobedience to the chairman's direction to answer a question constitutes contempt. The chairman's direction may only be overruled by a vote of the majority of the committee members present.

The object of the Fifth Amendment privilege not to incriminate oneself is so no criminal action will be prosecuted. If a witness cannot be prosecuted for the crime to which his testimony relates, it is improper for the witness to invoke the privilege.

(E) The committee chairman shall direct each witness to furnish any relevant book, paper, affidavit, or other written evidence for the committee's consideration, which material the witness has chosen to bring or the production of which has been required by subpoena duces tecum. Unless overruled by a majority vote of the committee members present, disobedience to the chairman's direction to produce such documents in response to a subpoena duces tecum constitutes a contempt.

(F) A witness may be allowed to insert in the record sworn written statements of reasonable length relevant to the purpose, subject matter, and scope of the investigation.

(G) Unless otherwise directed by committee, all witnesses shall testify under oath.

(H) Legislative General Counsel shall administer the oath to each witness.

(vii) Response of Respondent. The respondent shall be given an opportunity to respond, orally or in writing, to the allegations stated in the complaint.

(viii) Advice of Counsel.

(A) Any witness testifying before the committee may have his counsel present.

(B) When the committee seeks factual testimony within the personal knowledge of the witness, such testimony and answers should be given by the witness himself and not suggested to the witness by counsel. Counsel for a witness should not advise the witness during the witness's testimony, except when specifically requested by the witness.

(C) The participation of counsel at a hearing and while a witness is testifying is limited to advising the witness of his legal rights. Counsel shall not be permitted to address the committee, ask questions of any witness, or engage in oral arguments with the committee, but must confine his activity exclusively to private conversations of legal advice to his client. Counsel's failure to abide by these rules is grounds for counsel's exclusion from the preliminary inquiry.

(ix) Contempt. A majority of the members of the committee may compel obedience to the requirements of the committee by way of contempt proceedings begun by application to a state district court as to any person who:

(A) fails to comply with a subpoena or a subpoena duces tecum;

(B) refuses to answer a question relevant to the investigation which does not infringe on his constitutional rights; or

(C) is guilty of contempt on any other grounds specified in statute or recognized at common law.

(x) Interested Persons. Upon consent of a majority of its members, the (Senate, House, or Joint) Ethics Committee may permit any person, not compelled or invited, to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record.

(xi) Subpoena Power. At the direction of a majority of the committee, the committee chairman may direct staff to issue subpoenas to direct the attendance of witnesses and to issue

subpoena duces tecum to direct the production of documents.

(xii) Release of Testimony. The release of any testimony or other evidence presented at a closed hearing and the form and manner of such release shall be by a majority vote of all members of the committee. Committee members and its staff shall not publicly disclose any other part of the preliminary inquiry.

(xiii) Continuance of Preliminary Inquiry. If a majority of the committee determines that further evidence and testimony are necessary, they may adjourn and continue the preliminary inquiry hearing to a future date, which date shall be established by a majority of the committee.

(xiv) Burden of Proof.

(A) If, at the conclusion of the preliminary inquiry in which the procedural requirements of JR-16.07 are not waived, the committee determines, by a preponderance of the evidence, that there is reason to believe the alleged violation of the Code of Official Conduct did occur, the committee shall direct staff to prepare a Summary of the Preliminary Inquiry.

(B) If, at the conclusion of the preliminary inquiry in which the procedural requirements of JR-16.07 are waived, the committee determines, by a preponderance of the evidence, that there is reason to believe the alleged violation of the Code of Official Conduct did occur, the committee shall direct staff to prepare a Summary of the Preliminary Inquiry.

~~[(xv) Special Prosecutor. If an ethics probe goes beyond the preliminary inquiry stage, the Senate or House Ethics Committee shall direct the chairman to appoint a special prosecutor. This special prosecutor shall be paid by the Senate if it is a Senate Ethics Committee or the House if it is a House Ethics Committee. The special prosecutor shall prepare the Statement of Alleged Violation from the summary prepared by the committee staff. The special prosecutor is also responsible for prosecuting the respondent in the disciplinary hearing.]~~

~~[(xvi)] (xv) Voting. If the committee is unable to achieve a majority vote directing further proceedings against the respondent, this constitutes a dismissal of the complaint.~~

~~[(xvii)] (xvi) Announcement of Committee's Decision. At the conclusion of the committee's deliberations in the preliminary inquiry, when a decision has been reached, the respondent and his counsel shall be invited into the committee room to hear the committee's decision, which shall be~~

written as a Summary of the Preliminary Inquiry.

~~[(e)]~~ (f) At the completion of the preliminary inquiry, the staff of the committee shall keep a file containing a comprehensive summary of the inquiry.

~~[(f) If the committee determines that there is reason to believe the alleged violation did occur, the committee shall direct the special prosecutor to transmit to the respondent and to the complainants a copy of the Statement of Alleged Violation. The statement shall be divided into counts. Each count shall allege a separate violation, and the facts which support each count.]~~

~~[(5) (a) The respondent has 30 days from receipt of the Statement of Alleged Violation to respond. The response shall be in writing and shall be signed by the respondent or the respondent's counsel. The response shall be limited to the following:]~~

~~[(i) an admission or denial of each count, under oath, with any supportive evidence or relevant information;]~~

~~[(ii) an objection to any or all counts on the grounds that the count fails to state facts which constitute a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to a member of the Senate or House in the performance of legislative responsibilities;]~~

~~[(iii) an objection to the jurisdiction of the committee considering the allegations contained in the statement;]~~

~~[(iv) a motion for a more detailed statement regarding the cause of action stated in the complaint; or]~~

~~[(v) an objection to the participation of any member of the committee, the committee's staff, or the special prosecutor on the grounds that that person would be unable to render a fair and impartial judgment or investigation. The committee, by majority vote, shall judge the qualifications of the person against whom the objection is raised.]~~

~~[(b) The respondent's failure to submit a response to the Statement of Alleged Violation or any count contained in it constitutes an admission of the alleged violation.]~~

~~[(c) Within 30 days after receipt of the respondent's response, the committee shall determine, by majority vote, to:]~~

~~[(i) dismiss the complaint;]~~

~~[(ii) grant or deny the respondent's motion for a more detailed statement, and if this motion is granted, direct the special prosecutor to give a more detail in the Statement of Alleged Violation and give the respondent 30 days from receipt of this statement to respond as provided in Section (5);]~~

~~[(iii) hold a disciplinary hearing; or]~~

~~[(iv) defer action, if a judicial proceeding is pending.]~~

~~[(d) If the committee is unable to achieve a majority vote directing further proceedings against the respondent, this constitutes a dismissal of the statement. The respondent and complainants shall be notified, in writing, of the action taken by the committee.]~~

~~[(e) The chairman may extend any time limitation, if the extension would facilitate a fair and complete inquiry. The chairman may shorten any time limitation, if special circumstances necessitate this being done.]~~

~~[(6) (a) Prior to any disciplinary hearing, the committee shall adopt a statement establishing the scope and purpose of the hearing. A copy of this statement shall be furnished to all witnesses. The scope and purpose may expand or contract during the hearing, depending upon evidence received. The respondent has the right to counsel during all stages of the disciplinary hearing.]~~

~~[(b) The disciplinary hearing is open to the public and consists of two phases. Phase I is to determine whether or not the counts in the statement have been proved. This phase shall be conducted as follows:]~~

~~[(i) The meeting shall be opened by the chairman. He shall give a statement of the committee's authority to conduct the hearing and the purpose and scope of the hearing.]~~

~~[(ii) Witnesses and evidence shall be received in the following order whenever possible:]~~

~~[(A) witnesses and evidence offered by the special prosecutor;]~~

~~[(B) witnesses and evidence offered by the respondent;]~~

~~[(C) rebuttal witnesses.]~~

~~[(iii) All witnesses shall testify under oath. Witnesses offered by the special prosecutor at a hearing shall be examined first by the special prosecutor. The respondent or respondent's counsel may then cross-examine the witnesses. The committee members and committee staff may then~~

~~question the witnesses. Redirect and recross examination may be permitted in the chairman's discretion. Witnesses offered by the respondent shall be examined first by the respondent or respondent's counsel, and then may be cross-examined by the special prosecutor. Committee members and committee staff may then question the witness. Redirect and recross examination may be permitted in the chairman's discretion.]~~

~~[(iv) At a disciplinary hearing, the burden of proof rests upon the special prosecutor to establish the facts clearly and convincingly by the evidence they introduce.]~~

~~[(c) Phase II of a disciplinary hearing is to]~~

(5) (a) After the announcement of the committee's decision in the Summary of the Preliminary Inquiry, if the procedural requirements of JR-16.07 have been waived as provided in Subsection (4)(d), the committee shall determine what recommendation should be made to the Senate or House with respect to any count which has been proved. The committee shall hear no further testimony during [Phase II] the preliminary inquiry, except by a majority vote of the committee.

~~[(d)]~~ (b) A count is not proved unless a majority of the committee so determine by vote. A count which is not proved shall be dismissed. If a majority of the committee does not vote that a count has been proved, a motion to reconsider that vote may only be made by a member of the committee who voted that the count was not proved.

~~[(7)]~~ (6) (a) The committee may, for any count that has been voted as proved, recommend one or more of the following actions:

(i) censure;

(ii) expulsion;

(iii) denial or limitation of any right, power, or privilege of the respondent, if under the Utah Constitution the Senate or House may impose such denial or limitation, and if the violation bears upon the exercise or holding of any right, power, or privilege; or

(iv) any other action the committee determines appropriate.

(b) If a majority of the committee does not vote in favor of the recommendation for action, a motion to reconsider may only be made by a member of the committee who voted against the recommendation.

(c) The committee's recommendation to the Senate or House shall be submitted in writing and shall contain a brief but complete statement of the evidence which supports their recommendations.

~~[(8)]~~ (7) The Senate or House shall consider the recommendations of the committee and shall, by a majority vote of that house, either accept, dismiss, or alter these recommendations. If the committee's recommendations are for expulsion of a Senator or Representative, acceptance of this recommendation requires a two-thirds vote of all the members elected to the Senate or to the House.

Section 2. Section **JR-16.07** is enacted to read:

JR-16.07. Disciplinary Hearing.

(1) If there is no waiver of the disciplinary hearing as provided in JR-16.04(4)(d), the Senate and House Ethics Committees shall follow these procedures at the conclusion of the preliminary inquiry.

(2) Special Prosecutor. If an ethics probe goes into a disciplinary hearing stage, the Senate or House Ethics Committee shall direct the chairman to appoint a special prosecutor. This special prosecutor shall be paid by the Senate if it is a Senate Ethics Committee or the House if it is a House Ethics Committee. The special prosecutor shall prepare the Statement of Alleged Violation from the Summary of Preliminary Inquiry. The special prosecutor is also responsible for prosecuting the respondent in the disciplinary hearing.

(3) If the committee determines that there is reason to believe the alleged violation did occur, the committee shall direct the special prosecutor to transmit to the respondent and to the complainants a copy of the Statement of Alleged Violation. The statement shall be divided into counts. Each count shall allege a separate violation, and the facts which support each count.

(4) (a) The respondent has 30 days from receipt of the Statement of Alleged Violation to respond. The response shall be in writing and shall be signed by the respondent or the respondent's counsel. The response shall be limited to the following:

(i) an admission or denial of each count, under oath, with any supportive evidence or relevant information;

(ii) an objection to any or all counts on the grounds that the count fails to state facts which

constitute a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to a member of the Senate or House in the performance of legislative responsibilities;

(iii) an objection to the jurisdiction of the committee considering the allegations contained in the statement;

(iv) a motion for a more detailed statement regarding the cause of action stated in the complaint; or

(v) an objection to the participation of any member of the committee, the committee's staff, or the special prosecutor on the grounds that that person would be unable to render a fair and impartial judgment or investigation. The committee, by majority vote, shall judge the qualifications of the person against whom the objection is raised.

(b) The respondent's failure to submit a response to the Statement of Alleged Violation or any count contained in it constitutes an admission of the alleged violation.

(c) Within 30 days after receipt of the respondent's response or the respondent's failure to respond within that time, the committee shall determine, by majority vote, to:

(i) dismiss the complaint;

(ii) grant or deny the respondent's motion for a more detailed statement, and if this motion is granted, direct the special prosecutor to give more detail in the Statement of Alleged Violation and give the respondent 30 days from receipt of this statement to respond as provided in Subsection (4)(a);

(iii) hold a disciplinary hearing; or

(iv) defer action, if a judicial proceeding is pending.

(d) If the committee is unable to achieve a majority vote directing further proceedings against the respondent, this constitutes a dismissal of the statement and of the complaint. The respondent and complainants shall be notified, in writing, of the action taken by the committee.

(e) The chairman may extend any time limitation, if the extension would facilitate a fair and complete inquiry. The chairman may shorten any time limitation, if special circumstances necessitate this being done.

(5) (a) Prior to any disciplinary hearing, the committee shall adopt a statement establishing the scope and purpose of the hearing. A copy of this statement shall be furnished to all witnesses. The scope and purpose may expand or contract during the hearing, depending upon evidence received. The respondent has the right to counsel during all stages of the disciplinary hearing.

(b) The disciplinary hearing is open to the public and consists of two phases. Phase I is to determine whether or not the counts in the Statement of Alleged Violation have been proved. This phase shall be conducted as follows:

(i) The meeting shall be opened by the chair. The chair shall give a statement of the committee's authority to conduct the hearing and the purpose and scope of the hearing.

(ii) Witnesses and evidence shall be received in the following order whenever possible:

(A) witnesses and evidence offered by the special prosecutor;

(B) witnesses and evidence offered by the respondent; and

(C) rebuttal witnesses.

(iii) All witnesses shall testify under oath. Witnesses offered by the special prosecutor at a hearing shall be examined first by the special prosecutor. The respondent or respondent's counsel may then cross-examine the witnesses. The committee members and committee staff may then question the witnesses. Redirect and recross examination may be permitted in the chairman's discretion. Witnesses offered by the respondent shall be examined first by the respondent or respondent's counsel, and then may be cross-examined by the special prosecutor. Committee members and committee staff may then question the witness. Redirect and recross examination may be permitted in the chairman's discretion.

(iv) At a disciplinary hearing, the burden of proof rests upon the special prosecutor to establish the facts clearly and convincingly by the evidence introduced.

(c) Phase II of a disciplinary hearing is to determine what recommendation should be made to the Senate or House with respect to any count which has been proved. The committee shall hear no further testimony during Phase II except by a majority vote of the committee.

(d) A count is not proved unless a majority of the committee so determine by vote. A count which is not proved shall be dismissed. If a majority of the committee does not vote that a count has

been proved, a motion to reconsider that vote may only be made by a member of the committee who voted that the count was not proved.

(6) Announcement of Committee's Decision. At the conclusion of the committee's deliberations in the disciplinary hearing, when a decision has been reached, the respondent and his counsel shall be invited into the committee room to hear the committee's decision.

(7) At the completion of the disciplinary hearing, the staff of the committee shall keep a file containing a comprehensive summary of the disciplinary hearing.

(8) (a) The committee may, as provided in Phase II of the disciplinary hearing, for any count that has been voted as proved, recommend one or more of the following actions:

(i) censure;

(ii) expulsion;

(iii) denial or limitation of any right, power, or privilege of the respondent, if under the Utah Constitution the Senate or House may impose such denial or limitation, and if the violation bears upon the exercise or holding of any right, power, or privilege; or

(iv) any other action the committee determines appropriate.

(b) If a majority of the committee does not vote in favor of the recommendation for action, a motion to reconsider may only be made by a member of the committee who voted against the recommendation.

(c) The committee's recommendation to the Senate or House shall be submitted in writing and shall contain a brief but complete statement of the evidence which supports their recommendations.

(9) The Senate or House shall consider the recommendations of the committee and shall, by a majority vote of that house, either accept, dismiss, or alter these recommendations. If the committee's recommendations are for expulsion of a Senator or Representative, acceptance of this recommendation requires a two-thirds vote of all the members elected to the Senate or to the House.

Section 3. Effective date.

This resolution takes effect upon approval by a constitutional majority vote of all members of the Senate and House of Representatives.

