

PROCEDURAL RULES OF THE LEGISLATIVE ETHICS COMMITTEE

1 APPLICABILITY AND DEFINITIONS.

- I. All business of the legislative ethics committee, created by RSA 14-B, shall be governed by these rules.
- II. As used herein, the following terms shall have the following meanings:
 - (a) "Hearing" is that procedure which follows a statement of formal charges.
 - (b) "Legislative employee" includes all house, senate, and joint staff whether employed on a part-time, full-time, permanent, or temporary basis.
 - (c) "Legislative officer" includes those employees of the House and Senate who are elected by members of the General Court.
 - (d) "Legislator" includes representatives and senators.
 - (e) "Proceeding" includes each step taken or which may be taken under these rules with respect to a complaint filed with the committee alleging violation of law, guideline, rule, or regulation and relating to the conduct of an individual in the performance of the individual's duties as a legislator, legislative officer, or legislative employee.
 - (f) "Respondent" means a legislator, legislative officer, or legislative employee against whom a complaint has been filed.

2 MEETINGS, CONDUCT OF BUSINESS, STAFF, QUORUM, AND DISQUALIFICATION.

- I. The committee may, by vote, establish regular or stated meeting dates. In addition, special meetings of the committee may be called by the chairperson or the vice-chairperson, or at the written request of three members of the committee.
- II. The business of the committee may be transacted by telephone, exchange of correspondence, including correspondence by electronic means, or other informal poll of members, unless one or more members object; provided, however, that no formal charges shall be instituted or formal proceedings ordered or unfavorable action taken against a legislator except upon deliberation and the affirmative vote of at least 4 members at a meeting of the committee.
- III. Members of the committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by these means shall constitute presence in person at a meeting.

- IV. Any business conducted outside of a meeting shall be ratified at the next meeting of the committee
- V. A quorum for the transaction of business by the committee shall be four members. No action of the committee shall be valid unless concurred in by four of its members, except as otherwise provided in these rules.
- VI. No member of the committee shall participate in any business in which his or her impartiality might reasonably be questioned.

3 CONFIDENTIALITY OF PROCEEDINGS.

- I. Except as provided in this section, all proceedings before the committee, and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the committee in the course of the proceeding, shall be confidential. No member of the committee or its staff and no employee of the committee shall disclose such proceedings, information, communications, materials, papers, files, and transcripts, except in the course of official duty or as otherwise authorized in this section.
- II. A respondent may waive his or her right to confidentiality and request the committee to conduct its initial review of the complaint publicly. In such case, all proceedings related to the committee's initial review of the complaint, other than its deliberations, shall be open to the public and the committee shall make available for public inspection all records other than its work product and internal memoranda. The respondent must notify the committee of the respondent's decision to waive confidentiality within 7 days of the date on the notice sent by the committee with the complaint. The notice of complaint shall include notice of this deadline and explain that a person who knowingly or willfully makes unauthorized disclosure of confidential matters or materials may be subject to a criminal penalty and disciplinary action. The committee shall promptly notify the complainant of any waiver of confidentiality and no proceeding may take place prior to 7 calendar days of the date of the notice sent by the committee.
- III. Upon completion of its preliminary investigation of a complaint and determining to resolve the complaint through an informal resolution or to initiate a formal hearing, the committee shall make available for public inspection all records, other than its work product and internal memoranda, relating to any the complaint and shall conduct any subsequent proceedings, other than its deliberations, in public session.
- IV. If a legislator, legislative officer, or legislative employee is publicly accused, through independent sources, of involvement in a proceeding before the committee, or publicly accused of conduct likely to become the subject of a proceeding, the committee may, at the request or with the consent of the legislator, legislative officer, or legislative employee

involved, issue brief public statements as it deems appropriate in order to confirm or deny the pendency of the proceeding, to clarify the procedural aspects thereof, and to explain the right of the legislator, legislative officer, or legislative employee to a fair hearing without prejudgment.

- V. If the pendency of a proceeding before the committee is generally known to the public, through independent sources, and the subject matter thereof is of broad public interest or speculation, and public confidence in the administration of the ethics guidelines may be threatened because of lack of information concerning the status of the proceeding and the requirements of due process, the committee may, on its own motion, issue brief statements as it may deem appropriate in order to confirm the existence of the investigation, to clarify the procedural aspects of the proceeding, and to explain that the respondent is entitled to due process.
- VI. If the committee, at any stage of a proceeding, dismisses a complaint or formal charges, whether from insufficiency of the complaint or because there is insufficient cause to proceed further with the matter or for other reason, the committee shall inform the complainant of such disposition. In addition, the committee may, at the request or with the consent of the respondent, issue a short explanatory statement to the public.
- VII. Any violation of these provisions relating to confidentiality shall constitute a violation of RSA 14-B and these rules. The committee may enforce these provisions by appropriate proceedings. The committee may, at the request of the non-violating party or on its own motion, terminate the proceedings with or without public comment. Notwithstanding the provisions of this rule, the committee may disclose to an appropriate law enforcement authority any matter that comes before it.

4 INITIAL REVIEW OF COMPLAINTS.

- I. Any individual may submit a complaint alleging that a legislator, legislative officer, or legislative employee has violated a law, guideline, rule, or regulation of the General Court.
- II. The committee shall initiate a complaint on its own motion against any individual the committee determines has not complied with the provisions of RSA 14-B:8, regarding the filing of a financial disclosure form. The chairperson shall file the complaint on behalf of the committee and is not required to recuse from participation in any subsequent proceedings regarding the complaint.
- III. Each complaint shall be submitted in writing and signed under oath by the complainant. The respondent shall be furnished with a copy of the complaint, and a copy shall be sent to each member of the committee for review.

- IV. Upon receipt of written notification from the attorney general that the attorney general has undertaken an investigation into matters relating to any complaint filed with the committee, the committee shall coordinate its proceedings with respect to the complaint with the attorney general and shall suspend its proceedings upon the request of the attorney general until completion of the investigation.
- V. The committee shall promptly examine each sworn complaint. The committee may summarily discharge the complaint without a meeting or further proceeding, in accordance with paragraph II of section 2 of these rules, if the committee determines by an affirmative vote of at least 4 members that the complaint is frivolous, scurrilous, or retaliatory in nature, fails to allege conduct which is contrary to the law, ethics guidelines, rules or regulations, or is otherwise plainly not within the committee's jurisdiction.
- VI. The committee shall conduct an initial review of each complaint it does not discharge. The committee shall dismiss a complaint after determining:
 - (a) That the committee does not have jurisdiction to consider it under RSA 14-B;
 - (b) It is obviously without merit; or
 - (c) It is obviously unfounded.
- VII. The committee shall dismiss any complaint arising out of acts or omissions occurring more than 2 years prior to the receipt of the complaint. However, when the last episode of an alleged pattern of recurring legislative conduct arises within the 2-year period, the committee may consider all prior acts or omissions alleged to be a part of such pattern.
- VIII. Receipt by the committee of a complaint which is repetitive of a prior complaint, whether from the same or a different source, following disposition of the initial complaint, shall be acknowledged, but the committee shall take no further action thereon.
- IX. Any complaint which appears to have merit, but which is defective in some respect so that the committee cannot act thereon, or requires clarification, may be returned to the complainant for clarification and resubmission.
- X. The committee may invite the respondent, the complainant, and any other individual or individuals the committee deems appropriate, to appear before the committee to testify or to submit written evidence.
- XI. The respondent and complainant shall be notified promptly in writing of any action taken by the committee pursuant to this section.

5 RESPONSE TO COMPLAINT.

- I. Except where the complaint has been discharged or dismissed pursuant to paragraphs IV, V, VI, VII, and VIII of section 4 of these rules, the respondent shall respond in writing to the merits of the complaint within 14 days of the date the committee notifies the parties that it is opening a preliminary investigation. Such response shall be filed with the committee which shall ensure that the complainant receives a copy of the response.
- II. In addition to such required response, the respondent may submit to the committee other relevant materials.

6 PRELIMINARY INVESTIGATION.

- I. The committee may order an investigation of any complaint properly before it, upon the affirmative vote of 4 or more members of the committee taken at a meeting thereof. Such investigation shall be conducted under the direction of the chairperson and in such manner as the chairperson may determine.
- II. The committee may retain an outside investigator to assist in an investigation after obtaining the approval of the fiscal committee of the general court. The investigator's duties may include interviewing individuals identified as having personal knowledge of the facts alleged, affording such individuals an opportunity to submit information to the committee, and the collection of evidence relevant to the complaint.
- III. The respondent shall be notified of the investigation, and afforded a reasonable opportunity to present such relevant matters as he or she may choose.
- IV. In conducting an investigation, the chairperson or investigator retained by the committee may require that any statement or written information furnished to the committee be given under oath or affirmation subject to the penalties for perjury or false swearing in official proceedings pursuant to RSA 641.
- V. If the investigation does not disclose sufficient cause to warrant further proceedings, the committee shall dismiss the complaint, and shall promptly notify the respondent and the complainant in writing of such dismissal. In other cases not thought found to merit the presentation of formal charges and hearing, the committee may informally resolve the matter with the consent of the respondent. Such informal resolution may take the form of written advice or admonishment, the requirement of remedial action, or the imposition of conditions, or any combination thereof. The consent of the respondent to informal resolution of the matter shall constitute a waiver of his or her right to a hearing.

7 STATEMENT OF FORMAL CHARGES, NOTICE OF HEARING, AND ANSWER.

- I. If, after preliminary investigation the committee concludes, by the affirmative vote of 4 or more members taken at a meeting, that formal proceedings should be instituted to inquire into any complaint, it shall prepare and file a formal statement of charges and shall set a time and place of hearing. The committee shall promptly serve the respondent by certified mail, postage prepaid, with a copy of the formal statement of charges together with a notice of hearing.
- II. The formal statement of charges shall (1) contain a clear summary of the allegations against the claims forming the basis of such allegations (including facts developed by the investigation), (2) identify and cite those provisions of the law, ethics guidelines, rules or regulations alleged to have been violated, and (3) advise the respondent of his or her duty to answer as provided in paragraph VI.
- III. The formal statement of charges together with the notice of hearing shall be served on the respondent at least 21 days prior to the hearing date assigned.
- IV. The notice of hearing shall include the following:
 - (a) the date, time, and place of the hearing;
 - (b) the fact that both the committee and the respondent may be represented by counsel at the hearing, may secure the attendance of witnesses and the production of documents by subpoena, and may examine and cross-examine witnesses;
 - (c) the identity of any special counsel for the committee; and
 - (d) the fact that all further notices concerning the hearing, including any adjournments thereof, shall be given by the chairperson or pursuant to his or her direction.
- V. The committee shall give notice to the complainant of the date, time, and place of the hearing. The complainant shall be entitled to attend the hearing as an observer, and may be required to attend and participate therein as a witness, but shall have no other function or right with respect to the hearing.
- VI. Within 14 days after receipt of the formal statement of charges, the respondent shall file an answer with the committee, setting forth all denials, affirmative defenses, mitigating circumstances and other matters which the respondent intends to raise at the hearing. The answer shall be in writing and signed by the respondent.
- VII. At any time prior to final decision, the committee may allow or require an amendment of the formal statement of charges, and may allow an amendment of the answer. When an amendment is made to the formal statement of charges, whether before or after commencement

of the hearing, the respondent shall be afforded a reasonable opportunity to answer the matters newly charged, as determined by the chairperson, and shall answer such matters within the time allowed. In any such case, the respondent shall also be afforded a reasonable time, as determined by the chairperson, in which to prepare his or her defense to the matters newly alleged.

- VIII. For good cause shown, the chairperson may extend the time within which the respondent is required to file his or her answer, and may grant a continuance of the scheduled hearing, but no such extension or continuance shall be for a period longer than 30 days without the concurrence of the committee.
- IX. The committee may terminate the proceeding and dismiss the complaint and formal statement of charges following the answer by the respondent or at any time thereafter, and shall in that event give notice to the respondent and the complainant that it has found insufficient cause to proceed.

8 DISCOVERY AND SUBPOENA POWERS.

- I. At any time after the filing of a formal statement of charges, the respondent or his or her counsel shall, upon written request, be entitled, as a matter of course:
 - (a) to obtain the names and addresses of all persons known to the committee to have relevant information; and
 - (b) to examine and copy any of the following:
 - (1) statements of the complainant;
 - (2) statements of persons claiming to have knowledge of the acts, omissions or events underlying the formal proceeding;
 - (3) investigative reports made by or for the committee in connection with the proceeding; and
 - (4) any other writing or item which is relevant to the proceeding, or which appears likely to lead to relevant information.
- II. The respondent shall make available to the committee, as a matter of course, upon the written request of the chairperson, or special counsel, any specified material which would be discoverable in civil proceedings in this state.
- III. Nothing in this section shall authorize access to any information, writing, or other item which is privileged by law, or which is protected as an attorney's work product.
- IV. The committee shall have the power to subpoena witnesses, compel their attendance and testimony, and require the production of books, records, documents, or other evidence or material deemed relevant to the investigation or hearing. Such subpoena powers may be exercised for the committee by the chairperson.

- V. The subpoena powers of the committee shall be exercised on behalf of the respondent upon his or her written request or the written request of his or her counsel. The chairperson shall determine whether the request is relevant to the investigation or hearing.

9 CONDUCT OF HEARING.

- I. The hearing shall be open to the public. No hearing shall be held without a quorum of members physically present. The deliberations of the committee shall be conducted in nonpublic session.
- II. The committee may proceed with the hearing at the time and place fixed, whether or not the respondent has filed an answer or appears for the hearing. The committee may draw an unfavorable inference from the failure of the respondent to answer or appear; but no such failure, standing alone, shall be sufficient to meet the standard of proof.
- III. A violation of the law, ethics guidelines, rule, or regulation shall be established by clear and convincing evidence. The respondent shall not be required to testify or present affirmative evidence in his or her own behalf.
- IV. The respondent shall be entitled to counsel of his or her choice, and shall have the right to adduce evidence, produce and cross-examine witnesses, and present all relevant arguments.
- V. The committee shall not be bound by the technical rules of evidence, and may admit evidence which it considers to be reliable, material, and relevant. The chairperson shall rule on objections to the receipt of evidence, subject to being overruled by a majority of the committee present at the hearing. The chairperson may defer ruling on an objection to the receipt of evidence, and admit evidence subject to later ruling thereon.
- VI. The hearing shall be recorded verbatim by stenographic, electronic, or other means approved by the committee. A free transcript of the hearing shall be provided to the respondent and the complainant upon request, who may also tape record the hearing.
- VII. The decision of the committee shall be based solely on the record evidence presented to the committee at the hearing, but shall not be based solely on hearsay evidence. The committee shall exclude from its consideration any information reviewed in earlier stages of the proceeding, unless such information is received in evidence at the hearing so as to become a part of the record.
- VIII. The decision of the committee shall be based solely on the record evidence presented to the committee at the hearing, but shall not be based solely on hearsay evidence. The committee shall exclude

from its consideration any information reviewed in earlier stages of the proceeding, unless such information is received in evidence at the hearing so as to become a part of the record.

10 DISPOSITIONS FOLLOWING HEARING.

- I. The committee shall issue its decision within 14 days after the hearing. If a majority of committee members feel that more time is necessary to reach a decision, this time period may be extended by up to an additional 14 days.
- II. If the committee decides that a violation of the law, ethics guidelines, rules, or regulations has not been established, the complaint shall be dismissed, and the respondent and the complainant shall be so notified.
- III. If the committee determines that there has been a violation of the law, ethics guidelines, rules, or regulations but that the violation is not of a sufficiently serious nature to warrant the imposition of formal discipline by the Legislature, it shall dispose of the matter by informal resolution. Such disposition may take the form of written advice or private admonishment, requirement of corrective action, direction of professional counseling or assistance, imposition of conditions on the specified conduct, or other similar remedial action, or any combination of the foregoing. All admonishments, reprimands, and other informal adjustments shall be reduced to writing.
- IV. If the committee determines that there was improper conduct based upon clear and convincing evidence and the improper conduct was of a serious nature so as to warrant formal disciplinary action it shall prepare a summary report of the deliberations regarding the complaint and of its findings. The report shall contain any specific recommendations concerning disciplinary actions to be imposed.
 - (a) In cases involving a legislator, or officer of the legislature, the committee shall submit its report to the speaker of the house of representatives and senate president. The report may recommend one or more of the following disciplinary actions: reprimand, censure, expulsion, or denial or limitation of any right, power, privilege, or immunity of the legislator that the constitution of New Hampshire permits the general court to deny or limit. Before any disciplinary action may be taken against a legislator or against an officer of the legislature, the report shall be ratified by the legislator's or by the officer's respective body of the general court.
 - (b) In cases involving an employee of the legislature, except in cases involving an employee of the legislature employed by the legislative budget assistant, the committee shall submit its report to the joint committee on legislative facilities. In cases involving an employee of the legislature employed by the legislative budget assistant, the committee shall submit its report to the fiscal committee of

the general court. The joint committee on legislative facilities, or the fiscal committee of the general court, shall determine what disciplinary action shall be taken against the employee. In making its determination, the joint committee on legislative facilities or the fiscal committee of the general court as appropriate may use any of the specific recommendations concerning disciplinary actions which are contained in the report which it receives.

- V. Any member who dissents from the determination of the committee may prepare a minority opinion which shall be appended to the report of the committee.
- VI. The committee shall also prepare a record of the proceeding, which shall include the committee's formal statement of charges, the answer of the respondent, any other pleadings, and a transcript of the hearing. The committee's report shall be filed with the clerk of the appropriate body of the legislature. Contemporaneously with such filing, copies shall be served on the respondent.
- VII. If the respondent resigns from office or employment or reaches the end of his or her term of office while an investigation is pending or prior to the issuance of a final ruling by the committee, the committee may issue a finding on the complaint. The finding shall not constitute a formal action but shall become part of the committee records. The finding may be considered when determining whether there is a pattern of recurring legislative conduct if the respondent serves as a legislator, legislative officer, or legislative employee in subsequent years.

11 USE OF CLOSED FILES.

A closed file may be referred to by the committee in subsequent proceedings in the following circumstances:

- I. Where a complaint or formal charges have been dismissed for any reason or there has been a finding of insufficient cause to proceed, and the subsequent proceeding raises similar allegations against the respondent or is based upon a similar occurrence or factual situation, the closed file may be used to exonerate the respondent or may be made a part of the investigation of the new complaint; or
- II. Where, after the disposition of a prior proceeding by informal resolution, the respondent fails to refrain from acting in the manner that caused the prior complaint to be filed and a subsequent complaint is filed alleging similar conduct which is established or proven, the closed file may be used as evidence tending to show that the problem is a continuing one; or
- III. Where, following the hearing of subsequent related or unrelated charges, the committee determines that a violation of the law, eth-

ics guidelines, rule or regulation has occurred, the closed file may be referred to in connection with the decision as to the nature of the informal resolution to be imposed by the committee or as to the disciplinary action to be recommended to the Legislature.

Adopted: April 27, 1992

Amended: May 18, 1994

Amended: May 22, 2002

Amended: May 20, 2004

Amended: December 7, 2016

Amended: August 29, 2018