

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.

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, 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 four 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. Any business conducted outside of a meeting shall be ratified at the next meeting of the committee.
- IV. 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.

- V. 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. Except in complaints relating to sexual harassment, a legislator, legislative officer, or legislative employee against whom a complaint has been filed 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 within 7 days of the date on the notice sent by the committee with the complaint of the respondent's decision to waive confidentiality. 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 initial review of a complaint, the committee shall make available for public inspection all records, other than its work product and internal memoranda, relating to any complaint it does not dismiss, and shall conduct any subsequent proceedings, other than its deliberations, in public session.
- IV. In the case of complaints alleging sexual harassment, all committee work product and internal memoranda shall be confidential, and all proceedings shall be conducted in nonpublic session. Upon a finding that a member has engaged in sexual harassment, the committee shall make available for public inspection all records relating to the sexual harassment complaint other than its work product, internal memoranda, or any other documentation or information that would be considered confidential under RSA 91-A or any other law, except pursuant to a court order.
- V. If a legislator, legislative officer, or legislative employee is publicly charged, through independent sources, with involvement in a proceeding before the committee, or publicly charged with 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, to explain the right of the legislator, legislative officer, or legislative

employee to a fair hearing without prejudgment, and to state that the legislator, legislative officer, or legislative employee denies the allegations.

- VI. 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, to explain that the legislator, legislative officer, or legislative employee is entitled to due process, and to state that the legislator, legislative officer, or legislative employee denies the allegations.
- VII. 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 legislator, legislative officer, or legislative employee concerned, issue a short explanatory statement to the public.
- VIII. If the committee, prior to completion of its initial review, disposes of a complaint by written reprimand or by other informal resolution, it shall inform the complainant that it has taken appropriate remedial action (but shall not disclose the details of such action unless the legislator, legislative officer, or legislative employee complained against so consents).
- IX. This section shall not be construed to prohibit the committee from preparing and releasing to the public materials which are not related to any particular proceeding or situation. Such materials may include explanations of:
 - (a) The jurisdiction of the committee and the limitations upon its powers and authority;
 - (b) The procedure for filing complaints; and
 - (c) The internal procedures of the committee.In addition, the committee may release periodic statistical reports of its work which do not identify or permit the identification of any person involved in any proceeding before the committee.
- X. Nothing herein shall prevent the committee from responding to unjustified public criticism of a legislator, legislative officer, or legislative employee which is not the subject of a proceeding, and the committee may so respond in appropriate cases upon deliberation and the affirmative vote of at least four members at a meeting of the committee.
- XI. 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. Each complaint shall be submitted in writing and signed under oath by the complainant. The legislator, legislative officer, or legislative employee complained against shall be furnished with a copy of the complaint, and a copy shall be sent to each member of the committee for review.
- II. The committee shall promptly examine each sworn complaint. If the committee determines by a unanimous affirmative vote that the complaint is frivolous, scurrilous, or retaliatory in nature, the committee may discharge the complaint without the benefit of a meeting or further proceeding, in accordance with paragraph II of section 2 of these rules. The committee shall notify the respondent and complainant in writing of its action.
- III. 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:7, regarding the filing of a financial disclosure form.
- IV. The committee shall conduct an initial review of each complaint it does not discharge to ascertain whether the committee has jurisdiction to consider the same under RSA 14-B. If it clearly appears on the face of the complaint or from preliminary inquiries by the committee that the complaint does not allege conduct on the part of the legislator, legislative officer, or legislative employee which, if established, would be contrary to the law, ethics guidelines, rules or regulations, the committee shall dismiss the complaint, and shall notify the complainant in writing that the matter raised is outside the committee's jurisdiction, assigning the reason therefor.
- V. The committee may invite the legislator, legislative officer, or legislative employee complained against, the complainant, and any other individual or individuals the committee deems appropriate, to appear before the committee to testify or to submit written evidence.
- VI. If the committee determines, upon completion of its initial review, that a complaint is obviously without merit or is obviously unfounded, it shall dismiss the complaint and advise the complainant in writing of such action.
- VII. The committee shall dismiss any complaint arising out of acts or omissions occurring more than two years prior to the receipt of the complaint, and the complainant shall be so advised in writing. 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 individual who is the subject of the complaint shall be notified promptly in writing of any action taken by the committee pursuant to this section.

5 RESPONSE BY LEGISLATOR, LEGISLATIVE OFFICER, OR LEGISLATIVE EMPLOYEE.

- I. Except where the complaint has been discharged or dismissed pursuant to paragraph II, IV, VI or VII of section 4 of these rules, the legislator, legislative officer, or legislative employee complained against shall respond in writing to the merits of the complaint within 14 days of the date of the notice sent by the committee. Such response shall be filed with the committee which shall send a copy of the response to the complainant.
- II. In addition to such required response, the legislator, legislative officer, or legislative employee 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 four 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. In the case of a complaint alleging sexual harassment or retaliation against any person who has made a good faith allegation of sexual harassment, the committee may retain an outside investigator to assist in the investigation. 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 legislator, legislative officer, or legislative employee 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. In the case of complaints relating to sexual harassment, the committee shall inform persons contacted for information of their obligation to maintain confidentiality.
- VI. If the investigation does not disclose sufficient cause to warrant further proceedings, the committee shall dismiss the complaint, and shall promptly notify the legislator, legislative officer, or legislative employee and the complainant in writing of such dismissal. In other cases not thought to merit the presentation of formal charges and hearing, the committee may informally resolve the matter with the consent of the legislator, legislative officer, or legislative employee. 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 legislator, legislative officer,

or legislative employee 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 four 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 before itself. The committee shall promptly serve the legislator, legislative officer, or legislative employee by registered or 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 legislator, legislative officer, or legislative employee and of the alleged facts 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 legislator, legislative officer, or legislative employee of his or her duty to answer as provided in paragraph VI of this section.
- III. The formal statement of charges together with the notice of hearing shall be served on the legislator, legislative officer, or legislative employee 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 legislator, legislative officer, or legislative employee 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 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 legislator, legislative officer, or legislative employee shall file an answer with the committee, setting forth all denials, affirmative defenses, mitigating circumstances and other matters which the legislator, legislative officer, or legislative employee intends to raise at the hearing. The answer shall be in writing and signed by the legislator, legislative officer, or legislative employee.
- 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 legislator,

legislative officer, or legislative employee 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 legislator, legislative officer, or legislative employee 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 legislator, legislative officer, or legislative employee 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 legislator, legislative officer, or legislative employee or at any time thereafter, and shall in that event give notice to the legislator, legislative officer, or legislative employee 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 legislator, legislative officer, or legislative employee 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;
 - (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.
 - (c) anything in this section to the contrary notwithstanding, the committee shall not be required to disclose to the legislator, legislative officer, or legislative employee the identity of any informant who will not be called as a witness in support of the charges, and who has declined to sign a written complaint, unless the alleged misconduct was directed at the informant.
- II. The legislator, legislative officer, or legislative employee 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 or special counsel to the committee.
- V. The subpoena powers of the committee shall be exercised in behalf of the legislator, legislative officer, or legislative employee 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, except in the case of complaints alleging sexual harassment or retaliation against persons who have made good faith allegations of sexual harassment. 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 legislator, legislative officer, or legislative employee has filed an answer or appears for the hearing. The committee may draw an unfavorable inference from the failure of the legislator, legislative officer, or legislative employee 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 must be established by clear and convincing evidence. The legislator, legislative officer, or legislative employee shall not be required to testify or present affirmative evidence in his or her own behalf.
- IV. The legislator, legislative officer, or legislative employee 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 legislator, legislative officer, or legislative employee, 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. At any time after the hearing is closed but prior to final decision, the committee may reopen the hearing for the taking of additional evidence. The legislator, legislative officer, or legislative

employee and the complainant shall be given such notice of any supplemental session as the circumstances may reasonably require.

10 DISPOSITIONS FOLLOWING HEARING.

- I. The committee shall issue its decision within 30 days after the hearing.
- II. If the committee decides that a violation of the law, ethics guidelines, rules, or regulations has not been established, the proceeding shall be dismissed, and the legislator, legislative officer, or legislative employee and the complainant shall be so notified.
- III. If the committee determines, by the affirmative vote of at least four of its members, 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. Prior to deciding upon such disposition, the committee may afford the legislator, legislative officer, or legislative employee an opportunity to meet with it or its designated member or members to discuss the matter. All private admonishments, reprimands and other informal adjustments shall be reduced to writing.
- IV. If the committee determines, by the affirmative vote of at least four of its members, 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 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. The committee shall also prepare a record of the proceeding, which shall include the committee's formal statement of charges, the answer of the legislator, legislative officer or legislative employee, any other pleadings, and a transcript of the hearing. The committee's report shall be filed with the clerk of the appropriate house of the legislature. Contemporaneously with such filing, copies shall be served on the legislator, legislative officer, or legislative employee.

11 USE OF CLOSED FILES.

- I. A closed file may be referred to by the committee in subsequent proceedings in the following circumstances:
- (a) 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 legislator, legislative officer, or legislative employee or is based upon a similar occurrence or factual situation, the closed file may be used to exonerate the legislator, legislative officer, or legislative employee or may be made a part of the investigation of the new complaint; or
 - (b) Where, after the disposition of a prior proceeding by informal resolution, the legislator, legislative officer, or legislative employee 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
 - (c) Where, following the hearing of subsequent related or unrelated charges, the committee determines that a violation of the law, ethics 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.

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