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MEMORANDUM

TO: MEMBERS AND CANDIDATES, SC HOUSE OF REPRESENTATIVES

FROM: WALLACE H. "JAY" JORDAN, JR., CHAIRMAN HOUSE ETHICS COMMITTEE

DATE: APRIL 7, 2022

SUBJECT: PUBLIC HEARING PROCEDURES

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Pursuant to House Ethics Committee Rule V.E.1., the SC House Ethics Committee (herein "Committee") adopts the following procedures for conducting its current and future public hearings related to an alleged violation of Chapter 13, Title 8 or Chapter 17, Title 2 of the South Carolina Code of Laws (herein "the Act"). If the matter involves a technical or rules violation, the Committee will follow the procedure set forth in House Rule 4.16E.(2). If you have any questions, please call the House Legislative Ethics Committee at: 803-734-3114.

NOTICE

If the State Ethics Commission (herein "Commission) issues a probable cause recommendation, the Committee shall review the recommendation and relevant evidence. If, after reviewing the Commission's recommendation and relevant evidence, the Committee determines that there is competent and substantial evidence that a violation of Chapter 13, Title 8 or of Chapter 17, Title 2 has occurred except for a technical violation of Sections 8-13-1170 or 8-13-1372, and the Committee determines a public hearing should be held, it must convene a formal public hearing on the matter within thirty days pursuant to House of Representatives Rule 4.16D.(8).

The notice of hearing shall include:

- (1) Statement of the date, time, place and nature of the hearing;
- (2) Statement of the legal authority and jurisdiction under which the hearing is to be held;

- (3) Reference to the particular sections of the statutes and rules involved; and
- (4) Short and plain statement of the matters asserted.

All public hearings must be conducted in open session pursuant to House Rule 4.16E and Section 8-13-540(D)(5).

REPRESENTATION

All persons appearing before the Committee are entitled to be represented by legal counsel at their own expense. However, individuals may proceed without counsel, if desired. In any proceeding before the Committee, the Committee may take such action as it deems necessary and appropriate to accomplish the purposes and intent of the Act including dismissing, settling, prosecuting, and referring for indictment violations of the Act with or without the consent of the person, if any, filing the complaint.

DISCOVERY

The Committee shall allow the respondent to examine and make copies of all evidence in the Committee's possession relating to the charges. The review of the evidence at the Committee's office will only occur during weekdays and during working hours.

The respondent shall be responsible for any costs associated with discovery the respondent conducts. Discovery by respondent requires prior written authorization by the Committee and shall be limited to the following: (1) written questions; (2) Written interrogatories limited to the standard interrogatories; and (3) Production of documents or things or permission to enter upon property for inspection purposes. The timing and deadlines of the discovery requests will be followed as outlined in the Scheduling Order.

SUBPOENAS

Pursuant to House Rule 4.16D.(10) and House Rule 4.16E.(4), the Committee may issue subpoenas and compel the attendance of any person who the Committee deems proper and relevant to the matter. A person to whom a subpoena has been issued must appear and is required to answer questions under oath, subject to the right to move the Committee for an order quashing the subpoena as set forth in House Rule 4.16D.(5). The Committee shall have the authority to enforce compliance with a subpoena to include finding the person in civil contempt. Upon a finding of civil contempt, the Committee may order an appropriate sanction, including but not limited to, a requirement that such person pay the reasonable costs and expenses associated with requiring compliance.

The Committee has the authority to issue subpoenas on behalf of the Commission and the respondent under House Rule 4.16D.(10) and House Rule 4.16E.(4). A party may apply to the Committee for an issuance of a subpoena by submitting a written request to the Committee at least 25 days prior to the public hearing. The Committee will not issue "blank" subpoenas to be filled in by the party. The party requesting the subpoena is responsible for service of the subpoena and the costs of such. Subpoenas must be issued 20 days prior to the public hearing and must be in compliance with South Carolina Rules of Civil Procedure 4 (d) or (j).

PRESENTATION OF CASE

The Chairman, or his designee, shall serve as the Hearing Officer to preside over the hearing and make rulings and determinations as to procedure. The Hearing Officer shall have a thorough knowledge of the Rules of Evidence and procedural rules but the Hearing Officer retains broad discretion to decide evidentiary matters. The hearing will be held before a majority of the Committee membership. The investigator or attorney handling the investigation for the Commission shall present the evidence related to the complaint to the Committee. The Commission and the respondent will be allowed to make opening statements. All parties may present witnesses. Witnesses shall be placed under oath and are available for direct examination, cross-examination, re-direct and re-cross. The Hearing Officer, at his discretion, may allow questioning of witnesses and the parties, by Committee Members.

After the Commission rests its case upon presenting all witnesses and other evidence it desires, the respondent may present his or her defense. Upon completion of presentation of all witnesses and other evidence, closing statements are allowed, if desired.

All hearings will be recorded and maintained for no more than four years. Transcripts are available at the expense of the requestor.

EVIDENTIARY MATTERS

Concerning evidentiary matters in the hearing:

- A. Public Hearings should be conducted in an informal manner and the South Carolina Rules of Evidence apply but in the interest of fairness, the Rules are advisory and apply at the discretion of the Hearing Officer.
- B. The parties have the right to confer with the Hearing Officer regarding evidentiary issues or other matters.
- C. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. The parties are also encouraged to stipulate testimony or facts at least fifteen days before the hearing.
- D. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy to the original.
- E. Objections to evidentiary offers must be made at the time of the offer and shall be noted in the record. The Committee shall consider only competent evidence in its deliberations on the pending matter for disposition.
- F. Expert's reports and other evidence in written form including affidavits may be considered at the hearing as provided below:
 - (1) A notice and a copy of the writing must be served on the Committee and any other counsel of record or parties appearing pro se at least fifteen days before the scheduled hearing.
 - (2) The notice shall contain a complete copy of the writing to be offered at the hearing and state the name, address, telephone number and title of the person making the writing, whether the written report is being offered as expert's evidence and, if so, the qualifications of the expert, including but not limited to the expert's curriculum vitae.
 - (3) The opposing party may stipulate in writing to admit the writing into evidence. Failure to file a written stipulation of agreement shall be deemed an objection to admit the writing.

- G. Failure to provide at least fifteen day's notice of the intent to offer a writing may result in the writing not being admitted unless (1) the opposing party consents and the terms of the agreement are filed with the Committee; (2) the author of the writing, including experts, attends the hearing and testifies; (3) the deposition of the writer is held before the hearing and the deposition is filed by a time set certain; or (4) the Hearing Officer allows leave to take the deposition after the hearing and submit supplemental evidence.
- H. The Hearing Officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

PRE-TRIAL BRIEFS AND MOTIONS

Absent leave of the Hearing Officer, the Committee requests that the Commission and the respondent make pre-trial motions at least fifteen days before the date of the hearing. The motion shall be filed with the Committee and a copy of the motion shall be served by the movant on the other party. The Hearing Officer can waive the fifteen-day requirement upon a showing of good cause. Pre-trial briefs must be filed at least fifteen days before the date of the hearing and the Hearing Officer may schedule a hearing at least 10 days prior to the public hearing to hear from the parties regarding the pre-trial briefs and motions. Pre-trial briefs should contain: 1) a list of any motions pending; 2) a brief and concise statement of the facts upon which each category of claims or defense is based; 3) additional legal authorities upon which each category of claims or defense is based; and 4) names of the witnesses expected to be called and a summary of their anticipated testimony.

BURDEN OF PROOF

The burden is on the Commission to establish, by competent and substantial evidence, the facts required to find a violation of the Act.

Failure of a party to appear at a hearing may result in the Committee basing its decision on a review of available documentation and the presentation of evidence.

DECISION

After the public hearing, the Committee shall consider the evidence and testimony presented at the hearing and enter their decision with a statement of the findings of fact, conclusions of law and other matters pertinent to the questions at issue. The decision and order shall be filed with the record and copy served on the parties. Upon finding, based on competent and substantial evidence, the respondent has committed a violation within the Committee's jurisdiction, the Committee shall impose sanctions as provided in House Rule 4.16F and Section 8-13-540(D)(6)(c).

The Committee shall report its decision and order in writing to the Speaker of the House of Representatives. The decision and order must be supported and signed by a majority of the Committee members present at the hearing. If the Committee finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

Pursuant to House Rule 4.16G.(3) and Section 8-13-540(D)(6)(e), after a public hearing, the following documents become public record: the notice of hearing, exhibits introduced at a hearing, the Committee's decision, and the final order. Exhibits introduced must be redacted prior to release to exclude personal information when the public disclosure would constitute an unreasonable invasion of personal privacy including, but not limited to, social security and bank account numbers. A transcript of the testimony before the Committee is not normally available or included in the record. Respondent may request a transcript in writing, but Respondent must pay the cost in advance to be transcribed by a certified court reporter.

APPEAL

The respondent has ten days from the date of receiving the Committee's decision and order to appeal to the full House of Representatives.