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Indicates New Matter

AS ADOPTED BY THE SENATE

January 20, 2011

**S. 326**

Introduced by Senators Hayes, Peeler, Rose and Alexander

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Read the first time January 11, 2011.

**A** **SENATE RESOLUTION**

TO AMEND RULE 44, RELATING TO THE SENATE ETHICS COMMITTEE’S DUTIES AND PROCEDURES, SO AS TO PROVIDE ADDITIONAL DUTIES, COMPLAINT PROCEDURES, AND PROCEDURES FOR FINDINGS OF PROBABLE CAUSE, AND TO PROVIDE PENALTIES FOR VIOLATIONS, AND TO ADD PROVISIONS REGARDING THE RECEIPT OF DOCUMENTS RELATING TO PROCEEDINGS IN ACTIONS TAKEN AGAINST A MEMBER; AND TO AMEND RULE 44.1, RELATING TO THE RULES GOVERNING ACTIONS TAKEN AGAINST A MEMBER, SO AS TO PROVIDE PROVISIONS FOR SUSPENSION AND REINSTATEMENT.

Amend Title To Conform

Be it resolved by the Senate:

That Rule 44 of the Rules of the Senate is amended to read:

“RULE 44.

A. Ethics Committee ~~Procedures~~ Duties

(a) In the Senate there shall be a Committee on Ethics, consisting of ten (10) members. ~~and the~~ The committee has the following powers and duties:

(1)(a) To receive complaints or charges concerning conduct alleged to be unethical from any citizen of this State or member of the Senate against Senate:

(i) members;

(ii) former members, provided the allegations are related to the former member’s service in the Senate;

(iii) candidates;

(iv) former candidates, provided the allegations are related to the former candidate’s bid for Senate;

(v) officers and employees;

(vi) staff and independent contractors of a legislative caucus committee.

~~of the Senate concerning conduct alleged to be unethical~~. Only sworn written complaints or charges may be considered.

(b) To file a complaint upon concurrence of at least six members of the Senate Ethics Committee when alleged violations are identified.

Unethical conduct may include, but is not limited to, a:

(i) violation of Chapter 13 of Title 8;

(ii) violation of Chapter 17 of Title 2; or

(iii) breach of this Rule by a person designated in (A)(1)(a) above or as designated by statute.

(2) To investigate such complaints and charges and, if warranted, to report the results of such investigation to the Senate with recommendations for further appropriate action as authorized by law.

(3) Upon request of any member, officer, or employee of the Senate to render advisory opinions with regard to legislative ethics when, in their judgment, such opinions would serve the public interest, and to act as an advisory body to the Senate and to individual members of or candidates for the Senate on questions pertaining to the disclosure and filing requirements.

(4) To make available annually to the Senate a compilation of the principles set forth in advisory opinions rendered.

(5) To administer or recommend appropriate sanctions or dismiss charges.

(6) To ascertain whether a person has failed to comply fully and accurately with the disclosure requirements of Chapter 13 of Title 8 and promptly notify the person to file the necessary notices and reports to satisfy the requirements.

(7) To recommend any rule or statutory change relating to ethics as the committee deems appropriate.

(b) All papers, documents, complaints, charges, requests for advisory opinions, and any other material required to be filed with or received by the committee~~, and all such documents or materials are to repose in the office of the Clerk of the Senate and as necessary or appropriate are to be handled by the Clerk as~~ shall be strictly confidential ~~unless made public by the committee in a report to the Senate~~ prior to a finding of probable cause, or a waiver of confidentiality by the respondent. No persons involved with a complaint before the committee, including complainant, respondent, counsel, counsel’s secretaries, committee members and staff, and investigators shall mention the existence of any such proceeding nor disclose any information pertaining thereto, unless otherwise permitted by the Rules. Disclosure of confidential information must be punished in a manner provided by the Ethics, Government Accountability, and Campaign Reform Act. If the Senate Ethics Committee finds that a person has violated the provisions of this item, it must report its findings to the Attorney General.

~~All proceedings of the Ethics Committee are strictly confidential and only those actions or decisions of the committee which it authorizes may be disclosed or made public. Provided, that the committee may vote to disclose certain confidential information to the membership of the Senate in Executive Session and the committee must disclose in Executive Session, any confidential final determination or action of the committee as is necessary for the members to make a fully informed vote on any matter before the Senate. If a member or former member of the Senate is appointed to an office which is subject to confirmation by the Senate and an ethics complaint has been filed against such member or former member before the receipt or during the pendency of the appointment, then the Senate may not consider the appointment until the Chairman of the Senate Ethics Committee notifies the Senate and any appropriate Standing Committee, in Executive Session, of the existence and nature of the pending complaint if the committee after a preliminary investigation finds that probable cause exists to support an alleged violation.~~

(c) Information that must be made public following a finding of probable cause or waiver of confidentiality by the respondent are: (i) the complaint; (ii) the response by the respondent; (iii) any exhibits introduced at a public hearing, subject to redaction of information of a personal nature where public disclosure would constitute unreasonable invasion of personal privacy; and (iv) the final order issued by the committee.

B. Senate Ethics Committee Procedures

Complaint

(a) All investigations, inquiries, hearings and accompanying documents must remain strictly confidential until a finding of probable cause, unless the respondent waives the right to confidentiality. However, the committee may vote before a finding of probable cause to disclose certain confidential information to the membership of the Senate in Executive Session and the committee must only disclose in Executive Session any action of the committee as is necessary for the members to make a fully informed decision on any matter before the Senate. In addition, the committee may vote before a finding of probable cause to disclose certain confidential information to the membership of the Senate if a member or former member of the Senate is appointed to an office which is subject to confirmation by the Senate and an ethics complaint has been filed and is pending against such member or former member. The Chairman of the Senate Ethics Committee must notify any Standing Committee with jurisdiction over the appointment, in Executive Session, of the existence and nature of the pending complaint if the committee, after a preliminary investigation, finds evidence to support an alleged violation. If the appointment is then brought before the Senate, the Senate may not consider the appointment until the Chairman of the Senate Ethics Committee notifies the Senate, in Executive Session, of the existence and nature of the pending complaint.

(b)(1) ~~The rules of the Ethics Committee shall provide as a matter of right that a~~ A certified copy of the sworn statement of charges against ~~a~~ ~~member~~ the respondent must be given to him or her within ten days of the time the statement of charges is received by the Chairman of the Ethics Committee. The respondent ~~and that the accused member~~ has the right to file a response to the complaint within fifteen calendar days after receipt of the complaint and to face and cross‑examine his or her accusers and the witnesses against him or her at any hearing called by the Ethics Committee. ~~Any hearing on the merits of a complaint is confidential and must be held in Executive Session unless the person charged requests a public hearing in writing.~~ All hearings following a finding of probable cause must be conducted in open session. The Ethics Committee must call a hearing if a majority of the membership of the Ethics Committee feels that the charges have merit or if the ~~accused~~ respondent formally requests a hearing.

(2) No complaint may be accepted by the Ethics Committee concerning a member of or candidate for the Senate during the fifty‑day period before an election in which the member or candidate is participating. During this fifty‑day time period, a person may petition the court of common pleas alleging the violations complained of pursuant to the provisions of Section 8‑13‑530. Action on a complaint filed against a member or candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the Ethics Committee at least thirty days before the election must be postponed until after the election.

~~(c)~~ ~~In conjunction with the proceedings specified in Rule 44.1 of the Rules of the Senate, the President Pro Tempore, and the Senate Ethics Committee on behalf of the entire Senate, may receive:~~

~~(1)~~ ~~certified copies of any indictment or information for a felony or offense against the election laws filed or returned against any member of the Senate;~~

~~(2)~~ ~~certified copies of any plea of guilty or nolo contendere to the felony entered by any member of the Senate;~~

~~(3)~~ ~~certified copies of any conviction of a member for the felony;~~

~~(4)~~ ~~certified copies of any opinion, order, or judgment of any court, state or federal, trial or appellate, relating to any of the aforementioned matters;~~

~~(d)~~ ~~No member may vote on the question of his or her expulsion from the Senate.~~

(c) If the Ethics Committee determines the complaint does not allege facts sufficient to constitute a violation, the complaint must be dismissed and the complainant and respondent notified. If the Ethics Committee finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. If the Ethics Committee determines the complaint alleges facts sufficient to constitute a violation, it shall promptly investigate the alleged violation and may compel by subpoena the attendance and testimony of witnesses and the production of pertinent books and papers. The subpoena must be signed by the Chairman of the Senate Ethics Committee.

(d) No complaint shall be accepted which is filed later than four years after the violation is alleged to have occurred.

Findings of Probable Cause and Subsequent Actions

(a) All ethics committee investigations and records relating to the preliminary investigation are confidential unless otherwise permitted by the Rules.

(b) If the Ethics Committee finds that probable cause exists to support an alleged violation after a preliminary investigation, it shall, as appropriate:

(1) render an advisory opinion to the respondent and require the respondent’s compliance within a reasonable time; or

(2) convene a formal hearing on the matter.

If the Ethics Committee renders an advisory opinion and the respondent fails to comply, the committee must convene a formal hearing on the matter within thirty days of the respondent’s failure to comply.

(c) If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the Ethics Committee’s possession relating to the charges. The Committee must establish procedures which afford respondents appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses. All hearings must be conducted in open session.

(d) After the hearing, the Ethics Committee shall determine its findings of fact. If the Committee, based on competent and substantial evidence, finds the respondent has violated Chapter 13, Title 8, or Chapter 17, Title 2, or violated this Rule, it shall:

(1) administer a public reprimand;

(2) require the respondent to pay a civil penalty not to exceed two thousand dollars for each non‑technical violation that is unrelated to the late filing of a required statement or report or failure to file a required statement or report;

(3) require the forfeiture of gifts, receipts, or profits, or the value thereof, obtained in violation of Chapter 13, Title 8 or Chapter 17, Title 2;

(4) recommend expulsion of the member;

(5) in the case of an alleged criminal violation, refer the matter to the Attorney General for investigation; or

(6) require a combination of items (1) through (5), as necessary and appropriate.

If the Ethics Committee finds the respondent has not violated a statutory provision or Rule or engaged in unethical behavior, it shall dismiss the charges.

(e) The Ethics Committee shall report its findings in writing to the President Pro Tempore of the Senate. If the Committee finds a violation of a statutory provision or Rule or finds unethical behavior, the report must be accompanied by an order of punishment that is supported and signed by a majority of the Ethics Committee members.

(f) The respondent has ten calendar days from the date of the notification of the Ethics Committee’s action to appeal the action to the full Senate.

(g) No Ethics Committee member may participate in any matter in which he is involved as a respondent.

(h) Upon receipt of a recommendation of expulsion or an appeal from an order of the Ethics Committee, the President Pro Tempore shall call the Senate into open session at a time to be determined at his discretion to consider the action of the Ethics Committee. The Senate shall either sustain or overrule the Ethics Committee’s action or order other action consistent with these Rules as otherwise permitted by statute. The consideration and results of a Senate Ethics Committee report are a matter of public record.

(i) No member may vote on the question of his or her expulsion from the Senate.

(j) Failure to fully comply with a final ethics order is a separate violation that may be considered by the Ethics Committee.

Penalty for Failure to File Statements or Reports as Required

If the Senate Ethics Committee finds the respondent has failed to file or was late in filing a required statement of economic interest or campaign disclosure report, the Senate Ethics Committee must order the respondent to pay a fine according to the provisions in Section 8‑13‑1510.

Technical Violations

The Senate Ethics Committee may, in its discretion, determine that errors or omissions on statements of economic interests and campaign disclosure reports are inadvertent and unintentional and not an effort to violate a requirement of Chapter 13, Title 8 and may be handled as technical violations not subject to the provisions of Chapter 13, Title 8 pertaining to ethical violations. The Senate Ethics Committee may assess a penalty for technical violations not exceeding fifty dollars.

C.

Receipt of Documents

In conjunction with the proceedings specified in Rule 44.1, the President Pro Tempore, and the Senate Ethics Committee on behalf of the entire Senate, may receive:

(1) certified copies of any indictment or information for a felony or offense against the election laws filed or returned against any member of the Senate;

(2) certified copies of any plea of guilty or nolo contendere to the felony entered by any member of the Senate;

(3) certified copies of any conviction of a member for the felony; and

(4) certified copies of any opinion, order, or judgment of any court, state or federal, trial or appellate, relating to any of the aforementioned matters.”

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