



SPONSOR: Sen. Lockman & Sen. Sokola & Sen. Townsend &
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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE RESOLUTION NO. 7

RELATING TO THE DELAWARE STATE SENATE RULES OF PROCEDURE FOR ETHICS VIOLATIONS.

BE IT RESOLVED by the Senate of the 152nd General Assembly of the State of Delaware that the Delaware State
Senate Rules of Procedure for Ethics Violations are, until further action of the Senate, as follows:

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32 **I. General Provisions**

33 **Rule 1. Scope and Authority.**

34 (a) These rules govern the procedures to be followed by the Rules & Ethics Committee and the Senate in
35 proceedings involving allegations of violations of Senate Rule 17, regarding Rules of Legislative Conduct.

36 (b) These rules and the Rules of the Senate are the rules of the Rules & Ethics Committee and the Senate. The
37 Committee may adopt additional rules not inconsistent with the Rules of the Senate.

38 (c) The rules of the Rules & Ethics Committee, other than the Rules of the Senate, may be modified, amended, or
39 repealed by a vote of a majority of the members of the Committee.

40 (d) The Rules of the Senate, as used in this rule, include the use of Mason's Manual of Legislative Procedure as
41 provided for under Senate Rule 50.

42 **II. Proceedings Before the Senate Rules & Ethics Committee**

43 **Rule 2. Meetings and Quorum.**

44 (a) The Rules & Ethics Committee shall meet at the call of the Chair. Notice of a Committee meeting must be
45 provided as required under the Rules of the Senate.

46 (b) A quorum of the Rules & Ethics Committee consists of a majority of the members of the Committee.

47 **Rule 3. Confidentiality of Committee Records and Meetings.**

48 (a) The Chair of the Rules & Ethics Committee shall, with the approval of the Committee, establish procedures as
49 in the Chair's judgment may be necessary to prevent the unauthorized disclosure of testimony or other information received
50 by the Committee or Committee counsel, Committee prosecutor, or Committee staff.

51 (b) Unless authorized by the Rules & Ethics Committee, information received by the Committee concerning an
52 alleged violation by a member of the Senate of a Rule of Legislative Conduct may not be disclosed to the public by the
53 Committee or the Committee counsel, Committee prosecutor, or Committee staff before the Committee issues the report
54 under Rule 11.

(1) After the Committee issues the report under Rule 11, the Committee shall make public the statement of alleged violation, the respondent's answer under Rule 9, and the report issued under Rule 11.

(2) After the Committee issues the report under Rule 11, the Committee may make public any other non-privileged document filed with or created by the Committee. Notwithstanding this paragraph (b)(2), the Committee may not disclose a document if the document's disclosure violates a law.

(c) Proceedings of the Rules & Ethics Committee held under Rules 5 through 12 are closed to the public.

Rule 4. Special Procedures.

The Rules & Ethics Committee may adopt, by motion, special procedures necessary for a particular matter before the Committee. The Committee shall provide a copy of the special procedures to all parties and witnesses in the matter.

Rule 5. Committee Staffing.

(a) On filing of a complaint under Rule 6, the Rules & Ethics Committee, by a vote of the majority of the members of the Committee shall appoint all of the following:

(1) An attorney to serve as counsel to the Committee, referred to in these rules as "Committee counsel." In serving as counsel to the Committee, the attorney may do all of the following:

- a. Provide legal and procedural advice to the Committee.
- b. Assist the Committee in its determination under Rule 7(b).
- c. Assist a member of the Committee with responding to a motion made under **Rule 9(a)(2)b.**
- d. Negotiate and prepare, with the Committee prosecutor, an agreed disposition under Rule 12.
- e. Perform other similar tasks as assigned by the Chair or Committee.

(2) An attorney to prosecute the matter, referred to in these rules as "Committee prosecutor." In prosecuting the matter, the attorney may do all of the following:

- a. Conduct the investigation under Rule 8.
- b. Prosecute the statement of alleged violation.
- c. Negotiate and prepare, with the Committee counsel, an agreed disposition under Rule 12.
- d. Perform other similar tasks as assigned by the Committee.

(3) Other individuals to assist the Committee in the Committee's work under these rules, referred to in these rules as "Committee staff."

(b) The Rules & Ethics Committee, by a vote of the majority of the members of the Committee, may also appoint additional individuals to assist the Committee in the Committee's work under these rules or the Rules of the Senate.

Rule 6. Complaints.

(a) A complaint alleging a violation of a Rule of Legislative Conduct may be submitted to the Rules & Ethics Committee. The complaint must be in writing and under oath and set forth in simple, concise, and direct statements all of the following:

(1) The name of the member of the Senate filing the complaint or, in the case of a violation of Senate Rule 17(a)(11), a member of the House, or employee of the General Assembly as defined under Senate Rule 18(b)(1) ("complainant").

(2) The name of the member of the Senate alleged to be in violation of a Rule of Legislative Conduct ("respondent").

(3) A statement of each violation, identifying the Rule of Legislative Conduct alleged to have been violated, divided into counts with each violation representing a separate count.

(4) A written statement setting forth the facts alleged to give rise to each violation. The facts supporting the complaint must be sworn under oath as required under Senate Rule 17(c).

(b) A complaint may only be filed by a member of the Senate, except in the case of a violation of Senate Rule 17(a)(11) when a member of the House, or employee of the General Assembly as defined under Senate Rule 18(b)(1), may file a complaint.

(c) A complaint filed under this rule must be transmitted directly to the Rules & Ethics Committee.

Rule 7. Processing Complaints.

(a) The Chair shall place a complaint filed under Rule 6 on the Rules & Ethics Committee's agenda for consideration and shall schedule a Committee meeting as soon as practicable, but not later than 30 days from the date the Chair receives the complaint.

(b) The Rules & Ethics Committee shall consider the complaint and determine if all of the following apply:

(1) The complaint alleges a violation of a Rule of Legislative Conduct under Senate Rule 17.

(2) The facts alleged state a violation of a Rule of Legislative Conduct under Senate Rule 17.

(3) The complaint is not frivolous, futile, or outside the Committee's jurisdiction.

(c)(1) If the Rules & Ethics Committee, by a vote of a majority of the members of the Committee, finds that the requirements of subsection (b) of this rule are not met, the Committee shall dismiss the complaint.

(2) If the Committee, by a vote of a majority of the members of the Committee, finds that the requirements of subsection (b) of this rule are met, the Committee shall conduct an investigation under Rule 8.

(3) The Committee's determination under this subsection must be transmitted in writing to the complainant and respondent.

Rule 8. Investigation and Report; Statement of Alleged Violation; *De Minimis* Violation.

(a) If the Rules & Ethics Committee determines under Rule 7(c)(2) to conduct an investigation, the Committee prosecutor and Committee staff shall conduct an investigation to determine whether a violation of a Rule of Legislative Conduct occurred.

(b) All of the following apply to an investigation under this rule:

(1) The respondent may present to the Committee prosecutor a statement concerning the complaint.

(2) The Committee prosecutor may interview witnesses and examine documents and other evidentiary matters.

(3) The Committee prosecutor may order the testimony of witnesses to be taken under oath.

(4) The Committee prosecutor may require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, documents, or other tangible objects as the Committee prosecutor deems necessary. To be valid, a subpoena must be issued under Senate Rule 60(a)(2).

(5) Any probative evidence may be used in the investigation.

(c) On the completion of the investigation, the Committee prosecutor shall prepare and transmit to the Rules & Ethics Committee a report containing a comprehensive summary of the information received in the investigation. The Committee prosecutor may include in the report a recommendation for action by the Committee concerning the alleged violation that is the subject of the investigation.

(d) Except as provided under subsection (f) of this rule, if the Rules & Ethics Committee, by a vote of the majority of the members of the Committee, determines on the basis of the evidence obtained in the investigation that there are sufficient grounds to believe that the violation occurred, the Committee shall direct the Committee counsel and Committee staff to transmit to the respondent a statement of alleged violation. The statement must be divided into counts and each count must relate to a separate violation and must contain a plain and concise statement of the alleged facts of each violation, including a reference to the provision of the Rule of Legislative Conduct alleged to have been violated.

(e) If the Rules & Ethics Committee, by a vote of the majority of the members of the Committee, determines on the basis of the Committee prosecutor's report on the investigation that there are not sufficient grounds to believe that the violation occurred, the Committee shall deliver to the Senate a confidential report that the complaint is dismissed and a brief statement of the reasons for the dismissal.

(f)(1) If the Rules & Ethics Committee, by a vote of the majority of the members of the Committee, determines on the basis of the Committee prosecutor's report on the investigation that there is sufficient evidence to believe that the

violation may have occurred, but that the violation was inadvertent, technical, or otherwise of a de minimis nature, the Committee may resolve the complaint by issuing a public or private letter of warning.

(2) If the Committee resolves the complaint by issuing a public or private letter of warning, the Committee shall deliver to the Senate a confidential report of the action taken and a brief statement of the reasons for the action.

(3) Issuing a public or private letter of warning resolves the complaint before the Committee and ends the proceedings under these Rules.

Rule 9. Answer; Motion to Recuse; Committee Action.

(a) If a statement of alleged violation is transmitted under Rule 8(d) of these rules, the respondent has 20 calendar days to respond. The response must be in writing and signed by the respondent or the respondent's counsel, and be limited to the following:

(1) An answer, admitting or denying, under oath, each count set forth in the statement and including any supportive evidence or other relevant information which the respondent may desire to submit.

(2)a. A motion objecting to the participation of a member of the Rules & Ethics Committee in the consideration of the allegations contained in the statement on the grounds that the member cannot render an impartial or unbiased decision.

1. The Committee member against whom the objection is made is the sole judge of the member's qualifications.

2. An objection under paragraph (a)(2) of this rule is not in lieu of an answer and must be filed simultaneously with the answer.

b. If a Committee member seeks disqualification from further participation in a matter before the Committee, the member shall proceed under Senate Rule 19(e).

(b) Within 10 calendar days after the receipt of a motion under paragraph (a)(2) of this rule, a member of the Rules & Ethics Committee whose recusal is sought shall consider and decide the motion. The Committee shall provide notice of the member's decision to the respondent.

(c) Failure to submit an answer to a count in the statement of alleged violation within the applicable time limitation under subsection (a) of this rule may be deemed by the Rules & Ethics Committee to be an admission to the facts or violation alleged in the count.

(d) The Chair may extend or reduce any time limitations imposed by this rule if the Chair determines that the extension would facilitate a fair and complete inquiry, or the reduction is required because of special circumstances. The

Chair shall provide notice, in writing, to the Rules & Ethics Committee and respondent of an extension or reduction of a time limitation.

(e)(1) As soon as practicable after the expiration of all applicable time limitations for action under subsections (a), (b), and (d) of this rule, the Rules & Ethics Committee shall determine, by the vote of a majority of the members of the Committee, when to set the matter for a hearing under Rule 10.

(2) The Committee shall notify the respondent in writing of action taken under paragraph (e)(1) of this rule.

Rule 10. Disciplinary Hearings Before the Committee.

(a) When the Rules & Ethics Committee votes to hold a disciplinary hearing under Rule 9(e)(1), the Committee shall hold the disciplinary hearing to receive evidence on which to base findings of fact and recommendations, if any, to the Senate concerning the violation. A disciplinary hearing consists of two phases, as follows:

(1) The first phase is for the purpose of determining whether a count in the statement has been proved.

(2) The second phase is for the purpose of determining what action to recommend to the Senate with respect to any count found by the Committee to have been proved.

(b) At a disciplinary hearing, the Committee prosecutor may require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, documents, or other tangible objects as the Committee prosecutor deems necessary. Depositions, interrogatories, and sworn statements taken under the Committee prosecutor's direction may be accepted into the Rules & Ethics Committee record. To be valid, a subpoena must be issued under Senate Rule 60(a)(2).

(c)(1) The order of the first phase of a disciplinary hearing is as follows:

a. The Chair shall open the hearing by stating the Rules & Ethics Committee's authority to conduct the hearing, the purpose of the hearing, and the hearing's scope.

b. Testimony from witnesses and other evidence pertinent to the subject of the hearing must be received in the following order, if possible:

1. Witnesses and other evidence offered by the Committee prosecutor.

2. Witnesses and other evidence offered by the respondent.

3. Rebuttal witnesses.

c.1. With respect to a witness offered by the Committee prosecutor, the witness is to be examined first by the Committee prosecutor. The respondent or the respondent's counsel may then cross-examine the witness. The Committee members may then question the witness. The Chair may permit redirect and recross.

2. With respect to a witness offered by the respondent, the witness is to be examined first by the respondent or the respondent's counsel. The Committee prosecutor may then cross-examine the witness. The Committee members may then question the witness. The Chair may permit redirect and recross.

(2) Testimony of all witnesses must be taken under oath. The oath is to be administered by a person authorized by law to administer oaths.

(d) At a disciplinary hearing, the burden of proof rests on the Committee prosecutor with respect to each count to establish the facts alleged in the statement of alleged violation by a preponderance of the evidence.

(e) During the second phase of a disciplinary hearing, the Rules & Ethics Committee may, by a vote of a majority of the members of the Committee, permit any of the following, with regard to the issue of what sanctions the Committee may recommend to the Senate, for a count in the statement of alleged violation that has been proved:

(1) An oral or written submission by the Committee prosecutor and respondent or respondent's counsel.

(2) Testimony by a witness.

(f) The Rules & Ethics Committee shall have all proceedings under this rule transcribed by a certified court reporter.

Rule 11. Committee Disciplinary Hearing Votes, Recommendations, and Report.

(a) As soon as practicable after the conclusion of the presentation of the evidence during the first phase of a disciplinary hearing, the Rules & Ethics Committee shall consider each count contained in the statement of alleged violation and, with respect to each count, shall vote either to find that the count has been proved or to dismiss the count. A count is proved if a majority of the members of the Committee vote for a motion that the count has been proved.

(b)(1) If the Rules & Ethics Committee votes that a count has been proved under subsection (a) of this rule, the Committee shall make a recommendation to the Senate for appropriate action concerning the violation charged in the count, which may include the Committee's recommendation to the Senate of one or more of the following sanctions:

a. Suspension or expulsion from the Senate.

b. Censure.

c. Reprimand.

d. Any other sanction determined by the Committee to be appropriate.

(2) The Committee must adopt a recommendation by the following vote:

a. A vote of the majority of the members of the Committee for a recommendation that there be no sanction.

b. A vote of the majority of the members of the Committee for a recommendation that constitutes a sanction under paragraphs (b)(1)b. through d. of this rule.

c. A vote of two-thirds of the members of the Committee for a recommendation that is a suspension or expulsion from the Senate under paragraph (b)(1)a. of this rule.

(c) The Rules & Ethics Committee shall prepare a report to detail the reasons for finding a count was or was not proved under subsection (a) of this rule and to accompany any recommendation to the Senate adopted by the Committee under subsection (b) of this rule concerning a violation charged in a count. The report must contain a statement of all of the following:

(1) The evidence that supports the finding as to any count proved.

(2) The Committee's reasons for the recommendation.

(3) The Committee's reasons for finding that a count was not proved.

(d) The Rules & Ethics Committee shall direct the Committee counsel to serve a copy of the Committee's report and a statement of counts found proven by the Committee on the respondent. The Committee shall deliver a copy of the report and statement of alleged violation to the Senate. The report and statement of counts found proven by the Committee is to be the basis of the Senate's consideration of the matter.

(e)(1) If the Rules & Ethics Committee votes to dismiss all counts of a statement of alleged violation and there are no votes against dismissal, the statement is dismissed and the Committee may not take any further action with respect to the statement.

(2) If there is a dissenting vote to the dismissal under paragraph (e)(1) of this rule, a member of the Senate may move under Senate Rule 17(d)(3) that the Senate reverse the Committee's dismissal and proceed as further determined by the Senate.

Rule 12. Agreed disposition.

(a) At any time after the Rules & Ethics Committee's decision under Rule 7(c)(2) to conduct an investigation and before a vote by the Committee under Rule 11(a), the Committee prosecutor, the Committee counsel, and respondent may negotiate a resolution to the complaint and prepare and submit a proposed agreed disposition to the Committee.

(b) The Rules & Ethics Committee may, by a vote of the majority of the members of the Committee, accept or reject or propose modifications to an agreed disposition. If modifications are proposed, the Committee prosecutor and respondent shall determine if such modifications are mutually acceptable.

(c) If the Rules & Ethics Committee accepts an agreed disposition, the Committee shall deliver to the Senate a public report on the agreed disposition and a brief statement of the reasons for the agreed disposition.

(d) The Committee staff and Committee counsel shall prepare the report under subsection (c) of this rule.

Rule 13. Disclosure of Evidence.

On request of a respondent, the Committee prosecutor shall provide the respondent with copies of, or permit the respondent to inspect, copy, or photograph, books, papers, documents, photographs, or other tangible objects that the Committee prosecutor intends to use as evidence against the respondent in a disciplinary hearing under Rule 10, any exculpatory evidence, and any other evidence that is material to the prosecution of the case or the preparation of the defense of the respondent.

Rule 14. Exculpatory Information.

If the Rules & Ethics Committee or Committee prosecutor at any time receives any exculpatory information respecting a statement of alleged violation against a respondent, the Committee or Committee prosecutor shall make the information available to the respondent as soon as possible.

Rule 15. Admissibility of Evidence.

(a) Any evidence that is relevant and probative is admissible in a hearing of the Rules & Ethics Committee, unless the evidence is privileged or the United States or Delaware Constitution requires the exclusion of the evidence. Objections going only to the weight that should be given to evidence do not justify the exclusion of the evidence.

(b) The Chair shall rule on a question of admissibility of testimony or evidence presented to the Rules & Ethics Committee. The Chair may limit the presentation of repetitious evidence. A ruling by the Chair is final unless reversed or modified by a vote of a majority of the members of the Committee.

Rule 16. Witnesses.

(a) A notice or subpoena to a witness to appear at a hearing must be served sufficiently in advance of the witness's scheduled appearance to allow the witness a reasonable period of time, as determined by the Rules & Ethics Committee, to prepare for the hearing and, if the witness desires, to employ counsel.

(b) A witness may be accompanied by the witness's counsel at a hearing for the purpose of advising the witness concerning the witness's constitutional rights and to raise objections to the admissibility of testimony or evidence. Counsel for a witness other than the respondent may not engage in oral argument with the Rules & Ethics Committee. After a witness has testified, the witness's counsel may submit to the Committee, in writing, any questions the counsel requests propounded to the counsel's client and any request for additional witnesses or other evidence. The Committee may grant or deny the counsel's request.

(c) The respondent may apply to the Rules & Ethics Committee for the issuance of subpoenas for the appearance of witnesses or the production of documents on the respondent's behalf. The Committee shall grant the respondent's

application on a concise showing by the respondent that the proposed testimony or evidence is relevant and not otherwise available, unless it is not made at a reasonable time or if the testimony or evidence would be merely cumulative. To be valid, a subpoena must be issued under Senate Rule 60(a)(2).

(d) The Rules & Ethics Committee shall, with notice or subpoena for a witness's appearance, provide the witness a printed copy of the rules of the Committee.

III. Proceedings Before the Senate

Rule 17. Records of Senate Proceedings.

All documents filed in the Senate proceeding concerning an allegation of a violation of a Rule of Legislative Conduct must be made available for public inspection at reasonable hours. However, a document may not be made available if the document's disclosure would violate a law.

Rule 18. Special Procedures.

The Senate may adopt, by resolution, special procedures necessary for a particular matter before the Senate. The Senate shall provide a copy of the special procedures to all parties and witnesses in the matter.

Rule 19. Consideration of Complaints by the Senate.

(a)(1) The respondent has 20 calendar days to respond after receipt of the report and statement of counts found proven by the Rules & Ethics Committee under Rule 11. The response must be in writing and signed by the respondent or the respondent's counsel, and be limited to the following:

a. An answer, admitting or denying, under oath, each count set forth in the statement and including any supportive evidence or other relevant information that the respondent may desire to submit.

b. A motion objecting to the participation of a member of the Senate in the consideration of the statement on the grounds that the member cannot render an impartial or unbiased decision.

1. The Senate member against whom the objection is made is the sole judge of the member's qualifications.

2. Within 10 calendar days after the receipt of a motion under paragraph (a)(1)b. of this rule, a Senate member whose recusal is sought shall consider and decide the motion. The President Pro Tempore shall provide notice of the member's decision to the respondent.

(2) An objection under paragraph (a)(1)b. of this rule is not in lieu of an answer and must be filed simultaneously with the answer.

(3) An answer or motion submitted under this rule must be accompanied by a memorandum of points and authorities.

(4) If a Senate member seeks disqualification from further participating in a matter before the Senate, the member shall submit to the President Pro Tempore an affidavit of disqualification, in writing and under oath, stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks disqualification.

(b) Failure to submit an answer to a count in the statement may be deemed by the Senate to be an admission to the violation alleged in the count.

(c) The President Pro Tempore may extend or shorten any time limitations imposed by this rule if the President Pro Tempore determines that the extension would facilitate a fair and complete inquiry or the shorter time is required because of special circumstances. If the President Pro Tempore is the respondent, the Majority Leader shall perform the President Pro Tempore's duties under this subsection.

(d)(1) As soon as practicable after the expiration of all applicable time limitations for action under subsection (a) and (c) of this rule, the Senate shall act, by the vote of a majority of all the members elected to the Senate, to do one of the following:

a. Hold a disciplinary hearing on one or more counts in the statement of counts found proven by the Rules & Ethics Committee.

b. Defer action on the statement but only if there is a grand jury or judicial proceeding pending.

c. Dismiss the statement or any counts of the statement.

(2) The Senate shall notify the respondent and complainant in writing of action taken under paragraph (d)(1) of this rule.

(e)(1) In order to hold a disciplinary hearing, the Senate shall appoint all of the following:

a. An attorney to serve as counsel to the Senate. In serving as counsel to the Senate, the attorney may do all of the following:

1. Provide legal and procedural advice to the Senate.

2. Assist the Senate in its determinations under this rule.

3. Assist a member with responding to a motion made under paragraph (a)(1)b. of this rule.

4. Perform other functions as assigned by the Senate.

b. The Committee prosecutor, to prosecute the matter before the Senate under these rules.

(2) Other individuals to assist the Senate in the Senate's work under these rules.

Rule 20. Disciplinary Hearings.

(a) The Senate shall hold a disciplinary hearing respecting a count in a statement of counts found proven by the Rules & Ethics Committee to receive evidence on the violation. A disciplinary hearing consists of 2 phases, as follows:

(1) The first phase is for the purpose of determining whether or not the counts in the statement have been proved.

(2) The second phase is for the purpose of determining what disciplinary action to take with respect to any count found by the Senate to have been proved.

(b) At a disciplinary hearing, the Committee prosecutor may require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, documents, or other tangible objects as the Committee prosecutor deems necessary. Depositions, interrogatories, and sworn statements taken under the Committee prosecutor's direction may be accepted into the Senate record. To be valid, a subpoena must be issued under Senate Rule 60(a)(1).

(c) Before setting a date for a disciplinary hearing and issuing notices and subpoenas for witnesses, the Senate shall resolve the scope and purpose of the hearing. A copy of the statement of scope and purpose must be furnished to the respondent and all witnesses. During the hearing, the Senate may expand or contract the scope in light of evidence received.

(d)(1) The order of the first phase of a disciplinary hearing is as follows:

a. The Presiding Officer shall open the hearing by stating the Senate's authority to conduct the hearing, the purpose of the hearing, and the hearing's scope.

b. Testimony from witnesses and other evidence pertinent to the subject of the hearing must be received in the following order, if possible:

1. Witnesses and other evidence offered by the Committee prosecutor.

2. Witnesses and other evidence offered by the respondent.

3. Rebuttal witnesses.

c.1. With respect to a witness offered by the Committee prosecutor, the witness is to be examined first by the Committee prosecutor. The respondent or the respondent's counsel may then cross-examine the witness. The Senate members may then question the witness. The Presiding Officer may permit redirect and recross.

2. With respect to a witness offered by the respondent, the witness is to be examined first by the respondent or respondent's counsel. The Committee prosecutor may then cross-examine the witness. The Senate members may then question the witness. The Presiding Officer may permit redirect and recross.

(2) Testimony of all witnesses must be taken under oath.

(e) At a disciplinary hearing, the burden of proof rests on the Committee prosecutor with respect to each count to establish the facts alleged in the statement of counts found proven by the Rules & Ethics Committee by clear and convincing evidence.

(f) The second phase of a disciplinary hearing consists of the oral or written submission by the Committee prosecutor and counsel for the respondent as to the sanction the Senate should impose with respect to a count found by the Senate to have been proved. Testimony by witnesses related to the sanction the Senate should impose with respect to a count found by the Senate to have been proved may be heard in the second phase of the disciplinary hearing.

(g) The Senate shall have all proceedings under this rule transcribed by a certified court reporter.

Rule 21. Findings; Sanctions.

(a)(1) As soon as practicable after the conclusion of the presentation of evidence during the first phase of a disciplinary hearing, the Senate shall consider each count contained in the statement of counts found proven by the Rules & Ethics Committee and, with respect to each count, shall vote either to find the count has been proved or dismiss the count. A count is proved if at least a majority of all of the members elected to the Senate vote for a motion that the count has been proved. A count that is not proved is dismissed by the Senate.

(2) If the Senate votes that a count has been proved under paragraph (a)(1) of this rule, the Senate may, on completion of the second phase of the disciplinary hearing, vote on a motion that any of the following sanctions be imposed concerning the violation charged in the count:

- a. Suspension or expulsion from the Senate.
- b. Censure.
- c. Reprimand.
- d. Fine.
- e. Any other sanction determined by the Senate to be appropriate.

(b)(1) On a motion under paragraph (a)(2) of this rule, a member of the Senate may be suspended or expelled from the Senate with a vote of two-thirds of all the members elected to the Senate concurring in the suspension or expulsion.

(2) On a motion under paragraph (a)(2) of this rule, a member of the Senate may be subjected to a sanction under paragraph (a)(2)b. through (a)(2)e. of this rule with a vote of a majority of all the members elected to the Senate concurring in the sanction.

Rule 22. Disclosure of Evidence.

On the request of a respondent, the Committee prosecutor shall provide the respondent with copies of, or permit the respondent to inspect, copy, or photograph, books, papers, documents, photographs, or other tangible objects that the

Committee prosecutor intends to use as evidence against the respondent in a disciplinary hearing before the Senate, any exculpatory evidence, and any other evidence that is material to the prosecution of the case or the preparation of the defense of the respondent.

Rule 23. Exculpatory Information.

If the Senate or Committee prosecutor at any time receives any exculpatory information respecting a statement of alleged violation against a respondent, the Senate or Committee prosecutor shall make the information available to the respondent as soon as possible.

Rule 24. Admissibility of Evidence.

(a) Any evidence that is relevant and probative is admissible in a hearing before the Senate, unless the evidence is privileged or the United States or Delaware Constitution requires the exclusion of the evidence. Objections going only to the weight that should be given to evidence do not justify the exclusion of the evidence.

(b) The Presiding Officer shall rule on a question of admissibility of testimony or evidence presented to the Senate. The Presiding Officer may limit the presentation of repetitious evidence. A ruling by the Presiding Officer is final unless reversed or modified by a majority vote of the members present.

Rule 25. Witnesses.

(a) A notice or subpoena to a witness to appear at a hearing must be served sufficiently in advance of the witness's scheduled appearance to allow the witness a reasonable period of time, as determined by the President Pro Tempore, to prepare for the hearing and, if the witness desires, to employ counsel. If the President Pro Tempore is the respondent, the Majority Leader shall perform the President Pro Tempore's duties under this subsection.

(b) A witness may be accompanied by the witness's counsel for the purpose of advising the witness concerning the witness's constitutional rights and to raise objections to the admissibility of testimony or evidence. Counsel for a witness other than the respondent may not be permitted to engage in oral argument before the Senate. After a witness has testified, the witness's counsel may submit to the Presiding Officer, in writing, any questions the counsel wishes propounded to the counsel's client and any request for additional witnesses or other evidence. The Presiding Officer may grant or deny the counsel's request.

(c) The respondent may apply to the Senate for the issuance of subpoenas for the appearance of witnesses or the production of documents on the respondent's behalf. The Senate shall grant the respondent's application on a concise showing by the respondent that the proposed testimony or evidence is relevant and not otherwise available, unless it is not made at a reasonable time or if the testimony or evidence would be merely cumulative. To be valid, a subpoena must be issued under Senate Rule 60(a)(1).

440 (d) The Senate shall, with the notice or subpoena for a witness's appearance, provide the witness with a printed
441 copy of the Rules of the Senate and these rules.

SYNOPSIS

This Resolution enacts the Delaware State Senate Rules of Procedure for Ethics Violations.

Author: Senator Lockman