

SENATE COMMITTEE ON
SPECIAL COMMITTEE ON CONDUCT

May 23, 1995 7:00 A.M.

Hearing Room B
Tapes 3 - 4

MEMBERS PRESENT: Sen. Shirley Stull, Chair
Sen. Ron Cease, Vice-Chair
Sen. Gene Derfler
Sen. Tom Hartung
Sen. Peter Sorenson

MEMBERS EXCUSED; Sen. Randy Leonard

STAFF PRESENT: Krisffna McNitt, Committee Adn~or
Tom Clifford, Committee Conn~el
Gretchen Haber, Committee Assistant

MEASURES HEARD: Adoption of committee rules

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TAPE 3, SIDE A

003 CHAIR STULL: called the meeting to order at 7:00 a.m.
- The Senate President intends to maintain the committee as a permanent one after the interim.

007 TOM CLIFFORD, LEGISLATIVE COUNSEL: Outlines proposed committee rules
~HIBIT
A).
- Calls attention to rule five, which requires a majority of members to determine if improper conduct has taken place and whether the committee should take jurisdiction.
- Item six, requires a majority of committee to request a hearing or work session on any matter within the jurisdiction of the committee.
- Continues with review of rules.
- Beginning on page three, are the rules as they pertain to formal process and due process considerations.

070 SEN. SORENSON: What provisions apply to a lobbyist?

071 CLIFFORD: Item 5(c) should include lobbyists and should be added to that section.

078 SEN. SORENSON: Do you envision an ex parse rule such that people being investigated should not be lobbying the committee members on their own?

098 CLIFFORD: Believes this is covered further down in the rules.
- Page four of rules refers to subpoenas of witnesses.

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109 SEN. CEASE: Is there a distinction between actions taken against a lobbyist and a Senate staff person?

115 CLIFFORD: The rules do not differentiate, but the sanctions may be different.
- Continues discussion on witness attendance, witness lists.

137 SEN. DERFLER: Could additional information be provided at the hearing, if that information was not provided to all active parties five days prior to the hearing?

142 CLIFFORD: Yes; but that may require another five days to give the other side enough time to respond to the new information.

153 CHAIR STULL: Notes opportunity for rebuttal evidence.

155 SEN. SORENSON: Supports the concept of providing notice of evidence to both sides, but has concerns about providing a list of questions to be asked prior to the hearing.

185 CHAIR STULL: The rules do not clearly specify that the questions would be provided to all parties. Notes that lawyers involved will not ask the questions, the members will, and that is probably why the provision is there to require questions be given in advance.

218 CLIFFORD: The goal is one of disclosure (boKom of pg. 4) to all parties.

220 SEN. HARTUNG: It unduly complicated to provide a list of questions to all parties. The documentation provided would be sufficient background for all parties.

235 CHAIR STULL: Most cases will not have substantive documentation.

238 SEN. HARTUNG: How will the questions be derived?

240 CHAIR STULL: The parties involved, their attorneys will develop them.

242 SEN. CEASE: The committee is making the process too formal and legalistic. Agrees that most cases will not involve documentation. The committee should have more leeway.

263 KRISTINA MCNITT, COMMITTEE ADMINISTRATOR: Rule 18.08(2) of the Senate Rules states that the parties involved may ask for questions in order to prepare for their appearance before the committee.

278 CHAIR STULL: The formal process is intended to provide a structured format, as compared to the informal process, and many other options open to the complainant.

285 SEN. CEASE: What is the appeal process?

300 CLIFFORD: The committee would not provide an appeal process, but complainant may pursue other legal options. Indicates that they do have the opportunity to request a reconsideration.

320 SEN. CEASE: The committee should formally notify the House of Representatives, should formal action be taken against a lobbyist.

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335 SEN. SORENSON: Regarding to earlier discussion about providing a list of questions prior to the hearing, most of the questions would be accusatory in nature and their prior release could create problems. Maybe the committee won't ask the questions because the questions weren't good. Another option is to limit the number of questions.

345 CHAIR STULL: It might be appropriate to add a disclaimer of some sort, to have the questions reviewed by legal counsel.

380 SEN. SORENSON: Regarding the list of questions, could add "the number to be determined by the committee."

394 CHAIR STULL: Refers to provisions regarding the scope of evidence in the proposed committee rules.

440 SEN. CEASE: The members do not have to ask the questions submitted.

450 CLIFFORD: Perhaps the questions should be negotiated with legal counsel to ensure that they are not argumentative or inflammatory.

Tape 4, Side A

005 CLIFFORD: Concur with suggestion to have counsel assist in the review of questions prior to the hearing, in order to insure the integrity and appropriate nature of the questions.

010 SEN. CEASE: What if the complainant has no counsel, and The accused does?

019 CLIFFORD: The Legislative Counsel Office can be directed to work with the complaining party to assist in providing the case is put forth fully at the hearing. There is no provision in the rules to provide legal counsel to the complainant.

025 SEN. CEASE: Suggests that it be clearly established in the rules that counsel would provide general, informational assistance to all parties involved.

042 SEN. HARTUNG: Is concerned that the formal procedures would scare off those who feel they may have a complaint, but who lack the resources to investigate.

050 CHAIR STULL: Might be a problem to supply one party a lawyer, but not the other.

052 SEN. CEASE: Most staff persons would not bring a case, it is too intimidating. An accused member would obtain counsel, and it is an uneven match.

072 CLIFFORD: It is the responsibility of the committee to bring out all sides of the issue at the hearings.

083 SEN. SORENSON: Given the existence of an informal process, it is appropriate for the formal process to be somewhat legalistic

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111 CHAIR STULL: It is the intention of the committee to discover the truth in the proceedings, and that counsel should be available to all parties and provide informational assistance.

120 SEN. SORENSON: The rules appear to be established for a complaint made by a staff person against a Senator for improper conduct. Is the scope beyond that?

140 CLIFFORD: The rules would apply to all improper conduct. Discusses need to adhere to due process provisions, which calls for formality.

170 SEN. CEASE: Acknowledges that any statements made against a Senate member discredits the entire assembly. Notes tendency for each caucus to protect its own.

185 CHAIR STULL: Stresses importance of establishing committee parameters in advance of any complaint proceedings.

190 CLIFFORD: Continues to review proposed committee rules.

210 SEN. SORENSON: What would happen if there were two subjects of complaints? Would there be separate proceedings?

235 CLIFFORD: If the case involved identical facts, then it would be ideal to hold one hearing. If the circumstances for each party were different,

then separate proceedings would be necessary.

250 SEN. SORENSON: If multiple cases were heard in one hearing, and the complainants are asked to speak first, this would heavily weight the proceedings in their favor.

268 CLIFFORD: Someone would always have to speak first.

270 CHAIR STULL: The complainants would need to speak first to establish the case. Indicates that there would not be the ability to establish the case otherwise.

288 CLIFFORD: Continues to review proposed rules. In regards to the earlier question about ex parte communication, the rules state that counsel shall refrain from private discussions until report is finished.

304 SEN. SORENSON: That is part of it; but day-to-day legislative communication where someone might be approached with information regarding the accused is more the concern.

344 CLIFFORD: The members of this committee, if approached, would have to tell the person that you are not allowed to discuss the matter.

350 SEN. SORENSON: Why not put that in the rules?

363 SEN. CEASE: Requests that the issue of confidentiality should be included in the rules.

367 CHAIR STULL: Agrees; requests that a conceptual amendment be written to establish confidentiality.

385 CLIFFORD: Concludes presentation of committee rules.

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398 CHAIR STULL: Requests a separate heading in the committee rules, listing the conduct of the committee at a hearing such as confidentiality.

Tape 3, Side B

008 MCNITT: Reviews suggested conceptual amendments:
- Page one, add a (d) to add lobbyist and to notify the House of Representatives of any action taken against the lobbyist.

012 CEASE: Suggests including the Governor's Office as well.

015 MCNITT: Page 5, under "witness attendance" to allow Legislative Counsel to review the submitted questions.

- A new section that prohibits communication between the committee members and the accused.

- A new statement that Legislative Counsel would assist in the presentation of the case in an unbiased fashion.

027 SEN. SORENSON: Regarding scope of evidence, suggests adding language stating the objective of the hearing is to obtain the truth about the complaint.

- Under the category of "communications" suggests adding "no senator, staff, or other persons shall contact or communicate a member concerning a contested matter before the committee. No member shall contact or communicate to anyone regarding a contested matter before the committee.

040 CHAIR STULL: The conceptual amendments will be distributed to the members; should a

member have questions or concerns the committee will reconvene to discuss the issue.

045 SEN. DERFLER: Wants it to be clear that members can ask questions not on the list of questions to members.

MOTION: Sen. Sorenson moves the adoption of the committee rules as presented and as amended, as temporary rules until such time as the committee has the opportunity to review them.

060 CHAIR STULL: Prefers to adopt the rules permanently, with the understanding that the committee will meet again if there are concerns once the amended rules are circulated to members.

070 SEN. SORENSON: Withdraws his motion.
MOTION: Sen. Cease moves adoption of the conceptual committee rules as presented.

VOTE: In a roll call vote, the motion passes, 5-0; Sen. Leonard excused.

080 SEN. SORENSON: Requests ample notice of meetings, such as a month.

085 CHAIR STULL: We will not meet without a complaint. If a complaint is lodged, we will give as much notice as possible given the procedural time frames.

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EXHIBIT SUMMARY

A - proposed rules, staff, 7 pgs.

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