

SENATE RULE 43 - COMMITTEE ON ETHICS
January 2012

Procedure Set Out in SR 43	How Staff Can Help
<i>Preliminary Determination by President, Majority and Minority Leaders</i>	
<ul style="list-style-type: none"> ● Any person may file a complaint with the President alleging misconduct involving legislative duties by a member of the Senate. ● The fact that a complaint has been filed and any related documents must be kept confidential. 	<ul style="list-style-type: none"> ● OLLS staff can assist President with understanding the process, timelines, and confidentiality requirements in the rule once a complaint is filed.
<ul style="list-style-type: none"> ● Complaint must: <ul style="list-style-type: none"> • Be in writing • Be signed • Set out facts constituting alleged misconduct • Specify statutes, rules, const'l provisions, ethical principles alleged to have been violated. 	<ul style="list-style-type: none"> ● OLLS staff can assist President and Majority/Minority Leaders in determining whether a communication should be treated as a complaint under the rule and whether the complaint meets the requirements of the rule and was properly filed.
<ul style="list-style-type: none"> ● President must provide copy of the complaint to the member complained against. 	<ul style="list-style-type: none"> ● OLLS staff can assist President by preparing written communications and transmittals between President and member complained against.
<ul style="list-style-type: none"> ● President must consult with Majority and Minority Leaders re: whether the complaint is meritorious or substantiates an ethical violation. 	<ul style="list-style-type: none"> ● OLLS staff may assist Leadership with applicable law in the constitution, statutes, legislative rules, and general ethics principles as they determine whether complaint is meritorious or substantiates an ethical violation.
<ul style="list-style-type: none"> ● If at least 2 of the 3 determine the complaint is not meritorious or does not substantiate an ethical violation, it must be dismissed. ● If dismissed, matter shall remain confidential. 	<ul style="list-style-type: none"> ● OLLS staff may assist the President in preparing correspondence to the complainant and the member complained against regarding the determination of Leadership.
<ul style="list-style-type: none"> ● If the complaint is not dismissed in the preliminary investigation stage, committee on ethics shall be appointed as follows: <ul style="list-style-type: none"> • 5 - 7 members • Party representation in proportion generally to relative number of members of the 2 major political parties in the Senate • Majority party members appointed by the President from among chairs of Senate committees of reference • Minority party members appointed by Minority Leader from among those who are senior in service and experience • President designates chairman and vice chairman. 	<ul style="list-style-type: none"> ● OLLS staff may assist the President by providing advice regarding requirements of the rule re: composition of the committee. ● OLLS staff may assist the President by preparing correspondence to the complainant, member complained against, and Secretary of the Senate regarding the determination by Leadership and the appointment of a committee on ethics, as well as advising member complained against regarding the right to be represented by counsel.

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<i>Procedures for the Committee on Ethics</i>	
<ul style="list-style-type: none"> ● Committee members appointed and chair/vice chair designated. ● Committee may adopt rules of procedure for orderly conduct of its meetings, investigations, and hearings. 	<ul style="list-style-type: none"> ● OLLS staff may assist the chair and other committee members by: <ul style="list-style-type: none"> • Helping chair develop a work plan and timeframes for committee's use • Helping committee understand its charge and the procedures and timelines as set out in the rule • OLLS staff can prepare a proposed written timeline for committee's use. ● OLLS staff can advise the committee chair re: recommended rules of procedure for committee.
<ul style="list-style-type: none"> ● Member complained against may submit a written answer within 10 days after appointment of committee. 	<ul style="list-style-type: none"> ● OLLS staff can assist by distributing submissions, such as the response, to committee members and by providing interface with the press regarding public records. ● OLLS staff can work directly with the attorney representing the member complained against, if any, regarding process, deadlines, communications, etc.
<ul style="list-style-type: none"> ● Committee conducts a <i>preliminary investigation</i> of the complaint as follows: <ul style="list-style-type: none"> • Examination of complaint, answer (if any), and any other evidence compiled pursuant to the committee's request • Committee shall <i>not</i> receive testimony or other evidence from other sources at this stage • Preliminary investigation must be completed within 30 days after appointment of committee • Committee determines whether <i>probable cause</i> exists to find that a violation may have occurred or whether no violation occurred. 	<ul style="list-style-type: none"> ● OLLS staff can assist committee in understanding its duties and limitations in conducting its preliminary investigation. ● OLLS staff can help committee by providing legal information relative to their charge as follows: <ul style="list-style-type: none"> • Memo on how open meetings and open records laws apply to the proceedings • Memo explaining legal standard of "probable cause" • Information re: the sources of law on ethics that may be pertinent to the complaint • Memo explaining other law that may be implicated by the allegations in the complaint. ● OLLS staff can assist in identifying possible sources of evidence relevant to the preliminary investigation and preparing requests for production of such evidence. ● LCS staff can work with chair and members to schedule meetings, provide notice of public meetings, and prepare written agendas for meetings. ● LCS staff can prepare notebooks for committee members' use during process.
<ul style="list-style-type: none"> ● If committee determines that <i>no violation</i> occurred, the complaint is dismissed. 	<ul style="list-style-type: none"> ● OLLS staff can assist committee chair in preparing communications to President, complainant, and member complained against re: committee's determination and dismissal of complaint.
<ul style="list-style-type: none"> ● If committee determines probable cause exists to find that a violation may have occurred, it must notify the member complained against. 	<ul style="list-style-type: none"> ● OLLS staff can assist committee chair in preparing communication notifying member complained against and other interested parties re: committee's determination.

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<ul style="list-style-type: none"> ● Member complained against may request a hearing within 7 days after notice. ● Hearing must start within 14 days after receipt of the request for a hearing. ● At the hearing, the member complained against may appear, present evidence, cross-examine witnesses, and be represented by counsel. ● Committee has power to take testimony under oath and to issue subpoenas and subpoenas duces tecum pursuant to JR 33. 	<ul style="list-style-type: none"> ● OLLS staff can help guide the committee and even develop a list of possible sources and types of written evidence that the committee may wish to consider and witnesses the committee may wish to hear from. ● OLLS staff can help the committee by preparing and arranging for service of subpoenas and subpoenas duces tecum pursuant to JR 33, if requested. ● LCS staff can help the committee by scheduling meetings and copying evidence for notebooks.
<ul style="list-style-type: none"> ● All proceedings of the committee are governed by the open meetings laws and the Colorado Open Records Act. ● Committee may retain counsel and may hire such investigators as it deems necessary for the performance of its duties. (All such expenditures must be approved by the President.) 	<ul style="list-style-type: none"> ● OLLS staff can advise committee members re: the requirements of open meetings and open records laws. ● OLLS staff can assist the committee chair and members with the process for retaining counsel or with hiring an investigator, if requested. ● OLLS staff can work with the press and interested persons who request access to public records resulting from the committee's proceedings.
<ul style="list-style-type: none"> ● After the hearing, the committee may: <ul style="list-style-type: none"> • Dismiss the complaint; or • If it finds that action should be taken against the member, make appropriate recommendations to the Senate (eg: reprimand, censure, expulsion). 	<ul style="list-style-type: none"> ● OLLS staff can provide committee with a confidential memorandum for use in applying the facts gleaned from the complaint, answer, evidence, and testimony to the elements of the law in order to assist the committee in reaching its conclusion. ● OLLS staff can provide the committee with a memorandum describing the range of possible penalties and their ramifications, if necessary.
<ul style="list-style-type: none"> ● Committee needs to communicate its findings and recommendations to the President and/or the Senate. 	<ul style="list-style-type: none"> ● OLLS staff can draft all correspondence that the committee chair directs to communicate findings and recommendations to the President and/or Senate regarding the matter. ● OLLS staff can advise the President and other members of the Senate re: range of possible penalties and the procedures/ramifications related to each.