

LEROY M. GARCIA
PRESIDENT
SENATE DISTRICT 3
STATE CAPITOL BUILDING
200 E. COLFAX AVENUE
DENVER, COLORADO 80203
CAPITOL: (303) 866-4878

Email: leroy.garcia.senate@state.co.us



**SENATE
STATE OF COLORADO
DENVER**

COMMITTEES
EXECUTIVE COMMITTEE, CHAIR
LEGISLATIVE COUNCIL, CHAIR

June 9, 2021

Ms. Cindi Markwell
Secretary of the Senate
Colorado Senate Chambers
State Capitol Building
Denver, CO 80203

Senate President

Dear Madam Secretary:

I have received the attached communication from Chris Forsyth, which sets out a complaint under Senate Rule No. 43 and alleges an ethical violation by Senator Bob Gardner.

Senate Rule No. 43 (a) requires that such a complaint be dismissed if at least two of the three leaders of the Senate conclude that the complaint is not meritorious or does not substantiate an ethical violation. However, this conclusion was not reached by a majority of the leaders of the Senate.

Senate Rule No. 43 (b) directs the President of the Senate to appoint a Committee on Ethics of five to seven Senate members. Therefore, I am establishing a five-member Committee on Ethics, which shall be comprised of three majority party members who I have appointed from among the chairs of Senate committees of reference, and two minority party members who are to be appointed by the Senate Minority Leader from among members of the Senate who are senior in service and experience.

Accordingly, I hereby appoint Senators Gonzales, Lee, and Winter to the Committee on Ethics. I also designate Senator Gonzales as chair of the Committee and Senator Lee as vice chair of the Committee.

In addition, I am asking the Legislative Council to staff the Committee on Ethics and the Office of Legislative Legal Services to provide any legal assistance requested by the Committee.

I request that you deliver copies of this letter and the attached complaint to Senator Gardner, the chair of the Committee on Ethics, Senator Gonzales, and the complainant Chris Forsyth. This letter shall serve as formal notice of the initiation of the procedure set out in Senate Rule No. 43. Once the Senate Minority Leader provides you with written notification of the Minority Leader's two appointments to the Committee on Ethics. As provided for in Senate Rule No. 43 (c), Senator Gardner may submit a written answer to the Committee on Ethics within ten days after the date of the Senate Minority Leader's appointments. In addition, Senator Gardner is entitled to be represented by legal counsel during the proceedings of the Committee on Ethics. The Committee shall proceed in accordance with Senate Rule No 43.

Respectfully,

Leroy M. Garcia Jr.
President of the Senate

April 21, 2021

Senate President Leroy Garcia
Colorado General Assembly
via email: leroy.garcia.senate@state.co.us

Re: Senator Bob Gardner

FORMAL COMPLAINT PURSUANT TO SENATE RULES

Dear President Garcia,

I'm writing to file a formal complaint against Senator Bob Gardner for violating Rule 41 of the Colorado Senate Rules. I'm filing the complaint pursuant to Rule 43 of the Colorado Senate Rules which requires the complaint to be filed with you.

Senator Gardner has violated Rule 41 of the Colorado Senate Rules which provides as follows:

" . . . A member shall respect and comply with the law and shall perform his or her legislative duties at all times **in a manner that promotes public confidence in the integrity and independence of the Senate and of the General Assembly.** By personal example and by admonition to colleagues whose behavior may threaten the honor and integrity of the lawmaking body, the member shall watchfully guard the responsibilities of the public office and the responsibilities and duties placed on the member by the Senate.

Colorado Senate Rule 41 (a.5)(emphasis added).

(c) *Undue influence — definition.* (1) A Senator, by reason of his or her office, is or may be in a position to bring undue influence on other legislators, public officials, or private persons. To use this potential for economic or private gain is an abuse of office and a matter of concern to the Senate, whether or not the act is also punishable under the criminal laws.

Colorado Senate Rule 41 (c)(1).

FACTS

In a joint Judiciary hearing on January 25, 2019, Gardner stated as follows on the legislative record:

“Having had about 5 or 6 years ago a colleague with whom I shared an office come to me and say, ‘I’m appearing in front of this senior judge and the senior judge said this’ and then she showed me the transcript and she said ‘and I don’t know what to do but I understand you’re in the legislature’ and so forth. Well, I was able to make a phone call to the state court administrator. But had my colleague not shared office space with a member of the House Judiciary Committee she would have been faced with a recusal motion . . .”

Gardner admitted on January 25, 2019, that he used his position to bring undue influence on another public official, the state court administrator, to get a different judge assigned to his colleague’s case. Senior judges are placed under contract by the state court administrator’s office and assigned to handle specific cases through the power of the chief justice and the state court administrator.

This year, Gardner was appointed to a legislative panel responsible for hiring an investigator to investigate allegedly inappropriate conduct by the chief justice and the state court administrator that was revealed by a Denver Post reporter in articles earlier this year. The chief justice and state court administrator are alleged to have awarded a large contract to a former judicial branch employee to keep the employee from revealing the misconduct of judges.

At present, Senator Gardner is a prime Senate sponsor of HB 21-1136 which proposes to expand the senior judge program, and therefore proposes to expand the power of the chief justice and state court administrator regarding the senior judge program. Given Gardner’s actions, the bill also proposes to expand Gardner’s power to call the state court administrator and inappropriately control what judge hears a case.

VIOLATIONS

COUNTS 1 and 2: Gardner’s admissions in the January 25, 2019, joint Judiciary hearing show that Senator Gardner has not acted “in a manner that promotes public confidence in the integrity and independence of the Senate and of the General Assembly.” His actions have violated Rule 41(a.5) of the Senate Rules. Gardner used undue influence on the state court administrator for private gain in violation of Rule 41 (c)(1). Gardner used his power to place undue influence to get a different judge on a colleague’s case. As Gardner said, “had my colleague not shared office space with a member of the House Judiciary Committee she would have been faced with a recusal motion . . .” He admittedly used his power to do something other people cannot do. His actions brought both the General Assembly and the judicial branch into disrepute. Gardner’s admission on January 25, 2019, shows that he violated 1) Rule 41 (a.5) of the Senate Rules and 2) Rule 41 (c)(1).


COUNT 3: Gardner was then appointed to a committee responsible for hiring an investigator and essentially overseeing an investigation into the judicial branch. More specifically, the investigation involves the actions of the chief justice and the state court administrator. The General Assembly, and Senate Judiciary in particular, is to keep checks and balances on the judicial branch. That is the governmental function of those entities. That is why the legislature is involved in the investigation. Yet at the same time Gardner is looking into the actions of the chief justice and the state court administrator, he is sponsoring a bill increasing the power of the chief justice and the state court administrator as requested by the chief justice in his address to the legislature. Gardner's actions in sponsoring HB 21-1136 at the same time he is involved in an investigation of the judicial branch does not promote public confidence in the integrity and independence of the Senate and the General Assembly. It is a conflict of interest for Gardner to be overseeing an investigation regarding a chief justice and state court administrator while he pursues a bill requested by the chief justice and the state court administrator. Obviously, the investigation into the chief justice and state court administrator is a farce with Gardner's involvement. Gardner's actions in co-sponsoring HB 21-1136 at the same time that he is on a committee in charge of overseeing an investigation into the judicial branch violates Rule 41 (a.5) of the Senate Rules.

COUNT 4: Given Gardner's admission in the joint Judiciary meeting on January 25, 2019, it is obvious that Gardner is co-sponsoring HB 21-1136 to help himself. Such actions do not promote public confidence in the integrity and independence of the Senate and the General Assembly. The senior judge program is fraught with problems beyond the fact that the program undermines the confidence in the judiciary by allowing the state court administrator to assign or unassign retired judges to particular cases at will. Retired judges are not subject to a vote of the people, do not file financial disclosures and carry the stigma that they retired to avoid discipline. Gardner cannot even begin to articulate how the bill is not a violation of the rights of his constituents. Yet Gardner has shown how the senior judge program has worked for him. Gardner's actions in co-sponsoring HB 21-1136 violate Rule 41 (a.5) of the Senate Rules because he is seeking to increase his power at the expense of his constituents.

SUMMATION

Senator Gardner should not be allowed to be on Senate Judiciary given his propensity for using the position to help himself. More appropriately, Gardner should be expelled from the Senate for brining the Senate and the judiciary into disrepute. If you have any questions, please feel free to contact me. Thank you for your time and attention to this matter.

Sincerely,



Chris Forsyth, Esq.
3155 Ingalls St.
Wheat Ridge, CO 80214
Phone: (W) 303-892-3894; (H) 303-238-8864
cforsyth@judicialintegrity.org

