

IN THE SENATE

SENATE RESOLUTION NO. 107

BY JUDICIARY AND RULES COMMITTEE

A SENATE RESOLUTION

1 STATING FINDINGS OF THE SENATE AND REPEALING RULE 52 OF THE RULES OF THE SEN-
2 ATE RELATING TO CERTAIN MAILING; PROVIDING FOR THE AMENDMENT OF RULE 53
3 OF THE RULES OF THE SENATE TO REDESIGNATE THE SENATE RULE NUMBER, TO PRO-
4 VIDE FOR MATERIAL VIOLATIONS REGARDING CERTAIN COMPLAINTS, AND TO PRO-
5 VIDE THAT PRIVATE COMMUNICATIONS WITH LEADERSHIP SHALL NOT BE CONSTRUED
6 AS VIOLATING CERTAIN CONFIDENTIALITY REQUIREMENTS; AND PROVIDING FOR
7 THE AMENDMENT OF RULE 54 OF THE RULES OF THE SENATE TO REDESIGNATE THE
8 SENATE RULE NUMBER.
9

10 Be It Resolved by the Senate of the State of Idaho:

11 WHEREAS, the Senate deems it necessary and desirable to repeal Rule 52
12 of the Rules of the Senate; and

13 WHEREAS, the Senate deems it necessary and desirable that Rule 53 and
14 Rule 54 of the Rules of the Senate be amended.

15 NOW, THEREFORE, BE IT RESOLVED by the members of the Senate, assembled
16 in the Second Regular Session of the Sixty-fifth Idaho Legislature, that
17 Rule 52 of the Rules of the Senate, be, and the same is hereby repealed.

18 BE IT FURTHER RESOLVED that Rule 53 and Rule 54 of the Rules of the Senate
19 shall be amended to read as follows:

20 RULE 532

21 Committee on Ethics. -- (A) The President Pro Tempore shall receive
22 complaints from any Senator concerning the alleged violation of the Rules
23 of the Senate or the provisions of applicable law by a member of the Senate.
24 Whenever such a complaint is received, the President Pro Tempore shall ap-
25 point a committee on ethics of six members, consisting of a chairman and five
26 members, three of whom must be appointed with the concurrence of the leader
27 of the party opposite to the party of the President Pro Tempore.

28 (B) The complaint shall be in writing, signed, verified and contain one
29 or more of the following allegations:

30 (1) Substantial conduct unbecoming a Senator;

31 (2) A material violation of the Rules of the Senate, including:
32 (i) the disclosure of any information that is confidential
33 concerning the preliminary investigation provided in
34 subsection (E) of this Senate Rule; or (ii) the disclosure of any
35 information, preliminary investigation or written complaint,
36 except as provided in subsection (F) of this Senate Rule;

37 (3) A violation of any state law relating to the use of public office
38 for private pecuniary gain;

1 (4) A violation of any state law relating to conflicts of interest;
2 or

3 (5) A violation of any state law that brings discredit or
4 embarrassment to the Senate or that constitutes a breach of
5 public trust.

6 (C) The complaint shall be specific and supported by competent prelimi-
7 nary evidence of the violation of the Rules of the Senate or the provisions of
8 applicable law, including: (i) the name of the member of the Senate alleged
9 to be in violation; and (ii) the description of the facts and circumstances
10 supporting each alleged violation.

11 (D) The President Pro Tempore shall provide the written complaint to
12 the chairman of the committee on ethics. Subject to the provisions of this
13 rule, the committee shall review the written complaint. The committee may
14 dismiss any ethics complaint that:

15 (1) Does not comply with this Senate Rule;

16 (2) Contains alleged violations that occurred: (i) two years or
17 more before the date on which the complaint was submitted to
18 the committee; or (ii) before the accused Senator was sworn in
19 to the Senate.

20 (E) The committee shall notify the Senator complained against of the
21 complaint and shall provide the Senator a copy of the complaint. The Sen-
22 ator complained against may submit a written answer to the committee. The
23 committee shall make a preliminary investigation of the complaint. Notwith-
24 standing the provisions of Senate Rule 20, such investigatory meetings shall
25 be held in executive session. If, after investigation, the committee deter-
26 mines no probable cause exists that a violation has occurred, the committee
27 shall dismiss the complaint and notify the complaining Senator and the Sena-
28 tor complained against. All proceedings of the committee, pursuant to this
29 subsection (E), including the complaint and the appointment of the committee
30 shall remain confidential, except that private communications with members
31 of majority or minority leadership shall not be construed as violating this
32 requirement of confidentiality.

33 (F) If, after investigation, the committee determines probable cause
34 exists that a violation may have occurred, the committee shall so notify
35 the complaining Senator and the Senator complained against. At that time,
36 the written complaint and the formation of the committee shall no longer be
37 confidential, but shall become a public document. The Senator complained
38 against may request a hearing before the committee, before which he shall
39 be entitled to appear, present evidence, cross-examine witnesses, and be
40 represented by counsel. The committee shall have the power to take testimony
41 under oath and to issue subpoenas and subpoenas duces tecum in the manner
42 provided in Chapter 4, Title 67, Idaho Code. After the hearing, the com-
43 mittee may make recommendations to the Senate. The committee may recommend
44 dismissal of the charges, reprimand, censure, or expulsion. Expulsion of a
45 Senate member shall require the affirmative vote of two-thirds of the mem-
46 bers elected to the Senate, as provided by Section 11 of Article III of the
47 Constitution. Reprimand or censure of a member shall require the affirma-

1 tive vote of a majority of the members elected to the Senate. Action of the
2 Senate pursuant to this rule is final and not subject to court review.

3 (G) The committee may retain such counsel and may hire such investiga-
4 tors as it deems necessary for the performance of its duties under this rule,
5 or may request an advisory opinion from the Attorney General. All expendi-
6 tures incurred pursuant to this subsection (G) shall be approved by the Pres-
7 ident Pro Tempore and paid by vouchers and warrants drawn as provided by law
8 from appropriations made to the Legislative Account.

9 (H) The committee may adopt rules of procedure for the orderly conduct
10 of committee meetings, investigations, and hearings, which rules shall be
11 consistent with this rule and other applicable rules of the Senate and state
12 statutes.

13 (I) If the complaint concerns misconduct of the President Pro Tempore,
14 then the duties of the President Pro Tempore in this rule shall be the duties
15 of the floor leader of the same party as the President Pro Tempore.

16 RULE 543

17 Contest of Election -- Procedures. This Rule governs procedures lead-
18 ing up to and including a hearing on the contest of election. It should be
19 read in conjunction with Chapter 21, Title 34, Idaho Code. For purposes of
20 this Rule, the term "Party" means either the CONTESTEE or the CONTESTOR; the
21 term "Parties" means both.

22 (A) Any proof of the CONTESTEE's or CONTESTOR's legal arguments, in-
23 cluding depositions, affidavits, production of papers, and examination
24 of poll books and ballots (herein "Record") that either CONTESTEE or
25 CONTESTOR desires the Senate to consider in adjudication of a Contest
26 must be completed on or before December 29. CONTESTEE and CONTESTOR's
27 Record must be delivered to the Office of the Secretary of State no later
28 than the close of business on the next business day. Any Record or ev-
29 idence from the CONTESTEE or CONTESTOR not delivered to the Office of
30 the Secretary of State by that day and time will not be considered by the
31 Senate.

32 (B) The Parties must file a Memorandum that outlines their claims, de-
33 fenses, legal authority, legislative precedent, proposed form of re-
34 lief, and a description of witness fees and discovery costs that are in-
35 curred. The Memorandum must be filed with the Office of the Secretary
36 of State no later than the close of business four (4) business days fol-
37 lowing delivery of the Record to the Office of the Secretary of State as
38 provided in paragraph (A). However, CONTESTEE is not required to file a
39 responsive pleading to the Contest.

40 (C) Any Party may file a Responsive Memorandum. If a Party chooses to
41 file a Responsive Memorandum, it must be filed with the Office of the
42 Secretary of State no later than the close of business on the first day
43 of the next Regular Session.

44 (D) If an unresolved discovery or Record dispute exists and continues
45 between the CONTESTEE and the CONTESTOR, and on motion duly made, the
46 presiding officer or his designee may rule on the dispute. Neither the
47 CONTESTEE nor the CONTESTOR will be granted any additional time beyond
48 December 29 to develop or deliver his Record.

49 (E) Committee hearing procedures. If the Senate refers the Contest
50 of Election to a Standing or Special Committee, the Committee Chairman

1 will notify the Parties of the Committee hearing procedures. The fol-
2 lowing procedures, subject to the discretion of the Committee Chairman,
3 will govern the hearing:

4 (1) No additional testimony or Record may be presented, taken, or
5 allowed by the Parties beyond the Record delivered to the Office of
6 the Secretary of State as provided in paragraph (A) of this Rule.

7 (2) Neither CONTESTEE nor CONTESTOR may examine or cross-examine
8 any witness that testifies before the Committee. All examination
9 will be performed by Committee members.

10 (3) Pursuant to Section 34-2104, Idaho Code, only the named points
11 in the Notice of Contest of Elections may be argued.

12 (4) The Committee may send for and receive persons, papers, and
13 records, whether written or oral, including from the Office of the
14 Attorney General, other State Elected Officers, State officials,
15 County Elected Officers, County officials, or other witnesses
16 that the Committee determines will reasonably assist the Commit-
17 tee in the performance of its constitutional duty as a "judge of
18 the election, qualifications and returns of its own members," Sec-
19 tion 9, Article III, Idaho Constitution.

20 (5) In all other respects, the Committee will be governed by the
21 rules of the Senate.

22 (F) The Committee may adopt any of the following as part of the hearing
23 procedures:

24 (1) Permit the Parties to have counsel present at Committee meet-
25 ing(s); and

26 (2) Establish a time limit for the CONTESTEE and CONTESTOR to ar-
27 gue their positions to the Committee.

28 (G) Neither CONTESTEE nor CONTESTOR, nor their counsel, may partici-
29 pate in ex parte communication with any Idaho State Senator regarding
30 the merits of the Contest of Election prior to final Senate determina-
31 tion.

32 (H) Service of all Record, Memorandum, Responsive Memorandum, motions,
33 or objections must be made on the other Party as provided in Idaho Rules
34 of Civil Procedure 5(b), excepting subpart 5(b)(2)(D). The Parties must
35 also provide a proof of service as provided by Idaho Rules of Civil Pro-
36 cedure 5(e). The Parties must work in good faith to ensure reasonable
37 and timely service, considering the limited time periods.

38 (I) Nothing in this Rule limits or restricts the Senate in the perfor-
39 mance of its duties as the judge of the election, qualifications and re-
40 turns of its members.