



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE May 19, 2023

TO Co-Chairmen Tara Nethercott and Clark Stith, Subcommittee on Legislative Ethics Complaint Procedures

FROM Tamara Rivale, Legislative Counsel

SUBJECT History of Joint Rule 22-1

The Wyoming House of Representatives and Senate adopted Joint Rule 22-1 during the 2011 General Session. Prior to Joint Rule 22-1, the Wyoming Legislature did not have a procedure specifically defined for ethics complaints.¹

As background, an ethics complaint was filed in 2010 against the late Representative Sue Wallis.² The complaint was also sent to the Campbell County Attorney's Office and the Wyoming Attorney General. However, the former did not find cause to pursue the matter, while the latter cited a lack of authority to investigate it. The complaint spurred the House and Senate Rules Committees to propose Joint Rule 22-1 for adoption by the 61st Legislature.

The audio recording of the proceedings in both the House and Senate chambers on the day of the Joint Rule's adoption provides insight into the context, intent, and purpose of the rule. The deliberations included several breaks for the House and Senate members to discuss questions raised by members and to prepare a corrected copy inclusive of amendments suggested by members.

¹Various rules and statutes have been in force for many years that address specific conduct of members (i.e., smoking on the floor), the general authority of the president and speaker, and the general investigatory powers of the Legislature. See Memo from David K. Gruver to Richard H. Miller, Director, and Dan J. Pauli, Assistant Director, Disciplinary Actions for Members of the Legislature (July 1992).

²Pat Raia, "**Wyoming House Leaders: Allegations Against Wallis Unfounded**," BloodHorse Magazine (February 8, 2011); Joan Barron, "**Wyoming House leaders will 'look at' Wallis ethics complaint: Wild horse activist files against state Rep. Wallis**," Casper Star Tribune (January 2, 2011). The complaint alleged the representative's sponsorship of legislation relating to the disposal of livestock amounted to violations of the conflict of interest and disclosure laws "because she was improperly using her position as a state lawmaker to promote and misrepresent horse processing development from which she may personally benefit."

In his explanation of the Rule, House Majority Floor Leader Tom Lubnau explained:

The unfortunate reality of being involved in today's political system is that there are those who would use ethics challenges as a tool to advance their political interests. On the other hand, this body should take true ethics violations very seriously. Currently, we have no rules to address ethical violations. Joint Rule 22 attempts to strike a balance between quickly addressing spurious claims while at the same time addressing serious claims.

Comments during the Senate Floor Debate indicated the rule was developed based on the procedures followed by the Wyoming Bar Association for handling complaints against lawyers. The Joint Rules Committee made changes to the Bar Association's procedures, including provisions for the establishment of a special committee, the requirement for open meetings of that committee, and the inclusion of a 'reasonably prudent legislative person' standard. The standard adopted in the rule was that of a "reasonably prudent person, informed of legislative procedures and duties," rather than being an average person on the street.

Questions raised by Senate members revolved around concerns regarding potential misuse of the complaint process and its administrative burden. Senate Majority Floor Leader Tony Ross explained that the "three-tiered process" addressed these issues. He explained that a complaint is first filed with the presiding officer for consultation with other members of leadership to decide whether or not to summarily dismiss it, then to a subcommittee to determine if probable cause exists and if there is merit, and finally to a special committee for a hearing similar to that of house election contests. He further stated that in the past, leadership "kind of got together and decided whether [a complaint] was valid or not" and that the proposed rule "would provide some more formality to that."

The House's debate focused more on the necessity of executive sessions and confidentiality. To those questions, House Majority Floor Leader Lubnau indicated the reason for an executive session for a probable cause determination was to avoid unnecessary attention on salacious and baseless allegations that lack probable cause. He further stated that the rule was an attempt to strike a balance between dealing publicly and openly with legitimate ethical complaints and disposing of spurious ones early on.

After introducing the Joint Rule and debating its provisions, the Senate and the House laid the Joint Rule back for several hours. Upon return to the topic, both chambers proceeded to adopt a corrected copy of the Joint Rule.

The final version of the rule incorporated three changes from the initial proposal. First, it mandated that upon receiving a signed written complaint, a copy must be promptly provided to the member who is the subject of the complaint. Second, language originating

in Section 797, Paragraph 4 from Mason's Manual of Legislative Procedures was included in the Joint Rule, allowing for the dismissal of complaints filed solely "for political purposes." This addition was explained as necessary to prevent misuse of the complaint process. Third, the duty to handle complaints against the president or the speaker was reassigned from the majority floor leaders to the Senate vice president and the House speaker pro tempore.

The House approved the Joint Rule with a vote of 40 to 19, 1 excused, while the Senate passed it with a vote of 29, 1 excused.

Joint Rule 22-1 has not been amended since its adoption but was repealed by the Senate in 2023. In the span of 12 years during which it was in effect, no complaints have advanced to the point where a special committee was established to conduct an investigation as outlined in subsection (d) of the rule.