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OKLAHOMA HOUSE OF REPRESENTATIVES

SPECIAL INVESTIGATIVE COMMITTEE  
REPORT

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Date Submitted: September 16, 2011

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## **SPECIAL INVESTIGATIVE COMMITTEE REPORT**

**To: Clerk, Oklahoma House of Representatives**

Pursuant to the Committee Rules of the Special Investigative Committee of the Oklahoma House of Representatives, Rule IV.F., the Committee submits this Report, for publication in the House Journal.

### **I. EXECUTIVE SUMMARY**

#### **Introduction.**

In response to a felony charge of bribery filed in late December 2010 against a Member of the Oklahoma House of Representatives, Speaker of the House Kris Steele established the bipartisan Special Investigative Committee of the Oklahoma House of Representatives. Pursuant to the Oklahoma Constitution, the Committee was given the mandate to investigate whether the Member had engaged in conduct that impaired his ability to perform his duties as a Member of the House or that substantially impaired public confidence in the Legislature. The Committee was called upon to recommend to the Oklahoma House of Representatives whether the House should punish or expel the Member.

The Members of the Special Investigative Committee commend House Speaker Steele for creating the Committee. The importance of the Committee's mission and the work it has performed cannot be overstated. Allegations of bribery in connection with the work of the House of Representatives go to the heart of the democratic process. It was incumbent upon the House of Representatives to explore and understand for itself the basis of such allegations, regardless of the pendency of the criminal action. Certainly, any private business, large or small, would examine for itself the facts surrounding alleged corruption within the company. Government should be no different. In fact, to facilitate this process, Congress and about half of the states have permanent ethics committees with permanent rules of operation.

#### **Decision of the Committee.**

After conducting Phase I of its work, and after careful evaluation of the information it has gathered and all options available to it, the Special Investigative Committee has concluded it is appropriate for Committee proceedings to conclude with this Report.<sup>1</sup>

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<sup>1</sup> Pursuant to Committee Rules, the Committee has determined it has gathered sufficient information to form an opinion regarding whether sufficient evidence exists which, if uncontested, would suggest a Member has engaged in conduct which impairs the ability of the Member to perform the duties of his or her office, or substantially impairs public confidence in the Legislature. Committee Rule III.A. The Rules provide that if a majority of a quorum of the Committee votes that based on the evidence gathered a formal hearing relating to the allegations is warranted, counsel for the Committee shall prepare a written report, to which the Member should then respond. Committee Rule III.B.

The Committee's decision is primarily based on the fact the information it has gathered suggests further examination of the allegations through the adversarial proceedings described in Phases II and III of the Committee's Rules is unnecessary at this time. The Committee has gained a reasonable understanding of the facts on which the allegations against the Member are based.

Guilt or innocence of a crime may only be determined in a court of law. The Committee, of course, can neither determine nor predict the outcome of the criminal charges now pending against the Member. It is clearly inappropriate for the Committee to recommend disciplinary action based on speculation as to whether the Member has committed a crime. If the Member is convicted in the criminal proceedings, the Committee recommends and anticipates that the House of Representatives will examine this matter further in light of the evidence and findings in the criminal case. To the extent the alleged actions supporting the charge of bribery are proven in the criminal proceedings, the Committee strongly expresses its disapproval of the Member's conduct.

The Committee's decision should not be perceived as a finding no improper conduct occurred. Rather, the Committee's decision is simply based on the fact it has accomplished its purpose of gathering the facts, and based on the information before it, deems the most appropriate forum in which to determine the truth of the allegations to be the criminal proceedings.

## II. CONCLUSIONS

### **The Committee Determines a Formal Hearing is not Warranted.**

Upon reviewing the evidence and other materials, the Committee met and determined it had gathered sufficient information to form an opinion about the matter before it. *See* Committee Rule III.A. The Committee's next charge was to determine whether, based on the evidence gathered, a formal hearing relating to the allegations is warranted. *Id.*, Phase II. For the reasons stated below, the Committee determines that a formal hearing relating to the allegations in this matter is not warranted.

### **Assumptions.**

In reaching its conclusions, the Committee makes no findings as to whether the factual allegations against Rep. Terrill are true. As stated on page 11 of this Report, Rep. Terrill has not had an opportunity to cross-examine witnesses, nor did he choose to provide the Committee with evidence.

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Given the Committee's concerns as explained in this report, the Committee has determined, pursuant to these Rules, that whether the Member's ability to perform his duties, and/or whether his behavior will impair public confidence to such an extent that the Member should be disciplined by the House will be determined in the criminal proceeding. Thus, this internal investigative process has served its purpose.

Solely for purposes of determining whether the Committee should proceed further, the Committee does not discount any of the statements made by various witnesses, as detailed in Part V, below, but simply assumes they are true. It should be noted that examination of witnesses by Rep. Terrill or his presentation of evidence might have caused the Committee to alter the assumption of the veracity of the allegations. The judicial process will afford Rep. Terrill the opportunity to make his own presentation.

**The Committee Believes that, Unless the Conduct in Question Constitutes a Felony,  
Expulsion is not an Appropriate Punishment.**

The Members of the Committee met on several occasions to discuss the evidence it had collected. Each of the Members indicated deep concern about the allegations, perhaps best summed up by one Member's statement that if the allegations are true, and that is what politics is all about, "I don't want anything to do with politics."

Each of the Members also indicated great appreciation for the fact that in the American and Oklahoma systems of government, generally speaking the will of the people must be respected. Hence, although the punishment of expulsion of a duly elected Member of the Oklahoma House of Representatives plainly is one to be considered in appropriate circumstances, that step should be undertaken rarely, only in extreme cases. The Oklahoma Constitution makes clear that resort to expulsion must be had with great caution, in that it requires a supermajority vote of "the concurrence of two-thirds[.]" Okla. Const. Art. 5, § 30. Historically, reluctance to overturn the will of the voters by exercising the option of expulsion is demonstrated by the fact the United States Congress has taken that extraordinary step only in a handful of cases in over 220 years. It appears that the decision to expel is also extremely rare among state legislative bodies. To the best of the Committee's knowledge, neither legislative body in Oklahoma has ever expelled a Member.

Based on the available evidence, even assuming the truth of the factual allegations, no Member of the Committee would vote to recommend expulsion of Rep. Terrill from the Oklahoma House of Representatives unless he is convicted in a court of law of the charges against him. To be sure, the challenged conduct, assuming it happened, is egregiously reprehensible, and is certainly not something that occurs in the usual course of business at the Oklahoma House of Representatives. No Member of the Committee has previously witnessed or heard of similar conduct while serving in the Oklahoma House of Representatives. All Members of the Committee strongly disapprove of the challenged conduct.

However, expulsion of a Legislator is a rarely exercised punishment. It appears that the United States House of Representatives has expelled only five Members (including one Member-elect), and the United States Senate has expelled fifteen Senators, most in the 1860s for supporting the Confederacy. And, although the precise numbers are difficult to ascertain, it appears relatively few Members of state Legislatures have been disciplined based on the standard of "disorderly behavior," "disorderly conduct," or similar terms.

The allegations here were made before the most recent election at which the voters in his district re-elected Rep. Terrill. Thus, the Committee believes the voters of the district have indicated their choice that Rep. Terrill remain in office, at least pending the outcome of his trial.

Moreover, the Committee believes the recent changes to the Rules of the Oklahoma House of Representatives should drastically reduce the opportunities for such conduct to occur and recommends that the Leadership and Members of the Oklahoma House of Representatives should closely monitor the results of the changes and, if necessary, make additional changes to inhibit abuse of the legislative process.

The Members of the Committee would, of course, vote to expel any Member who has been properly convicted of a felony. As stated earlier, it is up to a court of competent jurisdiction to determine whether the conduct alleged against Rep. Terrill constitutes a felony. If that happens, the Oklahoma House of Representatives can decide at that time whether it should expel a Member.

**Because the Oklahoma House of Representatives has already Reprimanded Rep. Terrill, further Punishment short of Expulsion would be Unnecessarily Duplicative.**

On the other hand, assuming the truth of the factual allegations – that is, assuming after a full evidentiary hearing at which Rep. Terrill had the opportunity to challenge the allegations and put on his own evidence, the Members of the Committee found all of the factual allegations were true – the Members of the Committee each would recommend that the Oklahoma House of Representatives issue some sort of punishment for Rep. Terrill, as provided in Article 5, Section 30, of the Oklahoma Constitution.

However, the Members of the Committee conclude that, because the Oklahoma House of Representatives has already chosen to “punish [Rep. Terrill] for disorderly behavior” during the current Legislative Session, an additional punishment at this time would merely be cumulative. Earlier this year, the Oklahoma House of Representatives voted to reprimand Rep. Terrill for conduct that was unrelated to this investigation (the Committee also notes that the House of Representatives also voted to reprimand two other Members for unrelated conduct). The reprimand occurred upon motion, after a relatively short debate. The process used by this Committee was not employed in any of those reprimands. Given this year’s reprimand of Rep. Terrill is a matter of record, the Members of the Committee conclude that going through a lengthy process that at most might result in a second reprimand makes little sense. Based on the evidence gathered, the Members of the Committee conclude that a formal hearing relating to the allegations is not warranted. *See* Committee Rule III.B.

**The Committee Recommends that the House Adopt Rules Establishing a Permanent Ethics Committee.**

Congress and about half of the states have permanent ethics committees with permanent rules of operation. The Members of the Committee believe the Oklahoma House of Representatives should create a House Ethics Committee, with established rules.

Establishing an Ethics Committee and creating standing rules should instill confidence that the Oklahoma House of Representatives will deal with ethics complaints in an expeditious, fair and consistent manner. Indeed, in reviewing how other legislatures handle ethics complaints against Members, the Committee believes those jurisdictions that have an established committee with established rules appear to be best equipped to process complaints.

Therefore, the Committee suggests that the Speaker of the Oklahoma House of Representatives create and establish a permanent, bi-partisan Ethics Committee. The Committee also suggests that the Speaker of the House of Representatives direct the Ethics Committee to undertake the task of creating a set of rules under which the Ethics Committee will operate. The Ethics Committee would be similar in function to this Committee, would examine the application of the Rules to particular conduct of House Members and would make recommendations to the House of Representatives as to appropriate disciplinary action.

### **Changes to the Rules of the House of Representatives, Adopted at the Beginning of the 2011 Legislative Session, Create Transparency and Prevent Abuse of the Conference Committee Process.**

One of the more troubling aspects of the allegations involved in this matter was the lack of transparency that has sometimes occurred in the legislative process. Significant rules changes have ameliorated that situation.

At the beginning of the 2011 Legislative Session, Speaker of the House Kris Steele led the House to adopt significant reforms to create greater transparency in the legislative process of the House of Representatives. Among the changes are requirements that conference committees must now hold open meetings and public votes. Moreover, the House of Representatives no longer will consider any conference committee report unless the report, including any changes to the proposed legislation contained in the report, appears online for at least 24 hours before coming to the floor for a vote. These changes in procedure, together with some technological changes to the House of Representatives' computer system, should dramatically reduce the opportunities for abuse of the legislative process, particularly at the end of a legislative session.

Under former practice, the House would consider a conference committee report "only when a majority of both the House and Senate members of the committee have signed the report." *See Rules of the House of Representatives, Fifty-second Legislature of the State of Oklahoma* ("Old Rules"), Rule 7.15(a). However, there was no requirement that House conference committee votes be cast, or even that a House conference committee meet in open session. That practice has changed.

Under current rules, "All meetings of standing conference committees shall be open to the public, subject to the authority of the chairperson to maintain order and decorum." *See House Rules, 53<sup>rd</sup> Oklahoma Legislature* ("New Rules"), Rule 7.15. Moreover, under the New Rules, standing conference committees must give reasonable public notice, New Rule 7.16, and all votes must be cast "in open, public meetings." New Rule 7.18. And, under New Rule 7.21(c), "A conference committee report may be considered for adoption only if said report has been published on the joint conference calendar twenty-four (24) hours before consideration of the

report.” Moreover, under New Rule 7.22, “All records required by the provisions of this Rule shall be made available on the House website at least for the duration of the Session.”

Perhaps the most significant change is that the House Rules no longer allow circumvention of the disclosure rules at the end of the legislative session. According to the last sentence of Old Rule 7.15(d), “The requirements of this paragraph [for disclosure of conference committee reports] shall not be applicable on the last two (2) days of any legislative session once the date of sine die adjournment has been established.” This exception to the general rule of disclosure effectively allowed large amounts of legislation to be written at the end of a legislative session with virtually no time for Members to read and consider the legislation.

The New Rules eliminate this exception to the general rule. In combination with the other rules changes delineated above, the elimination of the last two days exception has fostered a much more orderly and deliberative process.

The Committee thinks these changes to the House Rules have been steps in the right direction. The Committee also notes that the changes to the legislation in question here – SB 738 and HB 2486 – were done under the Old Rules.

### **III. BACKGROUND**

On December 22, 2010, the State of Oklahoma filed an Information in Oklahoma County District Court, charging State Representative Randall Terrill with “the crime of offering a bribe for withdrawal of candidacy” to former State Senator Deborah Ann Leftwich. The Information alleged Rep. Terrill “intentionally, willfully, and knowingly did offer a thing of value to Deborah Ann Leftwich for her withdrawal of candidacy[.]” The Information alleges Rep. Terrill “attempt[ed] to legislatively create and fund an \$80,000 per year state job with the Oklahoma Medical Examiner’s Office and through political influence and/or intimidation force Deborah Ann Leftwich’s appointment to said job in return for Deborah Ann Leftwich withdrawing her candidacy for Oklahoma State Senate Seat 44 for the 2011-2014 term, contrary to provisions of Section 16-107 of [Title 26 of] the Oklahoma Statutes and against the peace and dignity of the State of Oklahoma.”

According to the Information, the Oklahoma County District Attorney received information that Rep. Terrill, Rep. Mike Christian, and Sen. Leftwich “were involved in a plan to create the ‘Transition Coordinator’ position for Sen. Leftwich at the Oklahoma State Medical Examiner’s Office.” The Information alleged the “plan was for Sen. Leftwich to be offered the position to induce her to withdraw her candidacy for Senate District 44.”

### **IV. FORMATION OF THE SPECIAL INVESTIGATIVE COMMITTEE**

#### **Composition of the Committee.**

At the beginning of the 1<sup>st</sup> Session of the 53<sup>rd</sup> Legislature of the State of Oklahoma, Speaker of the House Kris Steele, pursuant to House of Representatives Rule 11.2, established the Special Investigative Committee to investigate “whether a Member of the House of

Representatives ('Member') has engaged in conduct which impairs the ability of the Member to perform the duties of his or her office, or substantially impairs public confidence in the Legislature." See Committee Rules, Phase I, *citing* Okla. Const. Art. 5, § 30. The Special Investigative Committee was created on a bipartisan basis. The Committee has eight Members: four are Republicans and four are Democrats.

### **Oklahoma's Constitutional Standard – "Disorderly Behavior."**

The Oklahoma Constitution provides, at Art. 5, § 30, in relevant part:

Each House may determine the rules of its proceedings, **punish its members for disorderly behavior**, and, with the concurrence of two-thirds, expel a member.

(Emphasis added.)

Notably, the language of Oklahoma's Constitutional provision is identical to that in the United States Constitution, Art. I, § 5, cl. 2, and, similarly, the standard of discipline in the federal provision contains no further qualifications:

Each House may determine the Rules of its Proceedings, **punish its Members for disorderly Behaviour**, and, with the Concurrence of two thirds, expel a Member.

(Emphasis added.) Oklahoma's Constitutional standard – "disorderly behavior" – is identical not only to that of the United States Constitution but also to that of more than twenty states (and innumerable city charters or ordinances). The standard in several additional states is virtually identical, including terms such as "disorderly conduct," or "disorderly and contemptuous" conduct or behavior. Like Oklahoma's Constitution, the federal Constitution and these various state laws generally do not contain any further description or qualification of what acts constitute "disorderly behavior," or what sanctions may be imposed for such conduct.

Review of the application of the standard of "disorderly behavior" to specific conduct in the United States House and Senate and its interpretation by various federal and state courts is helpful in understanding the meaning of the phrase under Oklahoma law. See, e.g., *Brock v. Thompson*, 1997 OK 127, ¶ 14, 948 P.2d 279, 287-88 (relying on United States Supreme Court cases interpreting the "Speech or Debate" clause of the United States Constitution as guidance in interpreting the identical Oklahoma provision).

### **The "Disorderly Behavior" Standard is Broad and Extends to any Conduct which is Inconsistent with the Trust and Duty of a Member.**

Discipline based on the "disorderly behavior" standard of conduct emanates from the necessity and importance of legislative bodies' inherent right to protect their authority and dignity and their inherent power of self-protection. *In re Chapman*, 166 U.S. 661, 668 (1897). As the United States Supreme Court has observed, the power of self-protection has a broad reach, extending to all cases where the offense, in the judgment of the legislative body, is inconsistent with the trust and duty of a Member or threatens the legislative body's institutional integrity.

*Powell v. McCormack*, 395 U.S. 486, 548 (1969) (“Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds.”).

The federal counterpart to Oklahoma’s “disorderly behavior” clause “gives both Houses [of Congress] broad official powers to hold investigations ‘for violations of statutory law, including crimes; for violations of internal congressional rules; or for ... even purely private conduct by a Member that, in the House’s opinion, reflects badly on it as an institution.’” *In re Grand Jury Subpoenas*, 571 F.3d 1200, 1204 (D.C. Cir. 2009) (Kavanaugh, J., concurring), quoting Chafetz, *Democracy’s Privileged Few*, at 210 (citing Congressional Research Service, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, at CRS-3 (2002) (“CRS House Report”) (internal quotation marks omitted). “The [Disorderly Behavior] Clause thus grants expansive authority for each House to discipline and sanction its Members for improper behavior.” *Id.* The same breadth of the power each house of Congress has to determine what conduct constitutes “disorderly behavior” is also well recognized as to state legislative bodies. *See, e.g., French v. Senate of State of California*, 80 P. 1031, 1032-33 (Cal. 1905); *People ex rel. McDonald v. Keeler*, 2 N.E. 615, 624 (N.Y. 1885).

The U.S. House Judiciary Committee has described the power of the House to punish for “disorderly behavior” as “full and plenary and may be enforced by summary proceedings. It is discretionary in character ... restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote.” *See* CRS House Report, at CRS-12, quoting H.R. Rpt. No. 570, 63<sup>rd</sup> Cong., 2d Sess. (1914). According to the CRS House Report, House Members may be disciplined for any conduct which the House finds reflects discredit upon the institution. CRS House Report, at CRS-12.

### **Expulsion, Reprimand and Censure.**

Expulsion of a Member is rare, and the concept is self-explanatory. However, unlike the term “expel,” the words censure, reprimand, and admonition do not appear in either the federal Constitution or the Oklahoma Constitution. Nevertheless, they are the traditional ways in which legislative bodies have disciplined Members and maintained order and dignity in their proceedings.

### **Differences between the Committee’s Investigation and the Proceedings in District Court.**

Under the constitutional doctrine of the separation of powers, Okla. Const. Art. 4, § 1, it is up to the Executive Branch to determine whether to charge an individual with a crime and the Judicial Branch to determine that person’s guilt or innocence. In this particular matter, the process is moving forward within the court system.

On the other hand, it is the province of the Oklahoma House of Representatives to determine whether one of its Members has done something worthy of punishment or expulsion, as provided in Okla. Const. Art. 5, § 30. Of course, both the criminal and the legislative proceedings may involve the same conduct, as is the case here. Certainly, conviction on a charge

such as the one involved in this matter could well have an effect on the legislative body's determination of whether a Member should be disciplined. But the Committee's investigation remains separate from the criminal proceedings now pending in court.

The Oklahoma Constitution recognizes this dichotomy in a number of ways. One of the most obvious is the provision of Article 5, Section 19, that legislative "[p]unishment for contempt or disorderly conduct, or for any other cause, shall not bar an indictment for the same offense." In other words, there is no double jeopardy prohibition on the filing of a criminal charge against a person who has been punished under Article 5, Section 30. On the other hand, no person is "eligible to election to the Legislature, who has been adjudged guilty of a felony." Okla. Const. Art. 5, § 18.

### **Initial Meeting; Adoption of Rules.**

The Committee met for the first time on Monday, February 14, 2011. Its first order of business was to adopt rules under which it would operate. The Committee received a draft set of proposed rules. There was significant discussion of the proposed rules.

The Committee Rules were based on rules from various sources, including the United States House of Representatives, the United States Senate, and the legislatures of several other states. Additionally, the Committee reviewed statutes and rules of several governmental investigative bodies in Oklahoma, such as the Council on Judicial Complaints. Many of these rules proved helpful as guidance. None was completely dispositive. After further discussion and amendment, the Committee unanimously adopted the Committee Rules. A copy of the Committee Rules is attached to this Report.

The Committee Rules call for a three-part process. In Phase I, the Committee conducts its investigation of whether a Member of the House of Representatives engaged in conduct which impairs the ability of the Member to perform the duties of his or her office, or substantially impairs public confidence in the Legislature, as provided in Okla. Const. Art. 5, § 30.

According to the Committee Rules, when a majority of a quorum of the Committee believes the Committee has gathered sufficient information to form an opinion, the Committee may determine whether sufficient evidence exists to warrant further proceedings. Committee Rule III.A. Thus, in Phase II, if the Committee believes based on the evidence gathered that a formal hearing relating to the allegations is warranted, counsel for the Committee shall prepare a written report, to which the Member may then respond. Committee Rule III.B.

Phase III only occurs if the Committee conducts a formal hearing regarding the allegations against the Member. At that time, the Member has the right to testify and to present evidence, but is not required to do so. Committee Rule IV.B. Upon conclusion of Phase III of the proceedings, the Committee Rules call for the Committee to make a recommendation to the House of Representatives on whether it should consider discipline. Committee Rule IV.E.

Regardless of the outcome, at the end of its proceedings the Committee submits a Report to the Clerk of the House of Representatives, for publication in the House Journal. Committee Rule IV.F. This document is that Report.

The Committee Rules provide that, the investigative process, now complete, will be confidential. Committee Rule I.C. While the Committee believes in most circumstances it is best when government acts in an open manner, the initial investigation into allegations of wrongdoing is clearly not such a circumstance. The Committee is aware that most investigative bodies do not conduct their investigations into wrongdoing in public, since to do so obviously may compromise the investigation. For example, the Oklahoma Open Meeting Act, 25 O.S. §§ 301, *et seq.*, authorizes “[c]onfidential communications between a public body and its attorney concerning a pending investigation[.]” 25 O.S. § 307(B)(4). Good reason exists for this policy. Witnesses must feel free to speak openly with investigators without fear of reading their statements in the news the next day or retaliation from the subject of the investigation. While the subject of an investigation must be given an opportunity to respond to the final allegations of wrongdoing, premature publicity gives the subject an opportunity to attempt to influence or intimidate witnesses. Moreover, confidentiality prevents unsubstantiated allegations from improperly impugning the subject’s reputation.

The Committee’s decision to proceed confidentially was not undertaken lightly. The Committee consulted other legislative bodies’ rules, and confirmed they also provide for confidentiality. For instance, the Rules of the Committee on Standards of Official Conduct of the United States House of Representatives, 111<sup>th</sup> Congress, provide for substantial confidentiality of records and information. In fact, the Committee Rules in this regard were drafted using the U.S. House Committee Rules as guidance, particularly federal House Committee Rule 7, entitled “Confidentiality.”

## V. THE INVESTIGATION

On February 14, 2011, at the initial meeting, the Committee unanimously commissioned Andy Lester of the law firm, Lester, Loving & Davies, P.C., to act as counsel for the Committee, to conduct the day-to-day work of the Committee, and to do all other things necessary for the functioning of the Committee, in consultation with the Chair and Vice-Chair of the Committee.

The first step in the investigatory process involved contacting the Oklahoma County District Attorney, David Prater, regarding whether he would be willing to share the information his staff had developed in connection with his investigation of the pertinent incidents. Additionally, Committee counsel contacted Rep. Terrill’s attorney to obtain any information Rep. Terrill might want the committee to consider.

Several days later, Committee counsel met with District Attorney Prater and his staff, and received promises of complete cooperation. In this regard, it was important to District Attorney Prater that any documents he shared with the Committee remain confidential with the Committee. Upon assurances that the Committee Rules mandated such confidentiality, District Attorney Prater made available virtually all information in his possession.

Throughout the Committee's investigation, District Attorney Prater acted with the highest degree of professionalism and integrity. His complete cooperation made the process work smoothly. His willingness to share information saved significant time and effort in the investigatory process.<sup>2</sup>

The Committee invited Rep. Terrill to present to the Committee whatever information or input he desired, but he declined to do so, as was his right. The Committee draws no conclusion from Rep. Terrill's decision not to participate in its investigation.

Although Rep. Terrill declined to provide the Committee with information, the Committee, through its counsel, interviewed and/or obtained documents from several witnesses. What follows is a synopsis of the evidence the Committee developed based on all the information made available to the Committee. The Committee cautions the reader, however, that the following is only a synopsis of the information available to the Committee, that witnesses have not been subjected to cross-examination, and that Rep. Terrill has not provided the Committee his side of the story.

#### **Race for Senate District 44.**

Senator Deborah Leftwich represented Oklahoma Senate District 44. First elected in a special election in 2003, she was reelected in 2006. On January 1, 2007, she organized a campaign committee called "Debbe Leftwich Senate District 44 – 2010," filed her statement of organization with the Oklahoma State Ethics Commission, and received an Ethics Commission number. She transferred \$34,730.69 from her 2006 campaign account to her 2010 campaign account, and began receiving contributions in March 2007.

According to the Information filed by the District Attorney, one state representative contemplated running for Senate Seat 44 as early as February, 2010. In mid-March, following a poll showing the potential challenger would have a favorable result in a race against Leftwich, the state representative learned from his political consultant that Leftwich may not run for reelection, but instead was going to take a job at the Medical Examiner's Office.

#### **Background Information on Senate Bill 738.**

Senate Bill 738 passed the Legislature on May 27, 2010, near the end of the 2010 legislative session. It was designed to reform the Office of the Oklahoma State Medical Examiner, including moving the physical location of the office to Edmond. Among other things, it contained language creating a "Transition Coordinator" position within the Office. This language was added in late May 2010, as detailed in the Information filed by the District Attorney:

SB 738 was originally introduced in 2009. In May, 2010, Senator Anthony Sykes was tasked by [then Senate President Pro Tempore Glenn] Coffee (the author of

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<sup>2</sup> The investigation as a whole took longer than anticipated. Initially, some resisted cooperating with the Committee, which caused significant delays in the Committee's work.

SB 738) with getting SB 738 moving as the session was nearing a close. Senator Coffee told Senator Sykes to determine what language needed to be added to allow passage in the House of Representatives. Sykes ... contacted [Representative Randy] Terrill and inquired what language Terrill wanted put into SB 738 in order for the House to pass it.

On May 16, 2010, Terrill met with Sykes at the International House of Pancakes in Moore, Oklahoma, to discuss SB 738. Upon that discussion beginning, Terrill asked if Sykes minded if Leftwich joined them. Sykes indicated he did not mind, and Terrill called Leftwich. She arrived at the restaurant within a short time period.

Sykes advised that the three legislators discussed in detail what language should be in the final version of SB 738. Sykes said that he doesn't remember if anyone used the term, 'Transition Coordinator' while discussing the proposed language, but if they did, it was just in passing and the position was not discussed. The three of them discussed the bill and they left the restaurant.

#### **Rep. Terrill's May 17, 2010, meeting with Tom Jordan and Cherokee Ballard.**

On May 17, 2010, Representative Terrill summoned to his office at the House of Representatives, Tom Jordan, and Cherokee Ballard. Mr. Jordan was Chief Administrative Officer and Ms. Ballard's title is Medicolegal Executive Administrator/Public Information Officer/Legislative Liaison at the Office of the Chief Medical Examiner. The meeting was for the purpose of discussing SB 738. Jordan and Ballard had been working with Rep. Terrill and Sen. Leftwich throughout the legislative session to champion passage of legislation Dr. Jordan believed was necessary to improve the status of the Office of the State Medical Examiner. Toward the end of the legislative session, Rep. Terrill made clear he wanted the bill to contain language creating a Transition Coordinator to oversee the construction of new facilities and the eventual move of the office to Edmond.

When the May 17 meeting in Rep. Terrill's office began, Rep. Terrill prefaced the conversation by saying it was "dead man's talk." Rep. Terrill indicated Sen. Leftwich was interested in going back to work at the Medical Examiner's office. Sen. Leftwich had previously worked many years at the Medical Examiner's office in a clerical position and in human resources. Rep. Terrill stated that the Medical Examiner's office would be moving to Edmond, and that the agency needed a transition coordinator to manage the project, and that Sen. Leftwich would be ideal for the position. Rep. Terrill wanted to know how much Ms. Ballard and Mr. Jordan each made in salary. Ms. Ballard's salary was \$70,000. Mr. Jordan made \$90,000. Rep. Terrill then said Leftwich would make more than Ballard but less than Jordan, then added Sen. Leftwich would make \$80,000 and the job would be for three years.

Mr. Jordan asked Rep. Terrill how Sen. Leftwich's salary would be paid, in light of the

Oklahoma Constitutional prohibition against former legislators being employed by the state.<sup>3</sup> Rep. Terrill indicated that to avoid the two-year prohibition, he would use revolving funds and repay them with appropriated funds. Rep. Terrill then stated he had created a fund that he could use for other things, and mentioned moving approximately \$100,000 from the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (“OBN”) to the Medical Examiner’s office in a new bill.

According to Mr. Jordan, there was nothing wrong with Rep. Terrill’s proposal to create a Transition Coordinator, but it quickly became apparent to him that Rep. Terrill wanted only Sen. Leftwich in that position. That seemed odd to Mr. Jordan, because in his opinion Sen. Leftwich had no background to do the job. According to Mr. Jordan, for construction of facilities for a forensics agency, a transition coordinator must be someone with highly specialized training. This is so because overseeing the construction of a medical examiner’s office is not the same as overseeing construction of a normal facility, but instead involves the creation of highly technical scientific labs. It also seemed odd because of the two-year prohibition against Oklahoma Legislators taking a state job.

Both Ms. Ballard and Mr. Jordan left the meeting feeling something was not right. According to Ms. Ballard, they were both shocked. They were concerned that what was otherwise in their opinions an excellent bill was being weighted down with an unnecessary position – that of Transition Coordinator – to be filled by a person they believed was unqualified to do the work. In Mr. Jordan’s experience, the duties of a transition coordinator could just as easily have been done by the construction company that would be building the new facility.

Ballard also indicated that in her time dealing with the Legislature, she had never been confronted with such a situation before. She felt she and Mr. Jordan were being intimidated to do something that made no sense for the agency or the public. They were being told they had to hire an unqualified person for a relatively large salary.

Mr. Jordan stated he thought just about anyone would be better suited for the job than Sen. Leftwich. He felt like he would have had to oversee virtually everything Leftwich would have done. He also indicated the construction of medical examiner facilities was highly technical, and that Sen. Leftwich does not have the qualifications to oversee it. Like Ms. Ballard, Mr. Jordan stated he was disappointed that what he believed was an otherwise good piece of legislation was being loaded up with an unnecessary position for someone who wasn’t qualified to do the job for a salary that she wasn’t qualified to make.

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<sup>3</sup> Article 5, § 23 provides: “No member of the Legislature shall, during the term for which he was elected, be appointed or elected to any office or commission in the State, which shall have been created, or the emoluments of which shall have been increased, during his term of office, nor shall any member receive any appointment from the Governor, the Governor and Senate, or from the Legislature, during the term for which he shall have been elected, nor shall any member, during the term for which he shall have been elected, or within two years thereafter, be interested, directly or indirectly, in any contract with the State, or any county or other subdivision thereof, authorized by law passed during the term for which he shall have been elected.”

**The May 18, 2010, Meeting in Which Rep. Terrill Dictated to a Senate Staff Member  
the Terms for Creating the Transition Coordinator Position.**

Jennifer Mullens was the Oklahoma Senate Legislative Analyst assigned to SB 738. On May 17, 2010, Ms. Mullens received word from the office of Oklahoma State Senator Anthony Sykes that SB 738 needed some changes. On May 18, 2010, Ms. Mullens met with Sen. Sykes to discuss those changes, which had nothing to do with the Transition Coordinator language.

However, while Ms. Mullens was meeting with Sen. Sykes, Rep. Terrill walked into the office. According to Ms. Mullens, Rep. Terrill wanted to make some changes to SB 738 and Ms. Mullens started taking notes of the changes. At some point, Sen. Leftwich also joined the meeting. The changes Rep. Terrill wanted to make to the bill, Ms. Mullens testified, involved adding language to create the Transition Coordinator position.

**Changes to SB 738.**

Ms. Mullens took detailed notes of the changes to SB 738, which Rep. Terrill dictated to her. Ms. Mullens indicated to the Committee that in the several years she has worked as a Legislative Analyst for the State Senate, this instance was one of only two times she was told to insert language into a bill that was dictated by someone who is not a Senator or Senate staff member, and that the other time occurred years earlier and also involved Rep. Terrill. Ms. Mullens thought it was unusual that she would take dictation from a Member of the House of Representatives when drafting legislation.

According to Ms. Mullens' notes, the changes included:

- Authorization for a "Transition Coordinator" to oversee the transition of the Medical Examiner's Office to Edmond;
- The Transition Coordinator would have a fixed term of employment of three years;
- The Transition Coordinator would have an annual salary of \$80,000;
- The Transition Coordinator could be terminated only for cause;
- The Transition Coordinator would be hired by the Chief Administrative Officer, but would report to the Board, the Legislature and the Executive Branch;
- The Transition Coordinator would oversee the transition/move/relocation and implement the "Cline Report," including the statutory changes in the legislation;
- The Transition Coordinator would assist with the reaccreditation process and would serve as liaison between the Office of the Chief Medical Examiner and the University of Central Oklahoma, the Legislature and the Executive Branch;

- The Transition Coordinator would provide advice and counsel to the Chief Administrative Officer, the Board and the Chief Medical Examiner; and
- The Chief Administrative Officer must make an offer to fill the position by July 1, 2010, and the position would be filled by January 1, 2011.

According to Ms. Mullens, it was highly unusual to put into legislation language specifying the start date, end date and salary of an employment position. Ms. Mullens also stated that Senators Sykes and Leftwich did not offer any input on the Transition Coordinator position, but listened to Rep. Terrill's comments and appeared familiar with the proposed amendments.

On or about May 19, 2010, a new Section 7 was added to SB 738. It reads as follows:

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 936.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Chief Administrative Officer of the Office of the State Medical Examiner is authorized to hire a transition coordinator to oversee the transition of the Office of State Medical Examiner to a location in close proximity to the University of Central Oklahoma Forensic Science Institute.

B. The duties of the transition coordinator shall include, but shall not be limited to:

1. Overseeing the relocation of the Office of the State Medical Examiner;
2. Overseeing the implementation of the statutory changes specified in this act;
3. Assisting with the process of reaccreditation for the Office of the State Medical Examiner;
4. Serving as the liaison between the Office of the State Medical Examiner, the University of Central Oklahoma, the Legislature, and the executive branch; and
5. Providing advice and counsel to the Chief Administrative Officer, the Board of Medicolegal Investigations, and the Chief Medical Examiner.

C. The Chief Administrative Officer shall make an offer for the position of the transition coordinator on or before July 1, 2010. The position of transition coordinator shall be filled on or before January 1, 2011. The position shall not be filled for more than three (3) years after the first date of hire and shall be subject to a salary limitation of Eighty Thousand Dollars (\$80,000.00) per year. The

transition coordinator may only be terminated by the Chief Administrative Officer for cause.

D. The transition coordinator shall report directly to the Board of Medicolegal Investigations, the Legislature, and the executive branch.

#### **Word Leaks Out that Sen. Leftwich is not Seeking Reelection.**

According to the Information filed by the District Attorney, on or about May 20, 2010, at a "*Sine Die*" party, Rep. Mike Christian "began to talk about running for Leftwich's seat. The next day Terrill called Christian and told him to keep his mouth shut about running for Leftwich's Senate Seat. Shortly thereafter, Leftwich contacted Christian and told him not to talk about her candidacy."

On May 24, 2010, at a routine Monday morning staff meeting at the Office of the Chief Medical Examiner, Mr. Jordan announced that effective June 30, 2010, he was resigning from his position to take a job in the private sector. He also mentioned the status of SB 738, and stated that it looked like Sen. Leftwich would be coming to the agency as the Transition Coordinator. When Ms. Ballard heard the comment about Sen. Leftwich, she became concerned because Rep. Terrill had indicated that they were not supposed to say anything.

Within one-and-a-half hours, a reporter came by and asked Ms. Ballard if it was true that Sen. Leftwich was coming to the agency. Ms. Ballard called Rep. Terrill to let him know a reporter was asking about the Leftwich situation. He told Ms. Ballard to let Sen. Leftwich know.

#### **Passage of SB 738 and HB 2486 at the End of the Legislative Session.**

SB 738 was passed by the Legislature on May 27, 2010. On May 28, 2010, the last day of the legislative session, HB 2486 was passed. That bill included the transfer of \$90,000 from the Drug Money Laundering and Wire Transmitter Revolving Fund of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control to the Special Cash Fund of the State Treasury, and also included the appropriation of \$90,000 to the Office of the Chief Medical Examiner.

At or near the end of the 2010 legislative session, according to Ms. Ballard, Rep. Terrill approached her in the State Capitol, and told her that he had to speak with her and Mr. Jordan. Ms. Ballard responded that Mr. Jordan, though technically still employed, was using up his remaining leave time. According to Ms. Ballard, Rep. Terrill then told her Mr. Jordan was to do one more thing for him, namely hire Sen. Leftwich for the Transition Coordinator position. Rep. Terrill then said if Ms. Ballard was interested in filling the position being vacated by Mr. Jordan, Rep. Terrill could help her get it, adding Ms. Ballard and Sen. Leftwich would make a good team.

#### **Rep. Christian Announces, then Retracts, his Candidacy for Leftwich's Senate Seat.**

The District Attorney's filed Information also states:

On May 29, 2010, one day after the 2010 legislative session, one day after HB 2486 was passed and two days after SB 738 was passed, Chad Alexander told Christian that Leftwich was not going to seek re-election.

On May 31, 2010, Christian announced that he was running for Senate District 44. When this investigation became known to the public on June 4, 2010, Christian decided not to run for Senate District 44 and announced that he would seek re-election to his House District (Christian was successful in his reelection bid in the General Election on November 2, 2010.)

### **The June 2, 2010, Meeting at Warren Theater.**

On or about June 2, 2010, at Rep. Terrill's request, Mr. Jordan met with Sen. Leftwich and Rep. Terrill at the Warren Theater in Moore. Mr. Jordan arrived early, shortly before 2:00 p.m. Sen. Leftwich arrived around 2:00 p.m., followed shortly by Rep. Terrill.

At the meeting, Mr. Jordan mentioned the pressure he had been under to appoint Sen. Leftwich as the Transition Coordinator before the end of June. He said he could not do so because the Governor had not yet signed SB 738 and, once signed, the bill would not take effect for several weeks thereafter. Rep. Terrill responded that the bill gave Mr. Jordan a legislative mandate to make the appointment. Mr. Jordan indicated he could not make the appointment without the approval of the Medical Examiner Board. Mr. Jordan stated that Rep. Terrill placed a call to a person Rep. Terrill said was an attorney who supposedly advised him that Mr. Jordan could make the appointment with the Board's approval. Mr. Jordan indicated he would seek an opinion from the Attorney General.

### **Tom Jordan Seeks a Legal Opinion from an Assistant Attorney General.**

After the meeting concluded, Mr. Jordan called Assistant Attorney General Sandra Balzer to seek legal advice regarding the matter. On June 4, 2010, Assistant Attorney General Balzer wrote a memorandum to Mr. Jordan and the Members of the Board of Medicolegal Investigations, about the status of SB 738. Ms. Balzer noted, "[a]s of the writing of this memo, the bill has not been signed by the Governor." Citing Okla. Const. Art. 5, § 58, Ms. Balzer added, "If this bill is signed into law, the provisions in the law would not take effect until ninety days after adjournment of the legislature. Although the bill contained an emergency clause which would have made it effective upon approval of the Governor, the clause failed to pass in both Houses as is required by the Constitution. Thus, the earliest date on which the provisions in the law could take effect is August 26, 2010."

With respect to Section 7 of SB 738, which created the Transition Coordinator position, Assistant Attorney General Balzer wrote: "Since the law would not take effect until after the date on which an offer must be made for the position of transition coordinator, that provision is nullified and has no effect." She concluded that, despite the bill's mandate that the offer be made before July 1, the Chief Administrative Officer had "no legal duty to offer the position on or before July 1, 2010."

Ms. Balzer also gave her opinion regarding the legality of a state legislator accepting the position of Transition Coordinator as created in SB 738. She wrote:

There are no provisions in Section 7 or elsewhere in Senate Bill 738 to indicate that the positions of transition coordinator and chief administrative officer will be funded with non-appropriated dollars or appropriated dollars which allow the OCME to acquire federal or private funds which would be the source of the salary. A question has arisen as to whether House Bill 2486 would be a potential source of non-appropriated funds. The bill authorizes the transfer of \$90,000 from the Drug Money Laundering and Wire Transmitter Revolving fund of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to the Special Cash Fund of the State Treasury, and appropriates those funds to the Office of the Chief Medical Examiner "to perform the duties imposed upon the Board of Medicolegal Investigations by law." H.B. 2486. These dollars are "authorized by law" and appropriated by the legislature to the Office of the Chief Medical Examiner. If those funds were used to pay the salary of the transition coordinator or chief administrative officer, the appropriation of those funds could be construed as giving "force and effect" to the employment of the positions, thus triggering the constitutional prohibition of Article 5, Section 23.

Mr. Jordan also contacted OBN Director Darryl Weaver and told him about the situation. According to Mr. Jordan, Mr. Weaver explained that Rep. Terrill had set up the wire transfer fund for the OBN, but had told Mr. Weaver that Rep. Terrill could do with it as he wanted.

#### **Additional Allegations.**

The Information states:

During the investigation it was learned that Leftwich has a high school diploma, but no college degree. The Transition Coordinator position set no educational or experience requirements to qualify for the position, unlike the Chief Administrative Officer position in the same bill wherein the qualifications were set.

....

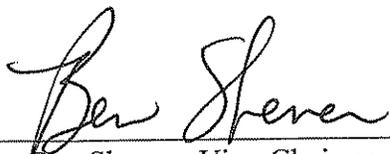
It was confirmed that Leftwich was in a unique position to have knowledge the [Transition Coordinator] position was to be filled by July 1, 2010. The expiration of her senate term would also make her available to fill the position, "on or before January 1, 2011." The three year life of the transition coordinator position would permit Leftwich to work the required months at the higher salary to make her eligible for increased pension benefits.

**Governor Henry Vetoes SB 738 and HB 2486.**

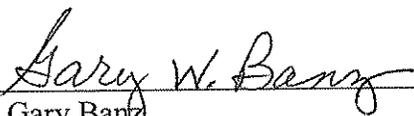
On June 4, 2010, the District Attorney's investigation into activities surrounding SB 738 and HB 2486 became known to the public. On June 6, 2010, Governor Brad Henry vetoed SB 738 and HB 2486.



Rep. Fred Jordan, Chairman



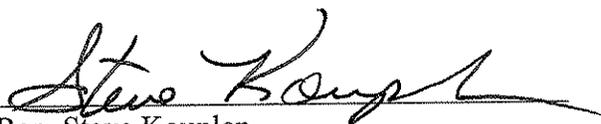
Rep. Ben Sherrer, Vice-Chairman



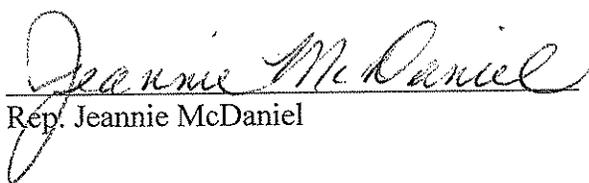
Rep. Gary Bang



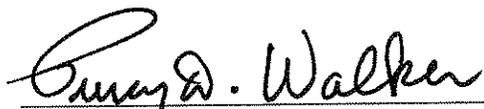
Rep. Doug Cox



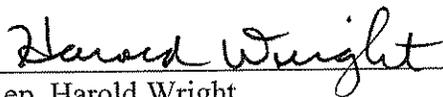
Rep. Steve Kouplen



Rep. Jeannie McDaniel



Rep. Percy Walker



Rep. Harold Wright

**SPECIAL INVESTIGATIVE COMMITTEE**  
**Committee Rules**

The Committee's work shall be performed in three phases.

**Phase I: Committee Investigation.** The Committee, which is established pursuant to House Rule 11.2 at the direction of the Speaker of the House of Representatives, will conduct its investigation of whether a Member of the House of Representatives ("Member") has engaged in conduct which impairs the ability of the Member to perform the duties of his or her office, or substantially impairs public confidence in the Legislature. Okla. Const. Art. 5, § 30.

**Phase II: Committee Recommendation to Give Notice and an Opportunity to be Heard.** The Committee will consider the information gathered by the Committee, to determine whether sufficient evidence has been presented which, if uncontested, would suggest a Member has engaged in conduct that impairs the ability of the Member to perform the duties of his or her office, or substantially impairs public confidence in the Legislature. The Committee shall vote on whether, based on the evidence gathered, a formal hearing relating to the allegations is warranted.

**Phase III: Formal Committee Hearing.** If the Committee determines a formal hearing relating to the allegations is warranted, the Member shall be given notice of the evidence against him or her, and shall be given an opportunity to be heard. Upon conclusion of the evidence, the Committee shall vote whether to recommend disciplinary action against the Member, and thereafter refer the matter to the House of Representatives for its consideration.

**I. Rules of General Application to the Committee.**

A. The Committee shall be governed by a Chair. The Vice-Chair shall act in the absence of the Chair.

B. The Chair shall designate the time and place of Committee meetings.

**C. Confidentiality.**

1. It is the intent of this Rule C that from and after the time the Committee is formed, until the Report of the Committee is released to the Clerk of the House for publication in the House Journal, all proceedings in closed sessions of the Committee shall be confidential to the same extent as proceedings before a grand jury.

2. Except as otherwise provided in these rules, all Committee meetings, proceedings, deliberations, and votes shall occur in closed session, and all Committee members, stenographers, witnesses, and witnesses' counsel shall treat all Committee meetings, proceedings, deliberations, and votes, or other work of the Committee as confidential.

3. No person is permitted to be present during closed meetings of the Committee except the Committee members, Committee counsel, a stenographer, an interpreter, if any, the witness, if any, under examination, and one attorney representing such witness. The Committee Chair shall administer the following oath to all Committee members, legal counsel for witnesses, interpreters, and stenographers who attend any closed Committee meeting:

DO YOU SWEAR (AFFIRM), THAT YOU WILL KEEP CONFIDENTIAL THE CLOSED PROCEEDINGS OF THE COMMITTEE, IN ACCORDANCE WITH THIS COMMITTEE'S RULES?

4. Prior to testifying as a witness in a closed session of the Committee, the Committee Chair shall administer to the witness the following oath:

DO YOU SWEAR (AFFIRM), UNDER PENALTY OF PERJURY, THAT THE TESTIMONY YOU ARE TO GIVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, AND THAT YOU WILL KEEP YOUR TESTIMONY SECRET, EXCEPT TO DISCUSS IT WITH YOUR ATTORNEY, THE COMMITTEE, OR COMMITTEE COUNSEL?

5. Except for matters taken up by the Committee in open session or as otherwise provided in these Rules, all records relating to the investigation of the Committee, including but not limited to all documents, transcripts, tape or video recordings, and electronically stored information ("Committee records"), shall be confidential and shall not be open to public inspection. Committee records shall not be subject to discovery. Transcripts of Committee proceedings relating to the investigation and disposition thereof shall not be available to any person or entity other than Committee members, Committee staff, and Committee counsel, except as otherwise provided by these Rules.

6. Provided, however, notwithstanding anything in these Rules that may appear to the contrary, the Speaker of the House of Representatives shall be entitled to review Committee records, and to be fully informed on the work and progress of the Committee, by Committee members, counsel or staff.

7. The following communications ("attorney-client privileged communications"), whether oral or written, including all documents, transcripts, tape or video recordings, and electronically stored information, shall remain confidential and such confidentiality may not be waived except by the act of the Committee Chair intentionally waiving such communication; provided, however, the Committee may waive the attorney-client privilege to the extent the communication is revealed through the release of the Committee Report: All confidential communications made for the purpose of facilitating the rendition of professional legal services to the House or the

Committee between (a) any member of the House of Representatives or a representative of a member of the House of Representatives and Committee counsel or a representative of Committee counsel; (b) between Committee counsel and a representative of Committee counsel. The waiver of any attorney-client privileged communication provided for herein shall not affect the continued confidentiality of any other attorney-client privileged communication.

8. Upon release of the Committee Report to the Clerk of the House, the restrictions on confidentiality required by these Rules shall be lifted; provided, however, the following shall remain confidential except as otherwise provided in these Rules: (a) all attorney-client privileged communications; (b) all communications, written or oral, that are subject to any other privilege authorized by law, unless waived; (c) all Committee records and all other communications, whether written or oral, relating to the deliberation and vote of the Committee except such information as is provided in the Committee Report; and (d) any Committee record or other communication a majority of a quorum of the Committee finds, for compelling reasons, in the Committee's sole discretion, should remain confidential. All persons taking an oath, including Committee members, shall continue to be subject to the oath they have given with respect to the matters described in this Rule I(C)(8).

D. Except as otherwise provided in these Rules, neither the Member under investigation, nor his or her counsel, shall communicate with any Committee member in connection with any issue before the Committee. The Member or his or her counsel shall communicate with the Committee through counsel for the Committee.

E. The Committee, through the Chair, shall have the power to:

1. compel the attendance of witnesses;
2. compel the testimony of witnesses under oath;
3. require the production of documents, records and other evidence;
4. take such other steps and exercise such other powers as are necessary to ensure the orderly and efficient conduct of the work of the Committee.

F. Subpoenas to compel the attendance and testimony of witnesses, or to compel the production of documents or other evidence, shall be attested to according to the Rules of the House of Representatives. Subpoenas shall be served, and return made to the Chair in the manner prescribed by Oklahoma civil law. Service of documents related to the proceedings, other than subpoenas, shall be by regular, prepaid mail. Persons served with a subpoena shall treat the subpoena as confidential.

G. Within such time as is indicated on the subpoena, a person commanded to appear as a witness or to produce documents may serve a written objection on the Chair

and Committee counsel, and if the subpoena was issued at the request of the Member under investigation, a copy of the objection shall also be provided to the Member or his or her counsel, if any. If objection is made, the Chair shall determine the merits of the objection.

H. At any meeting of the Committee at which a witness is presented, each Committee member shall have the opportunity to question the witness and examine the evidence. The Chair may direct Committee counsel to question witnesses.

I. No testimony given by a witness shall be used as evidence in any criminal proceeding against the witness in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by a witness is not within the privilege.

J. All witnesses who are interviewed, examined under oath by Committee counsel, or who appear before and are examined by the Committee, a Committee member, or the Member or the Member's counsel, shall have the right to have legal counsel present at all times.

K. All proceedings during a Committee meeting may be stenographically recorded or transcribed, or both, at the direction of the Chair or upon a vote of a majority of Committee members present.

L. Objections and rulings upon evidence.

1. Strict adherence to the rules of evidence, 12 O.S. §§ 2101 *et seq.*, shall not be required. The Committee shall permit the introduction of evidence that is competent, relevant and material. The Committee may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Counsel for a witness shall be allowed to be present during questioning of the witness and shall be allowed to advise the witness but shall make no objections or arguments or otherwise address the Committee or its legal advisor. The Chair shall have the power to remove such counsel if necessary. Violation of this subsection shall be punishable as contempt.

2. The Committee, at the discretion of the Chair, may receive evidence in written form, including affidavits, transcripts, and other writings under oath, without bringing the witnesses before the Committee. Documentary evidence may be received in the form of copies or excerpts. Upon request, Committee members or the Member shall be given an opportunity to compare the copy with the original.

3. The Chair, in his or her sole discretion, shall rule upon all objections and upon the admissibility of evidence arising in the course of deposing witnesses or presenting testimony or documents to the Committee.

M. The Committee may take notice of all judicially cognizable facts.

**II. Phase I. Committee Investigation.**

A. The Committee may meet from time to time at the direction of the Chair, to hear witnesses, review documents, gather information, or for such other purposes as the Chair shall determine, in his or her sole discretion. Provided, however, during Phase I, a quorum of Committee members shall not be required for the Committee to meet or conduct its investigation.

B. During Phase I, legal counsel for the Committee may gather and examine documents, cause oaths to be administered, interview witnesses, and/or examine witnesses under oath, outside the presence of the Committee or any Committee member and regardless of whether a Committee meeting has been scheduled. Provided, however, any Committee member shall have the right to attend the examination of any witness under oath, but a Committee member shall not be required to be present or to participate in the examination under oath of any witness. All witnesses, witnesses' counsel, stenographers, and others contacted by Committee counsel shall be subject to the same requirement of confidentiality as if the witness, witness's counsel, stenographer, or others had attended or given evidence in a closed Committee meeting.

C. Any transcripts of sworn statements of witnesses and relevant documentary evidence obtained by Committee counsel, other than transcripts of proceedings made pursuant to part I(K) of these Rules, shall promptly be provided by counsel to the Chair. Counsel shall from time to time report to the Committee or its Chair on the progress of the investigation.

**III. Phase II: Committee Recommendation of Notice and Opportunity to be Heard.**

A. At such time as a majority of a quorum of the Committee has met and determined the Committee has gathered sufficient information to form an opinion, the Committee may meet to determine whether sufficient evidence exists which, if uncontested, would suggest a Member has engaged in conduct that impairs the ability of the Member to perform the duties of his or her office, or substantially impairs public confidence in the Legislature.

B. If a majority of a quorum of the Committee shall vote that based on the evidence gathered, a formal hearing relating to the allegations is warranted, counsel for the Committee shall prepare a written report ("the Notice") of the Committee, setting forth the evidence on which the Committee has relied.

C. Upon final approval of the Notice by a majority of a quorum of the Committee, the Notice shall be signed by the Chair of the Committee and served on the Member.

D. The Notice shall be confidential.

E. The Member shall have fourteen days from the date of the Notice to provide a written response to the Committee. The Member's response may include the following:

1. A statement by the Member, made under oath, and signed by the Member.

2. A request for a hearing before the Committee. Any such request for hearing shall include:

a. The name and address of all witnesses the Member wishes to present to the Committee, a synopsis of the substance of the expected testimony of the proposed witness, and an indication of whether the Member desires a subpoena to issue to each such witness. The Member should also indicate whether the Member intends to testify before the Committee.

b. Copies of any documents the Member wishes to present to the Committee, or for which the Member desires a subpoena to issue.

F. Upon receipt of the Member's written response, if the Member has requested the issuance of subpoenas for witnesses or documents, the Chair shall determine whether the witnesses or documents sought to be subpoenaed are likely to provide competent, relevant and material evidence, and if so, shall issue subpoenas requested by the Member.

#### **IV. Phase III: Formal Committee Hearing.**

A. After receipt of a written response by the Member, or after fourteen days from the Notice if no response is received, the Committee may meet and conduct a hearing relating to the matters contained in the Notice. At all times during the hearing, a quorum of the Committee shall be present. The Chair in his or her sole discretion shall determine and shall be entitled to limit the length of the hearing and the evidence to be presented, including the witnesses who may appear and their number, and documentary evidence to be presented.

B. At the hearing, if the Member has so indicated in his or her written response, the Member may testify under oath, and/or present witnesses or documentary evidence according to the Rules of the Committee. Either the Member or the Member's counsel may examine each witness. Committee members and Committee counsel shall also be entitled to examine all witnesses so presented.

C. Counsel for the Member shall be allowed to be present during questioning of witnesses, but neither the Member's counsel nor the Member shall make objections or arguments or otherwise address the Committee or its counsel. The Chair shall have the power to remove such counsel if necessary. Violation of this subsection shall be punishable as contempt.

D. Additional witnesses or evidence may be submitted to the Committee at the direction of the Chair. The Member and the Member's counsel shall be entitled to be present for the presentation of any such additional evidence.

E. At the conclusion of the evidence, or at such other time as the Committee Chair shall determine, the Committee shall go into closed session to deliberate and vote whether to recommend disciplinary action to the full House. A recommendation for disciplinary action shall require a majority vote of a quorum of the Committee.

F. Upon conclusion of the Committee proceedings, the Committee shall submit a Report to the Clerk of the House of Representatives, for publication in the House Journal.