

S. 171. An act to amend 12 V.S.A. § 181 and to add 12 V.S.A. §§ 521, 1908, 1909 and 1910 relating to limitations of medical malpractice actions.

S. 207. An act to amend 3 V.S.A. §§ 803, 804 and 805(e) and to add 3 V.S.A. §§ 817-820 relating to administrative rules.

And has passed the same in concurrence with proposals of amendment; In the adoption of which the concurrence of the Senate is requested.

BILLS REFERRED

House bill of the following title, appearing on the Calendar for notice, and carrying an appropriation, under the rule, was referred to the Committee on Appropriations:

H. 414. An act relating to highway and transportation planning.

House bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule, was referred to the Committee on Finance:

H. 552. An act to amend 18 V.S.A. §§ 2002, 2004, 2005(c), 2008, 2011 and 2014; to add 10 V.S.A. § 397 and 18 V.S.A. §§ 2003(c) and 2005(d) and to repeal 18 V.S.A. §§ 2007 and 2016 relating to community care homes.

PRESIDENT ASSUMES THE CHAIR

IMPEACHMENT SESSION; RULES TO GOVERN IMPEACHMENT TRIAL ADOPTED

At nine o'clock and forty-five minutes in the forenoon, on motion of Senator Bloomer, the Senate and Senators met in impeachment session for the trial of Malcolm M. Mayo, Sheriff of Washington County, for the purpose of adopting rules to govern this trial of impeachment.

Thereupon, Senator Bloomer, for the Committee on Rules, moved the adoption of rules to govern proceedings of the Senate and Senators while sitting in impeachment session, as follows:

RULES OF THE SENATE OF THE STATE OF VERMONT WHEN SITTING IN IMPEACHMENT SESSION

Rule 1—General Provisions

(a) *SCOPE.*—These rules govern the proceedings of the Senate when sitting in Impeachment Sessions, subject to the exceptions and limitations stated herein. A question of Procedure not covered by these rules shall be decided according to the Rules of the Senate.

(b) *PURPOSE.*—These rules are intended to provide for the just trial of any impeachment adopted by the House of Representatives.

(c) *SOURCE.*—These rules are promulgated by the Senate, pursuant to its authority under Section 19 of Chapter II of the Constitution to determine the rules of its proceedings, including impeachment proceedings which the Senate is given the sole power to try.

(d) *EFFECTIVE DATE.*—These rules take effect on the date adopted by the Senate. They govern any trial thereafter commenced and, so far as just and practicable, any trial then pending.

(e) *AMENDMENT.*—These rules may be amended by a vote of the majority of the members present.

Rule 2.—Definitions

As used in these rules, unless the context otherwise requires, the term—

(1) “articles” means articles of impeachment adopted by the House, and “article” means any section or part thereof which avers conduct that constitutes a separate impeachable offense;

(2) “conduct” means an action or omission, or a series of acts or omissions, or both;

(3) “conviction” means a finding by two-thirds of the Senators present that any article is sustained by clear and convincing evidence;

(4) “final question” means a determination whether the Senate will sustain or reject an article;

(5) “House” means the House of Representatives of the state of Vermont;

(6) “impeachable offense” means maladministration designated as such in an article;

(7) “managers” means any members of the House whom the House appoints and designates as such, who are empowered by the House to appear on its behalf in the Senate there to take all steps necessary and proper to convince the Senate to sustain an impeachment adopted by the House;

(8) “oath” includes an affirmation;

(9) “parties” means the managers and the respondent;

(10) “presiding officer” means the President of the Senate;

(11) “respondent” means any person impeached in the articles;

(12) “Rules Committee” means the Senate Rules Committee;

(13) “secretary” means the Secretary of the Senate;

(14) “Sergeant-at-Arms” means the Sergeant-at-Arms of the General Assembly; and

(15) “trial” means the trial of an impeachment by the Senate.

Rule 3.—Organization of the Senate

(a) *NOTICE FROM THE HOUSE*.—Whenever the President of the Senate receives a formal notice from the House declaring that the House has adopted articles and appointed managers and naming the person impeached therein, the Senate, by vote of a majority of the Senators present, shall resolve to organize an Impeachment Session and shall set a time and date therefor.

(b) *PREPARATIONS*.—The Secretary of the Senate shall direct preparations in the Senate Chamber and shall give notice to the House of the time and date for organizing the Senate for an Impeachment Session, and shall further advise the House that upon such organization the Senate may admit managers for the purpose of permitting them to present and file articles.

(c) *ORGANIZATION AND OATH*.—Upon the appointed time, and at such later time as the Senate determines, the Senate shall lay aside its legislative and executive business upon such terms and conditions as it may prescribe. The presiding officer shall thereupon proclaim: "The Senate is now in session to try Articles of Impeachment." At the first session thereof, the secretary shall administer the following oath to the Senators: "I solemnly swear (or affirm) in all things appertaining to the trial of the impeachment of (name), (title), I will do impartial justice, according to law."

(d) *PRESENTATION OF ARTICLES*.—Upon organization, the Senate may admit managers for the purpose of permitting them to present and file articles with the Senate. Upon receipt of the articles, the presiding officer shall inform the managers that the Senate will take proper measure relative to such impeachment, and that the Rules Committee will duly notify the House and its managers of the time, order of trial, and other relevant matters.

Rule 4.—The Impeachment Session

(a) *POWERS*.—(1) The power of the Senate to try all impeachments includes the authority, when sitting in an Impeachment Session, to engage in, or to authorize or direct any person within the state to engage in, any conduct which the Senate finds necessary or proper and which may assist or contribute, directly or indirectly, to the just determination of an impeachment on the basis of probative evidence.

(2) The secretary is authorized and directed to make and issue any subpoenas, writs, or other orders of the Senate issued pursuant to these rules and the powers of the Senate, and to make and enforce such other regulations and orders as the Senate may authorize or direct. The secretary is authorized to proceed as directed under these rules during recess of the Senate. Upon request the Sergeant-at-Arms shall assist the secretary in the performance of any such function. Subject to the direction of the Senate, the Sergeant-at-Arms may employ or request such aid and assistance as may be necessary or appropriate to enforce, execute, and carry into effect any such orders. To this end, the Sergeant-at-Arms, upon a decision by the Senate, may call upon the assistance of any officer, agent, or employee of the state, wherever located, with or without reimbursement and all such officers, agents, and employees are authorized and directed to provide such assistance.

(b) *PRESIDING OFFICER*.—(1) The presiding officer shall preside during sessions of Senate in Impeachment Sessions, in accordance with these rules. He shall be responsible for assuring that the trial is conducted expeditiously and with impartiality, fairness, and integrity.

(2) The presiding officer may make a preliminary ruling on any disputed question other than a final question, or he may immediately submit any such question to the Senate for decision. Any such preliminary ruling may be set aside and the question decided by the Senate, in accordance with these rules.

(c) *RULES COMMITTEE*.—The Rules Committee shall be authorized to meet during recess or adjournment of the Senate and the committee or a member thereof designated by the chairman shall be authorized to hear and determine motions or requests of any party when the Senate is not in session. A ruling by a member of the Rules Committee may be appealed to the full committee. A ruling by the Rules Committee shall be binding.

(d) *SESSIONS*.—(1) Upon the filing of articles in accordance with rule 3(d), the Senate shall proceed to the consideration of such articles. After the trial commences the Senate shall continue in session each day (other than Saturdays, Sundays and legal holidays), except as otherwise ordered by the Senate upon recommendation of the Rules Committee until such time as may, in the judgment of the Senate, be necessary or appropriate.

(2) Trial shall commence at the time and date set therefor by the Senate upon recommendation of the Rules Committee. Such date shall be set to fall as soon after the date prescribed in these rules for the filing of the answer to articles as is consistent with affording the managers, the respondent, and the Senate a reasonable opportunity for preparation. Toward the close of each session of the Senate, the presiding officer shall announce the time and date for the next session, subject to the approval of the Senate. If the Senate shall at any time fail to sit upon trial upon the appointed time therefor, the presiding officer shall announce the time and date for the next such session. Any recess or adjournment of the Impeachment Session shall not operate as an adjournment of the Senate.

(3) At all times while the Senate is sitting upon trial, the doors of the Senate Chamber shall be kept open, except when the Senate shall otherwise order in accordance with these rules.

(4) The Senate may not proceed in the absence of a quorum of the Senators. A majority of the members of the Senate constitute a quorum. In the event that any Senator is sick or necessarily detained from any session or sessions, he shall study the record of the proceedings at such session or sessions, or consult with fellow Senators present or both.

(e) *DECISIONS*.—(1) The Senate shall act, issue orders, and decide all questions other than final questions by majority vote of the Senators present. The presiding officer shall not vote. The yeas and nays may be demanded by any Senator. Such votes shall be taken with a minimum of delay in the

most expeditious manner possible (as determined by the Rules Committee), except that the Senate may recess for a reasonable amount of time or defer any such vote until the next session in order to enable each Senator to research the applicable law.

(2) A vote on a final question whether the impeachment is sustained may be taken either at the conclusion of all evidence on all articles or at the conclusion of evidence on each separate article. On the question whether the impeachment is sustained, each Senator shall vote to "sustain" or "reject" an article considered by itself. If two-thirds of the Senators present vote to sustain any article, the respondent stands convicted. The Senate may thereupon enter judgment accordingly, or it may order the proceedings continued until other final questions have also been determined. If two-thirds of the Senators present fail to vote to sustain any article, the Senate shall enter judgment rejecting the impeachment.

(f) STATEMENTS OF SENATORS.—(1) Oral statements by Senators shall be restricted to a statement not to exceed 3 minutes at the organization of the Senate or the opening of the trial; not to exceed 5 minutes on any question other than a final question; and not to exceed 10 minutes on a final question, unless the Senate otherwise provides upon recommendation of the Rules Committee. A Senator may submit any relevant statement in writing to the secretary, regardless of length, for inclusion in the record of the proceedings.

(2) If a Senator wishes to offer a motion or order other than a motion to adjourn, it shall be reduced to writing and shall be read by the presiding officer.

Rule 5.—Pleadings

(a) GENERAL.—There shall be articles and an answer to articles. No other pleading shall be allowed, except that the Senate upon recommendation of the Rules Committee may order any additional statements or other written presentations or responses.

(b) SUMMONS AND ARTICLES.—(1) Upon the filing of articles in accordance with rule 3(d), the secretary shall forthwith issue a summons and deliver it to the Sergeant-at-Arms or to a person specially appointed to serve it. The summons shall be signed by the presiding officer or the secretary, be under the seal of the Senate, contain the name of the Senate and the names of the parties, be directed to the respondent, state the names of the managers and their counsel, if any, and the time within which these rules require the respondent to appear and defend.

(2) The summons and articles shall be served together. Service shall be made by delivering a copy of the summons and of the articles to the respondent personally, or by leaving copies thereof with a responsible person or persons employed at a place at which the respondent has customarily performed his duties as an officer of the state.

(3) Service of all process governed by these rules shall be made by the Sergeant-at-Arms, his designated agent, or any other person specially

appointed for such purpose by the Senate. The person serving such process shall make proof of service to the Senate promptly after service is made. Such process may be served at any place subject to the jurisdiction of the state.

(c) ANSWER TO ARTICLES.—(1) A respondent shall admit or deny any averment upon which the House relies in such article. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state, and such statement shall have the effect of a denial. Denials shall fairly meet the substance of the averments denied. If the respondent intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the respondent intends in good faith to controvert all the averments of any article, he may make his denials as specific denials of designated averments or he may generally deny all the averments except such designated ones as he expressly admits.

(2) A respondent shall serve his answer to articles within 10 days after the service of the summons and articles upon him pursuant to subdivision (b) of this rule.

Rule 6.—Conference and Trial Order

At any time after the filing of articles in accordance with rule 3(d), the Rules Committee may, in its discretion, order the managers and the respondent, or their counsel, to appear for a conference with the Rules Committee or a member thereof designated by the chairman to consider such matters as will promote a fair and expeditious trial. The Rules Committee shall make a proposed order which recites any action taken at such conference or conferences, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limit the issues for trial to those not disposed of by admissions or agreements. The Committee may further recommend in such proposed order a calendar or timetable for the trial, including the sequence for presentation of evidence, arguments, and voting with respect to each article; the schedule for sessions of the Senate; seating arrangements in the Senate chamber to reflect the fact that the Senate is sitting in an impeachment session; and any matters as to rulings on evidence or other incidental questions, or other matters necessary or appropriate to secure a just and expeditious determination of the impeachment. Such order, which shall be approved by the Senate, shall control the subsequent course of the proceedings, and shall be known as the Trial Order. The Trial Order may be amended at any time by the Senate to prevent manifest injustice or for any other reason.

Rule 7.—Discovery

GENERAL.—Either of the parties shall obtain from the other party a list of witnesses intended to be called. Each party shall have a continuing duty to disclose to the other party any additional witnesses that may be called as they become known to the calling party. No party may call a witness whose identity and possible use has not been disclosed to the other party at least 5 days prior to the commencement of the trial without prior approval of the

Rules Committee. A party may take a deposition of any witness upon 3 days notice to the Rules Committee and the other party.

Rule 8.—Evidence

(a) **GENERAL.**—*In a trial, the testimony of witnesses shall be taken orally under oath in an open session of the Senate, unless otherwise provided in accordance with these rules. All evidence shall be admitted in a trial which is admissible under (1) any of these rules; (2) any statute of the state of Vermont; (3) any of the rules of evidence heretofore applied in the courts of the state on the hearing of civil actions; (4) any decision thereon by the Senate upon recommendation of the Rules Committee in the interests of justice. In any situation, the rule, statute, or decision which favors the reception of the evidence governs. The competency of a witness to testify shall be determined in the same manner.*

(b) **WITNESSES.**—(1) *Witnesses called by a party shall be examined by one person on behalf of the party calling the witness, and, thereupon may be cross-examined by one person on behalf of the other party. No party may call another party or members of the House or Senate or their employees to testify or provide other information.*

(2) *If a Senator wishes a question or a series of questions to be asked a witness, he shall reduce such questions to writing and transmit them to any member of the Rules Committee. Such committee member may ask any such questions of such witness, together with any questions he may propound, at the conclusion of the direct examination and cross-examination of such witness.*

(3) *The Senate upon recommendation of the Rules Committee may call any person except a party or members of the House or Senate or their employees, to testify or provide other information designated by the Senate, and the Rules Committee may interrogate any such witness by leading questions or in any other manner. Any witness thus called may be contradicted and cross-examined by or on behalf of either party upon the subject matter of his examination in chief. As used in this paragraph, "other information" includes any book, paper, document, record, recording, or other material.*

(c) **SCOPE OF EXAMINATION AND CROSS-EXAMINATION.**—*A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse witness, contradict him, and impugn his creditability in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and his creditability may be impugned by or on behalf of the adverse party also, but he may be cross-examined by the adverse party only upon the subject matter of his examination in chief.*

(d) **HEARSAY.**—*Hearsay is not admissible in a trial, except in accordance with subdivision (a) of this rule.*

Rule 9.—Subpoena

(a) **FOR ATTENDANCE OF WITNESSES; FORM; ISSUANCE.**—*Every subpoena shall be issued by the secretary under the seal of the Senate*

of the state of Vermont, shall state the name of the Senate and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The secretary shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) **FOR PRODUCTION OF DOCUMENTARY EVIDENCE.**—*A subpoena may also command the person to whom it is directed to produce the books, papers, documents, records, recordings, or other material or tangible things designated therein. Notwithstanding the foregoing, the Senate may, upon motion promptly made and, in any event, at or before the time specified for compliance (1) quash or modify any subpoena if it is unreasonable and oppressive; or (2) condition denial of the motion upon payment by the party in whose behalf the subpoena is issued of the reasonable cost of producing such evidence.*

(c) **SERVICE.**—*A subpoena may be served by the Sergeant-at-Arms, his designated agent, or any other person or persons specially appointed for such purpose by the Senate upon recommendation of the Rules Committee.*

(d) **CONTEMPT.**—*Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the Senate. The Senate may impose such sanctions as it deems necessary in the interest of justice until such time as such person shall have purged himself of contempt by compliance. The Attorney General shall assist the Sergeant-at-Arms in implementing any such sanctions, upon request.*

Rule 10.—Presence of the Respondent

(a) **ANSWER TO ARTICLES.**—*The respondent shall be called to appear and answer the articles of impeachment against him, in accordance with the provisions of rule 4(d). If he appears, or any attorney or attorneys for him, the appearance shall be recorded, stating particularly if by himself or by an attorney naming the person appearing and the capacity in which he appears. If the respondent does not appear, either personally or by an attorney, the same shall be recorded.*

(b) **GENERAL.**—*The respondent shall be entitled to be present in the Senate at every stage of the trial. The absence of the respondent without cause as determined by the Senate after the trial has been commenced shall not prevent the trial from continuing until the entry of judgment.*

Rule 11.—Miscellaneous Provisions

(a) **MOTIONS.**—(1) *An application to the Senate for an order shall be by motion which shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these*

rules. All motions made by the parties or their counsel shall be addressed to the presiding officer and shall be committed to writing and read by the presiding officer.

(2) When a motion is based on facts not appearing of record, the Senate may hear the matter on affidavits presented by the respective parties, but the Senate may upon recommendation of the Rules Committee direct that the matter be heard in whole or in part on oral testimony or depositions.

(b) TIME.—(1) All questions other than final questions, and all motions, may be argued for a period of time not to exceed one hour for all proponents and not to exceed one hour for all opponents, unless the Senate otherwise provides upon recommendation of the Rules Committee.

(2) The Senate upon recommendation of the Rules Committee shall restrict the time available for all phases of the trial and any activity thereof in the interest of expeditious determination consistent with the interests of justice.

(3) In computing any period of time prescribed or allowed by these rules or determined by the Senate, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and legal holidays shall be excluded in the computation. When an act is required or allowed to be done at or within a specified time, the Rules Committee may in its discretion order such period enlarged or extended on the ground of excusable neglect.

(c) SERVICE.—(1) Except as otherwise provided by the Senate, every pleading, order required by its terms to be served, paper relating to discovery required to be served, written motion other than one which may be heard *ex parte*, and written notice, appearance, demand, and similar paper shall be served upon the parties. Whenever service is required or permitted to be made upon a party, the service shall be made upon an attorney representing such party, if any, unless service upon the party personally is ordered by the Senate. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the Senate. Delivery of a copy within this rule means handing it to the attorney or to the party, or leaving it at his office with a responsible person or persons. Service by mail is complete upon mailing.

(2) All papers required to be served upon a party shall be filed with the secretary either before service or within a reasonable time thereafter.

(d) OPENING ARGUMENTS.—The trial shall be opened by opening argument of the managers. The respondent may have opening reply argument when the managers complete their opening argument. The Senate upon recommendation of the Rules Committee may impose reasonable limitations on opening and closing arguments with respect to allowable time and the maximum number of speakers.

(e) CLOSING ARGUMENTS.—After the closing of evidence the managers shall open the argument. The respondent shall be permitted to reply. The managers shall then be permitted to reply in rebuttal.

Rule 12.—Public Access to Information

(a) GENERAL.—Except as otherwise provided in these rules, or by decision of the Senate upon recommendation of the Rules Committee, a trial shall, so far as practicable and to the extent consistent with the interests of justice, be conducted in public. Space and facilities, to the extent available, shall be made available to representatives of the press and the media.

(b) RECORD.—The secretary shall provide for the recording of the proceedings of the Session in the form of a complete verbatim transcript. All testimony, arguments, orders, decisions made by yeas and nays, and other matters shall be entered on the record.

Rule 13.—Entry of Judgment

Upon the concurrence of two-thirds of the Members present that an article or articles shall be sustained judgment shall be entered as determined by the Senate and authorized by the constitution of the State of Vermont.

Which was agreed to.

Thereupon, the purposes of this impeachment session having been accomplished, on motion of Senator Bloomer, the impeachment session was adjourned until such time as further action is necessary to be taken thereon.

SENATE RECONVENES

Thereupon, the Senate resumed its business of the session.

RULES SUSPENDED; HOUSE PROPOSAL OF AMENDMENT CONCURRED IN WITH AN AMENDMENT; BILL MESSAGED

Appearing on the Calendar for notice, on motion of Senator Cummings, the rules were suspended and House proposal of amendment to Senate bill entitled:

S. 201. An act to amend 4 V.S.A. § 71(a) relating to the number of superior judges and to amend 32 V.S.A. § 1431 relating to fees in supreme and superior courts.

Was taken up for immediate consideration.

The House proposes to the Senate to amend the bill as follows:

First: By adding after section 1, a new section to read:

Sec. 1a. 32 V.S.A. § 1003(c)(4) is amended to read

(4) Eight superior judges, each \$25,800.00