

SENATE RESOLUTION 203

(By Senator Trump)

[Introduced August 20, 2018]

1 Adopting rules of the Senate while sitting as a court of impeachment.

2 *Resolved by the Senate:*

3 That the following rules be adopted to govern the proceedings of the Senate while sitting
4 as a court of impeachment during the Eighty-Third Legislature:

5 **RULES OF THE WEST VIRGINIA SENATE**

6 **WHILE SITTING AS A COURT OF IMPEACHMENT**

7 **DURING THE EIGHTY-THIRD LEGISLATURE**

8 **1. Definitions**

9 (a) "Articles of Impeachment" or "Articles" means one or more charges adopted by the
10 House of Delegates against a public official and communicated to the Senate to initiate a trial of
11 impeachment pursuant to Article IV, Section 9 of the Constitution of West Virginia.

12 (b) "Board of Managers" or "Managers" means a group of members of the House of
13 Delegates authorized by that body to serve as prosecutors before the Senate in a trial of
14 impeachment.

15 (c) "Conference of Senators" means a private meeting of the Court of Impeachment,
16 including an executive session authorized by W. Va. Code §6-9A-4.

17 (d) "Counsel" means a member of the Board of Managers or an attorney, licensed to
18 practice law in this state, representing the Board of Managers or a Respondent in a trial of
19 impeachment.

20 (e) "Court of Impeachment" or "Court" means all Senators participating in a trial of
21 impeachment.

1 (f) "Parties" means the Board of Managers and its counsel and the Respondent and his or
2 her counsel.

3 (g) "Presiding Officer" means the Chief Justice of the West Virginia Supreme Court of
4 Appeals or other Justice, pursuant to the provisions of Article IV, Section 9 or Article VIII, Section
5 8 of the Constitution of West Virginia.

6 (h) "Respondent" means a person against whom the House of Delegates has adopted and
7 communicated Articles of Impeachment to the Senate.

8 (i) "Trial" means the trial of impeachment.

9 (j) "Two thirds of the Senators elected" means at least 23 Senators.

10 **2. Pre-Trial Proceedings**

11 (a) Whenever the Senate receives notice from the House of Delegates that Managers
12 have been appointed by the House of Delegates to prosecute a trial of impeachment against a
13 person or persons and are directed to carry Articles of Impeachment to the Senate, the Clerk of
14 the Senate shall immediately inform the House of Delegates that the Senate is ready to receive
15 the Managers for the reporting of such Articles.

16 (b) When the Board of Managers for the House of Delegates is introduced at the bar of
17 the Senate and signifies that the Managers are ready to communicate Articles of Impeachment,
18 the President of the Senate shall direct the Sergeant at Arms to make the following proclamation:
19 "All persons are commanded to keep silence, on pain of imprisonment, while the House of
20 Delegates is reporting to the Senate Articles of Impeachment"; after which the Board of Managers
21 shall report the Articles. Thereupon, the President of the Senate shall inform the Managers that
22 the Senate will notify the House of Delegates of the date and time on which the Senate will
23 proceed to consider the Articles.

24 (c) Upon the reporting of Articles of Impeachment to the Senate, the Senate shall adjourn
25 until a date and time directed by the President of the Senate when the Senate will proceed to
26 consider the Articles and shall notify the House of Delegates and the Supreme Court of Appeals

1 of the same. Before proceeding to consider evidence, the Clerk shall administer the oaths
2 provided in these Rules to the Presiding Officer; to the members of the Senate then present; and
3 to any other members of the Senate as they shall appear.

4 (d) If the Board of Managers reports Articles of Impeachment against more than one
5 person, the Senate shall conduct a separate trial of each Respondent individually as required by
6 Rule 19 of these Rules.

7 **3. Pre-Trial Conference**

8 The Presiding Officer shall hold a pre-trial conference with the parties in the presence of
9 the Court to stipulate to facts and exhibits and address procedural issues.

10 **4. Clerk of the Court of Impeachment; Duties**

11 The Clerk of the Senate, or his or her designee, shall serve as the Clerk of the Court of
12 Impeachment, administer all oaths, keep the Journal of the Court of Impeachment, and perform
13 all other duties usually performed by the clerk of a court of record in this state. The Clerk of the
14 Senate may designate other Senate personnel to assist in carrying out the Clerk's duties. The
15 Clerk shall promulgate all forms necessary to carry out the requirements of these Rules.

16 **5. Marshal of the Court of Impeachment; Duties**

17 The Sergeant at Arms of the Senate, or other person designated by the President of the
18 Senate, shall serve as the Marshal of the Court of Impeachment. The Marshal of the Court of
19 Impeachment shall keep order in accordance with these Rules under the direction of the Presiding
20 Officer.

21 **6. Trial to be Recorded in Journal of the Court of Impeachment**

22 (a) All trial proceedings, not including transcripts of the trial and copies of documentary
23 evidence required to be appended to the bound Journal of the Court of Impeachment by section
24 (c) of this Rule, shall be recorded in the Journal of the Court of Impeachment. The Journal of the
25 Court of Impeachment shall be read, corrected, and approved the succeeding day. It shall be

1 published under the supervision of the Clerk and made available to the members without undue
2 delay.

3 (b) After the Journal of the Court of Impeachment has been approved and fully marked for
4 corrections, the Journal of the Court of Impeachment so corrected shall be bound in the Journal
5 of the Senate. The bound volume shall, in addition to the imprint required by Rule 49 of the Rules
6 of the Senate, 2017, reflect the inclusion of the official Journal of the Court of Impeachment.

7 (c) When available, transcripts of the trial and copies of any documentary evidence
8 presented therein shall be printed and bound as an appendix to the Journal of the Court of
9 Impeachment.

10 **7. Site of Trial**

11 The trial shall be held in the Senate Chamber of the West Virginia State Capitol Complex.
12 All necessary preparations in the Senate Chamber shall be made under the direction of the
13 President of the Senate.

14 **8. Floor Privileges**

15 Only the following persons may enter the floor of the Senate Chamber during the trial:
16 Members of the Court of Impeachment; designated personnel of the Court of Impeachment; the
17 parties; the Presiding Officer; a law clerk of the Presiding Officer; witnesses and their counsel
18 while testifying; and authorized media, who shall be located in an area of the chamber designated
19 by the Clerk.

20 **9. Representation of Parties**

21 The House of Delegates shall be represented by its Board of Managers and its counsel.
22 The Respondent may appear in person or by counsel.

23 **10. Method of Address**

24 Senators shall address the Presiding Officer as “Madam (or Mr.) Chief Justice” or “Madam
25 (or Mr.) Justice”.

26 **11. Oaths**

1 (a) The following oath, or affirmation, shall be taken and subscribed by the Presiding
2 Officer: “Do you solemnly swear [or affirm] that you will support the Constitution of the United
3 States and the Constitution of the State of West Virginia and that you will faithfully discharge the
4 duties of Presiding Officer of the Court of Impeachment in all matters that come before this Court
5 to the best of your skill and judgment?”

6 (b) The following oath, or affirmation, shall be taken and subscribed by every Senator
7 before sitting as a Court of Impeachment: “Do each of you solemnly swear [or affirm] that you will
8 do justice according to law and evidence while sitting as a Court of Impeachment?”

9 (c) The following oath, or affirmation, shall be taken and subscribed by every witness
10 before providing testimony: “Do you solemnly swear [or affirm] that the testimony you shall give
11 shall be the truth, the whole truth, and nothing but the truth?”

12 **12. Service of Process**

13 (a) The Respondent shall be served with a summons for the appearance of the
14 Respondent or his or her counsel before the Court of Impeachment and provided with a copy of
15 the Articles of Impeachment and a copy of these Rules. The summons shall be signed by the
16 Clerk of the Court of Impeachment, bear the Seal of the Senate, identify the nature of proceedings
17 and the parties, and be directed to the Respondent. It shall also state the date and time at which
18 the Respondent shall appear to answer the Articles of Impeachment and notify the Respondent
19 that if he or she fails to appear without good cause, the allegations contained in the Articles of
20 Impeachment shall be uncontested and that the Senate shall proceed to vote on whether to
21 sustain such Articles pursuant to Rule 15 of these Rules.

22 (b) The notice required by this Rule shall be served on the Respondent in the manner
23 required by Rule 4 of the West Virginia Rules of Civil Procedure. All process shall be served by
24 the Sergeant at Arms of the Senate, unless otherwise ordered by the President of the Senate. A
25 copy of the summons to the Respondent, upon its issuance, along with a copy of the Articles of
26 Impeachment and a copy of these Rules, shall be provided by the Clerk of the Court of

1 Impeachment to the Clerk of the West Virginia House of Delegates. Upon service of the same
2 upon the Respondent, a copy of the return of service shall be provided by the Clerk of the Court
3 of Impeachment to the Clerk of the West Virginia House of Delegates.

4 **13. Dismissal of Articles Upon Resignation of Respondent; Termination of Trial**

5 (a) Any Senator may move to dismiss the Articles of Impeachment against a Respondent
6 if at any time before the presentation of evidence commences in his or her trial of impeachment
7 the Respondent has resigned or retired from his or her public office. Upon motion of any Senator
8 to dismiss the Articles pursuant to this Rule, all Senators not excused shall vote on the question
9 of whether to dismiss the Articles against the Respondent. If a majority of Senators elected vote
10 to dismiss the Articles against the Respondent, a judgment of dismissal shall be pronounced and
11 entered upon the Journal of the Court of Impeachment or the Journal of the Senate, whichever is
12 convened at the time such vote is taken.

13 (b) A vote pursuant to this Rule shall be taken by yeas and nays.

14 (c) Upon dismissal of the Articles of Impeachment against a Respondent pursuant to this
15 Rule, all pre-trial and trial proceedings regarding said Respondent shall immediately cease.

16 (d) If the House of Delegates adopts and communicates Articles of Impeachment that
17 name more than one Respondent in one or more of the Articles, a dismissal pursuant to this Rule
18 shall not dismiss the articles as to any Respondent who has not resigned or retired.

19 **14. Commencement of Trial; Answer to Articles of Impeachment**

20 At the time and date fixed and upon proof of service of the summons directed to the
21 Respondent, the Respondent shall be called to answer the Articles of Impeachment. If the
22 Respondent appears in person or by counsel, the appearance shall be recorded. If the
23 Respondent does not appear, either personally or by counsel, then the failure of the Respondent
24 to appear shall be recorded. While the Court of Impeachment is in session, the business of the
25 Senate shall be suspended except as otherwise ordered by the President of the Senate.

26 **15. Failure of Respondent to Appear and Contest**

1 (a) If the Respondent fails to appear personally or by counsel without good cause at the
2 time and date specified in the notice required by Rule 12 of these Rules, the allegations contained
3 in the Articles of Impeachment shall be uncontested.

4 (b) If the allegations contained in the Articles of Impeachment are determined to be
5 uncontested under section (a) of this Rule, the Presiding Officer shall then call upon the Board of
6 Managers to deliver a summary of the evidence of the allegations contained in such Articles.

7 (c) After the summary of evidence delivered by the Managers, the Court of Impeachment
8 shall vote on the question of whether to sustain one or more of the Articles of Impeachment in
9 accordance with the requirements of Rule 31 of these Rules.

10 **16. Entry of Plea or Pleas; Procedures Based on Plea or Pleas**

11 If the Respondent appears and pleads not guilty to each article, the trial shall proceed. If
12 the Respondent appears and pleads guilty to one or more articles, the Court of Impeachment
13 shall immediately vote on the question of whether to sustain the Articles of Impeachment to which
14 a plea of guilty has been entered in accordance with the requirements of Rule 31 of these Rules.

15 **17. Subpoenas**

16 A subpoena shall be issued by the Clerk of the Court of Impeachment for a witness on
17 application of a party.

18 **18. Procedure in a Contested Matter**

19 (a) After preliminary motions are heard and decided, the Board of Managers or its counsel
20 may make an opening statement. Following the opening statement by the Managers, the
21 Respondent or his or her counsel may then make an opening statement.

22 (b) The trial shall be a daily special order of business following the Third Order of Business
23 of the Senate, unless otherwise ordered by the President of the Senate. When the hour shall
24 arrive for the special order of business, the President of the Senate shall so announce. The
25 Presiding Officer shall cause proclamation to be made, and the business of the trial shall proceed.
26 The trial may be recessed or adjourned and continued from day to day, or to specific dates and

1 times, by majority vote of the Senators present and voting. The adjournment of the trial shall not
2 operate as an adjournment of the Senate, but upon such adjournment, the Senate shall resume.

3 (c) After the presentation of all evidence to the Court of Impeachment, the Board of
4 Managers shall present a closing argument, after which the Respondent shall present a closing
5 argument. Following the Respondent's closing argument, the Board of Managers may offer a
6 rebuttal.

7 (d) The Board of Managers shall have the burden of proof as to all factual allegations. The
8 Presiding Officer shall direct the order of the presentation of evidence.

9 **19. Separate Trials of Multiple Respondents; Order of Trials**

10 (a) If the House of Delegates communicates Articles of Impeachment against more than
11 one Respondent, the Senate shall schedule and conduct a separate trial of each Respondent.

12 (b) The Presiding Officer, in consultation with the parties, shall determine the order in
13 which multiple Respondents shall be tried.

14 **20. Witnesses**

15 (a) All witnesses shall be examined by the party producing them and shall be subject to
16 cross-examination by the opposing party. Only one designee of each party may examine each
17 witness. The Presiding Officer may permit redirect examination and recross-examination.

18 (b) After completion of questioning by the parties, any Senator desiring to question a
19 witness shall reduce his or her question to writing and present it to the Presiding Officer who shall
20 pose the question to the witness without indicating the name of the Senator presenting the
21 question. If objection to a Senator's question is raised by a party, the objection shall be decided
22 in the manner provided in Rule 23 of these Rules.

23 (c) It shall not be in order for any Senator to directly question a witness.

24 **21. Discovery Procedures**

1 (a) Within five days after service upon the Respondent of the Articles of Impeachment, the
2 Respondent may request, and the Board of Managers shall disclose to the Respondent and make
3 available for inspection, copy, or photograph, the following:

4 (1) Any written or recorded statement of the Respondent in the Managers' possession
5 which the Managers intend to introduce into evidence in their case-in-chief during the trial;

6 (2) Any books, papers, documents, data, photographs, tangible objects, buildings or
7 places, or copies of portions of such items in the Managers' possession that the Managers intend
8 to use in their case-in-chief as to one or more Articles of Impeachment;

9 (3) A list of the persons the Board of Managers intends to call as witnesses in its case-in-
10 chief during the trial; and

11 (4) A written summary of any expert testimony the Managers intend to use during their
12 case-in-chief. Any summary provided must describe the witness' opinions, the bases and reasons
13 for the opinions, and the witness's qualifications.

14 (b) The Board of Managers shall make its response to the Respondent's written requests
15 within 10 days of service of the requests.

16 (c) If the Respondent makes a request pursuant to this Rule, he or she shall be required
17 to provide the same information to the Managers, reciprocally, within 10 days following his or her
18 request.

19 (d) A copy of all requests pursuant to this section shall be provided to the Clerk. The parties
20 shall provide to the Clerk, in a format or in formats directed by the Clerk, copies of all items
21 disclosed pursuant to this Rule.

22 (e) The Clerk may require parties to number or Bates stamp any trial exhibits or other
23 information provided to the Clerk. The Clerk may hold a meeting with the parties to organize trial
24 exhibits.

25 **22. Court Reporters; Transcripts**

1 (a) All proceedings shall be reported by an official court reporter or certified court reporter:
2 *Provided*, That if the services of an official court reporter or certified court reporter are unavailable
3 on one or more days of the trial, the proceedings shall be digitally recorded and copies of the
4 recording made available to the parties.

5 (b) Upon request of a party, the Presiding Officer, or any Senator, the Clerk shall provide
6 a copy of the transcript of any portion of the trial, when such transcripts are available.

7 **23. Motions, Objections, and Procedural Questions**

8 (a) All motions, objections, and procedural questions made by the parties shall be
9 addressed to the Presiding Officer, who shall decide the motion, objection, or procedural question:
10 *Provided*, That a vote to overturn the Presiding Officer’s decision on any motion, objection, or
11 procedural question shall be taken, without debate, on the demand of any Senator sustained by
12 one tenth of the Senators present, and an affirmative vote of a majority of the Senators present
13 and voting shall overturn the Presiding Officer’s decision on the motion, objection, or procedural
14 question.

15 (b) On the demand of any Senator or at the direction of the Presiding Officer, the movant
16 shall reduce the motion to writing.

17 **24. Qualification to Sit as Court of Impeachment**

18 Every Senator is qualified to participate on the Court of Impeachment, unless he or she
19 has been excused pursuant to Rule 43 of the Rules of the Senate, 2017.

20 **25. Members as Witnesses**

21 The parties may not call as witnesses, nor subpoena the personal records of, the
22 Senators, members of the Board of Managers, personnel of the Court of Impeachment, the
23 Presiding Officer, or counsel for the parties.

24 **26. Attendance of Members**

25 Every Senator is required to attend the trial unless he or she has been granted a leave of
26 absence, pursuant to Rule 50 of the Rules of the Senate, 2017, or has been excused from voting

1 on the Articles, pursuant to Rule 43 of the Rules of the Senate, 2017. Any Senator who has been
2 granted a leave of absence shall be provided an opportunity to review the exhibits, video or audio
3 recordings, and transcripts for the date or dates he or she is absent and may participate in the
4 vote on verdict and judgment as provided in Rule 31 of these Rules.

5 **27. Notetaking**

6 Senators may take notes during the trial and such notes are not subject to the provisions
7 of W. Va. Code §29B-1-1 *et seq.*

8 **28. Applicability of Rules of the Senate**

9 Except as otherwise provided herein, the Rules of the Senate shall apply to proceedings
10 of the trial and the President of the Senate retains the authority to invoke such rules.

11 **29. Applicability of Rules of Evidence**

12 When not in conflict with these Rules or the Rules of the Senate, the Presiding Officer
13 shall rule on the admissibility of evidence in accordance with West Virginia Rules of Evidence:
14 *Provided*, That a vote to overturn the Presiding Officer’s ruling on the admissibility of evidence
15 shall be taken, without debate, on demand of any Senator sustained by one tenth of the members
16 present, and an affirmative vote of the majority of Senators present shall overturn the ruling.

17 **30. Instruction**

18 At any time, the Presiding Officer may, *sua sponte*, or on motion of a party or upon request
19 of a Senator, instruct the Senators on procedural or legal matters.

20 **31. Verdict and Judgment**

21 (a) After closing arguments, the Court may enter into a Conference of Senators for
22 deliberation. After conclusion of said conference and return to open proceedings, or pursuant to
23 Rule 15 or Rule 16 of these Rules, all Senators not excused shall vote on the question of whether
24 to sustain one or more Articles of Impeachment: *Provided*, That any vote of the Senators on the
25 question of whether or not to sustain an Article of Impeachment shall decide only that Article, and

1 no single vote of the Senate shall sustain more than one Article of Impeachment. The Presiding
2 Officer shall have no vote in the verdict or judgment of the Court of Impeachment.

3 (b) If two thirds of the Senators elected vote to sustain one or more Articles of
4 Impeachment, a judgment of conviction and removal from office shall be pronounced and entered
5 upon the Journal of the Court of Impeachment. If the Respondent is acquitted of any Article of
6 Impeachment, a judgment of acquittal as to such Article or Articles shall be pronounced and
7 entered upon the Journal.

8 (c) If two thirds of the Senators elected vote to sustain one or more Article of Impeachment,
9 a vote shall then be taken on the question of whether the Respondent shall also be disqualified
10 to hold any office of honor, trust, or profit under the state. If two thirds of the Senators elected
11 vote to disqualify, a judgment of disqualification to hold any office of honor, trust, or profit under
12 the state shall be pronounced and entered upon the Journal of the Court of Impeachment.

13 (d) Each vote pursuant to this Rule shall be taken by yeas and nays.

14 (e) A copy of all judgments entered shall be deposited in the office of the Secretary of
15 State.

16 **32. Conference of Senators**

17 (a) On motion of any Senator and by a vote of the majority of the members present and
18 voting, there shall be an immediate Conference of Senators. No Senator or any other person may
19 photograph, record, or broadcast a Conference of Senators. Any motion made pursuant to this
20 Rule shall be nondebatable.

21 (b) The President of the Senate, or his or her designee, shall preside over a Conference
22 of Senators and the Rules of the Senate shall apply during said conference except as otherwise
23 provided herein.

24 **33. Contempt; Powers of Presiding Officer**

25 The following powers shall be exercised by the Presiding Officer:

26 (1) The power to compel the attendance of witnesses subpoenaed by the parties;

- 1 (2) The power to enforce obedience to the Court's orders;
- 2 (3) The power to preserve order;
- 3 (4) The power to punish contempt of the Court's authority; and
- 4 (5) The power to make all orders that may be necessary and that are not inconsistent with
- 5 these Rules or the laws of this state.

6 **34. Prohibited Conduct; Sanctions**

7 The Court of Impeachment shall have the power to provide for its own safety and the
8 undisturbed transaction of its business, as provided in Article VI, Section 26 of the Constitution of
9 West Virginia.