

Senate Ethics Committee
Report to the Senate of the Ninety-Third General Assembly

Findings and Recommendations: *Sen. Alan Clark Petition of Ethical Violation*
Allegations against Sen. Stephanie Flowers

To: Senator Jimmy Hickey, Jr.,
President Pro Tempore of the Senate

Ms. Ann Cornwell,
Secretary of the Senate

I. Senate Ethics Committee Investigation and Hearing Procedure.

On Thursday, August 18, 2022, Senator Alan Clark filed a petition alleging violations of Senate Ethics Rule 24.03 and Rule 24.06(1)(c) by Senator Stephanie Flowers. The petition was provided to Senator Stephanie Flowers, as the respondent to the ethics petition, and to Ms. Ann Cornwell, as the Secretary of the Senate, in accordance with the requirements of Senate Rule 24.09(b).

Senator Kim Hammer, Chair, called a meeting of the Senate Ethics Committee on Friday, August 26, 2022, upon adjournment of the Legislative Council meeting, in Room 309 of the State Capitol Building, to commence its investigation of the petition, as required under Senate Rule 24.09(b). Senators Missy Irvin, Keith Ingram, and David Wallace participated in the August 26 meeting via Zoom. Senator Stephanie Flowers, as the Respondent to the petition being taken up by the Committee, was prohibited from serving on the Committee under Senate Rule 24.09(c). Senator Keith Ingram, as Minority Party Leader, served on the committee in her place, in accordance with Senate Rule 24.09(c)(i). The committee met again at 9:00 a.m. on Thursday, September 1, 2022, in Room 309, to hear from the parties and witnesses. Senators David Wallace and Keith Ingram participated in the September 1 meeting via Zoom.

Following opening remarks by Senator Hammer on September 1, 2022, regarding the purpose of the meeting and the procedure to be followed, a determination was made by the chair to go into executive session pursuant to Senate Rule 24.08(5). The committee voiced no objection to proceeding in executive session. The public was dismissed from the room at that time.

The Committee heard testimony from both Senator Alan Clark and Senator Stephanie Flowers, and asked questions of both parties. Senator Clark informed the committee that he had provided a list of witnesses only in the event the committee would like to hear from them, but otherwise he did not intend to call any witnesses. Senator Flowers called the following witnesses: Ms. Tamara Lewis, Senate Fiscal Officer, and Ms. Ann Cornwell, Director/Secretary of the Senate. In addition, the Committee called as witnesses Senator Bart Hester, Chair, Senate Efficiency Committee, and Senator Jimmy Hickey, Jr., President Pro Tempore of the Senate. Both parties and all witnesses were placed under oath. The Committee heard a closing statement from Senator Clark. Despite encouragement by the chair to remain, Senator Flowers made the decision to leave the committee hearing prior to providing a closing statement. The Committee excused Senator Clark and conducted deliberations following the hearing on September 1. The Committee convened again on Thursday, September 8, 2022 to continue its deliberations and to review the language of a draft

report of its findings and recommendations to the Senate. The Committee instructed staff on final revisions to the draft document.

Attached for your information are the following exhibits, which were provided to the Committee members for their consideration during the hearing and deliberation process:

- Exhibit A.1., Agenda, Senate Ethics Committee, August 26, 2022;
- Exhibit A.2., Agenda, Senate Ethics Committee, September 1, 2022;
- Exhibit A.3., Agenda, Senate Ethics Committee, September 8, 2022;
- Exhibit A.4., Agenda, Senate Ethics Committee, September 9, 2022;
- Exhibit B.1., August 18, 2022 Petition, filed by Sen. Clark;
- Exhibit B.2., August 18, 2022 letter from Sen. Hammer to the Senate Ethics Committee;
- Exhibit B.3., August 18, 2022 letter from Sen. Hammer to Sen. Clark;
- Exhibit B.4., August 18, 2022 letter from Sen. Hammer to Sen. Flowers;
- Exhibit C.1., Statement from Senator Clark, August 24, 2022;
- Exhibit C.2., Temporary Emergency Procedures – Arkansas Senate, 2021 Regular Session;
- Exhibit C.3., Recording of January 11, 2021 Senate Chamber Meeting (with pertinent time stamps noted);
- Exhibit C.4., Documentation related to Senator Stephanie Flowers’ Senate Chamber Attendance for the 2021 Regular Session; Written Statement of Rob Hatfield, Senate Production Assistant, August 22, 2022, “Compilation and Confirmation Process of Senator Stephanie Flowers’ Attendance and Utilization of Zoom during the Regular Session of the 93rd General Assembly”;
- Exhibit C.5., Attendance Sheets, Senate Judiciary Committee, 2021 Regular Session; Written Statement of Allison Potratz, Judiciary Committee Analyst, Bureau of Legislative Research, August 22, 2022; Written Statement of Ashley Miller, Judiciary Committee Administrative Assistant, Bureau of Legislative Research, August 22, 2022;
- Exhibit C.6., Written Statement from Tamara Lewis, Senate Fiscal Officer, August 24, 2022; Spreadsheet re: payments to Sen. Flowers during the 2021 Regular Session;
- Exhibit C.7., Recording of June 22, 2022 Senate Ethics Committee Meeting (with pertinent time stamps noted);
- Exhibit C.8., Witness List
- Exhibit D.1., Senator Stephanie Flowers’ Response to Complaint and Motion to Dismiss;
- Exhibit D.2., Senator Flowers’ List of Witnesses; Senator Flowers’ Exhibits/Documents; Email exchange between Sen. Flowers and Director Marty Garrity, July 1, 2022, regarding Sen. Clark FOIA request for supplemental sign-in sheets; Email Exchange between Sen. Flowers and Director Marty Garrity, June 29, 2022, regarding Sen. Clark FOIA request for Sen. Flowers’ attendance records at Senate Judiciary during the 2021 Regular Session; Email exchange between Sen. Flowers and Tamara Lewis, Senate Fiscal Officer for the Senate, August 19, 2022 re: Zoom attendance and direct deposits during 2021 Regular Session;
- Exhibit D.3., Copy of Cashier’s Check No. 0000028937, August 22, 2022, to the Arkansas Senate re: Stephanie Flowers, in the amount of \$217.60;
- Exhibit D.4., Newspaper Article “Ethics findings fault senators”, Michael R. Wickline, Arkansas Democrat-Gazette;

- Exhibit D.5., Witness List
- Exhibit E.1., Transcript, Senate Chamber Proceedings, January 11, 2021;
- Exhibit E.2., Transcript, Senate Ethics Committee Meeting, June 22, 2022;
- Exhibit E.3., Copy of Check No. 11647, August 11, 2022, to the Arkansas Senate from Sen. Flowers, in the amount of \$2,714.00;
- Exhibit E.4., Memorandum to Sen. Kim Hammer, Chair, Senate Ethics Committee, from Tamara Lewis, Senate Fiscal Officer, August 22, 2022, re: Senate Per Diem and Mileage Guidelines for Reimbursement of Senators who live within 50 miles of the State Capitol; and
- Exhibit E.5., Memorandum to Sen. Kim Hammer, Chair, Senate Ethics Committee, from Rob Hatfield, Senate Production Assistant, August 23, 2022, re: “Compilation and Confirmation Process of Senator Stephanie Flowers’ utilization of Zoom during the Regular Session of the 93rd General Assembly, including screenshots of each day that Sen. Flowers participated in the Senate Chamber via Zoom.
- Exhibit E.6., Alan Clark, Facebook Post, June 30, 2022;
- Exhibit E.7., “Made a mistake, senator concedes” by Michael R. Wickline, Arkansas Democrat-Gazette, July 3, 2022;
- Exhibit E.8., “Senator Clark wears a scarlet letter to Republican Party gala” by Max Brantley, Arkansas Times Blog, July 23, 2022;
- Exhibit E.9., Alan Clark, Facebook Post, August 9, 2022; and
- Exhibit E.10., Witness List.

The committee convened a final time on Friday, September 9, to finalize its determinations in executive session, and upon conclusion of its deliberations, the public was allowed to reenter the meeting room, at which time Senator Hammer recognized Senator Missy Irvin for a motion. Senator Irvin’s motion was as follows:

In response to a petition filed with the Senate Ethics Committee, pursuant to Senate Rule 24, on August 18, 2022, by Sen. Alan Clark, the committee, having completed its investigation of the allegations against Sen. Stephanie Flowers, finds that Sen. Flowers has not violated any provisions of Senate Rule 24. As such, I move that the committee recommend that the Senate uphold this finding of the committee and that no penalties be imposed against Sen. Flowers, as the Committee found the issue at hand to be clerical only.

Senator Irvin’s motion was seconded by Senator Joyce Elliott and passed unanimously by voice vote. The committee then returned to executive session, asking everyone other than committee members, staff, and Senator Alan Clark to leave the committee room. The committee posed additional questions to Senator Clark related to his intent in filing the petition against Senator Flowers and several public statements by Senator Clark found in social media postings and news articles. At the conclusion of its questions and further deliberations, the committee reconvened the public meeting, and Senator Hammer then recognized Senator David Wallace for an additional motion, as follows:

Having found that Sen. Clark's allegations of ethical violations against Sen. Flowers were without merit, the committee further finds that the accusations made by Sen. Clark against Sen. Flowers were spurious, frivolous, and retaliatory, in violation of Senate Rule 24.13, for the following reasons:

- 1. The allegations made against Senator Flowers did not have merit;*
- 2. Senator Clark has made repeated public statements regarding his intent to retaliate against the Senate;*
- 3. Senator Clark's investigation of the facts before filing his petition against Senator Flowers was reckless, with deliberate intent;*
- 4. The evidence demonstrates that Senator Clark singled out Sen. Flowers for an ethics complaint, and his stated reason for filing the petition was untrue; and*
- 5. After being provided with additional evidence in Senator Flowers' response to the petition and through evidence presented to the committee, the committee asked Senator Clark twice if he would like to withdraw his petition, and he refused to do so.*

As such, I move that the committee recommend that the Senate uphold this finding of the committee and impose the following penalties against Sen. Alan Clark:

- 1. Immediate loss of seniority, moving Sen. Clark to position 35 for the remainder of the 93rd General Assembly;*
- 2. A recommendation to the 94th General Assembly that Sen. Clark's loss of seniority be sustained, as the first order of business at the organizational meeting to be held in November, and that he remain at position 35 during the 94th General Assembly; and*
- 3. Suspension for the remainder of the 93rd General Assembly, effective upon adoption of these findings and recommendations by the Senate, to include loss of:*
 - a. Reimbursement for conference registration fees or travel reimbursements related to in-state or out-of-state travel;*
 - b. Attendance and participation at legislative committee meetings or meetings of the Senate, with the exception of any Senate organizational or Senate orientation meetings of the 94th General Assembly, including access to the member and staff only areas of committee rooms and facilities; and*
 - c. Access to and use of Senate, the Bureau of Legislative Research, Legislative Audit, and other legislative facilities, equipment, or staff resources, including his Senate email account.*

Senator Wallace's motion was seconded by Senator Keith Ingram and passed unanimously by voice vote. Senator Hammer then recognized Senator Mathew Pitsch, who moved for adoption of the report regarding the Committee's findings and recommendations and that the report be transmitted to the President Pro Tempore of the Senate for immediate release to the members of

the Senate and the public. The motion was seconded by Senator Clarke Tucker and passed by unanimously by voice vote.

This report is submitted to the Senate of the Ninety-Third General Assembly of the State of Arkansas in accordance with Senate Rule 24.10(f):

“Within twenty (20) calendar days of the conclusion of its hearing, the committee shall provide a written copy of its findings and recommendations to the President Pro Tempore for consideration by the full Senate. The report of the committee shall include recommendations regarding penalties to be imposed on the respondent, if any. The findings of the committee are not binding on the Senate, but are merely recommendations.”

II. Alleged Ethics Violations by Senator Stephanie Flowers.

A. Senate Ethics Committee Findings.

1. Findings of Fact.

The Senate Ethics Committee finds:

- a. Senator Stephanie Flowers has not violated Senate Rule 24.
- b. On January 11, 2021, the Senate of the Ninety-Third General Assembly adopted Temporary Emergency Procedures for the 2021 Regular Session. Those procedures allowed for remote participation of Senators in the Senate chamber proceedings under certain circumstances. (See, Exhibit C.2., Section 4., p.2, “Remote Participation of Members”; See also Exhibit C.3., Recording of January 11, 2021 Senate Chamber Meeting.)
- c. Section 5(a) of the Temporary Emergency Procedures of the Senate, as adopted on January 11, 2021, reads as follows: “A member participating remotely in a session of the Senate under these procedures shall be considered present for purposes of establishing a quorum; however, the member will not be counted as present for the purposes of per diem, unless the member has travelled to Little Rock from his or her district for the purpose of participating in the session.” (See, Exhibit C.2., Section 5, p. 2, “Quorum”.)
- d. Senator Stephanie Flowers participated in the Senate chamber meetings in person during Week 1 of the 2021 Regular Session. Senator Flowers participated in the Senate chamber meetings remotely, in compliance with the Temporary Emergency Procedures, beginning on Week 2 and for the remainder of the 2021 Regular Session. (See, Exhibit C.4., Rob Hatfield Memorandum and Sen. Flowers Senate Chamber Attendance Table; See also Exhibit E.5., Rob Hatfield Memorandum and Sen. Flowers Zoom Screenshots).

- e. Senator Flowers testified to the Senate Ethics Committee that she participated in the Senate chamber proceedings via Zoom throughout most of the 2021 Regular Session due to her personal health concerns during the pandemic.
- f. Senator Flowers, without her knowledge, consent, or request, was erroneously paid per diem and mileage reimbursements during Weeks 2 and 3 of the 2021 Regular Session. (*See, Exhibit C.6., Table of Payments from Senate to Sen. Flowers*)
- g. Senator Flowers communicated with Ms. Tamara Lewis, Senate Fiscal Officer, and Ms. Ann Cornwell, Director/Secretary of the Senate, following Week 3 of the 2021 Regular Session, upon realizing that payments had been direct deposited into her bank account that she believed had been paid to her in error. (*See, Exhibit D.1., Sen. Flowers' Response to Complaint and Motion to Dismiss, p. 1., Section 3.b.*) Senator Flowers stated in both her written response and testimony before the committee that she questioned Ms. Lewis and Ms. Cornwell whether the payments were authorized under the Temporary Emergency Procedures adopted by the Senate.
- h. Senator Flowers stated in both her written statement and her testimony before the committee that Ms. Lewis and Ms. Cornwell “advised me with assurance that their reading and interpretation of the rules and procedures allowed a member participating in Regular Session by Zoom to be paid per diem, but not mileage.” (*See, Exhibit D.1., p. 1, Section 3.b.*) Ms. Lewis acknowledged in her testimony that she did advise Senator Flowers that she was eligible to receive per diem.
- i. Following her conversation with Ms. Lewis and Ms. Cornwell during the 2021 Regular Session, an adjustment was made to Sen. Flowers’ payments from the Senate, whereby Sen. Flowers’ direct deposit during Week 4 was reduced to allow for repayment of the mileage reimbursements paid to Sen. Flowers during Weeks 2 and 3 of the Regular Session. (*See, Exhibit C.6., p.2*)
- j. Following this adjustment, Senator Flowers was erroneously paid per diem during Weeks 4 through 16 of the 2021 Regular Session. (*See, Exhibit C.6., Table of Payments from Senate to Sen. Flowers*)
- k. During their testimony before the committee, Ms. Lewis and Ms. Cornwell both acknowledged that it was their clerical error that led to the erroneous payments of per diem and mileage reimbursements to Senator Flowers on days when she participated remotely in the Senate chamber proceedings during the 2021 Regular Session. Both Ms. Lewis and Ms. Cornwell testified that Senator Flowers bore no responsibility for the erroneous payments made to her by the Senate.
- l. On August 11, 2022, Senator Flowers was contacted by Ms. Cornwell, notifying her of the erroneous payments of per diem. Upon learning of the erroneous payments, Senator Flowers wrote a check in the amount of \$2,714.00, reimbursing the Senate for per diem payments made for forty-six (46) days at the rate of \$59 per day. (*See, Exhibit D.1.,*

p.2, Section 4.a.; *See also* Exhibit E.3., Copy of check no. 11647). Ms. Lewis testified that the amount of per diem paid to Sen. Flowers during the 2021 Regular Session was actually \$55 per day, rather than the \$59 per day amount that Sen. Flowers based her repayment to the Senate, and that amount had been erroneously communicated to Sen. Flowers when she requested the amount she should repay, resulting in Senator Flowers making an overpayment to the Senate.

- m. On August 22, 2022, Senator Flowers provided an additional reimbursement payment to the Senate in the amount of \$217.60, after being notified by Ms. Lewis that four (4) payments had been made to her on days that she had been granted leave from the Senate. (*See, Exhibit D.1.*, p.2, Section 4.b.; *See also, Exhibit D.3.*, Copy of Cashier's Check No. 0000028937)
- n. Ms. Lewis testified before the committee that Senator Flowers has reimbursed the Senate in full for any overpayments made to her during the 2021 Regular Session related to days on which she participated in the Senate Chamber proceedings via Zoom or was on leave.¹

2. Committee Analysis.

Senator Flowers contacted Senate Staff as soon as she became aware of the deposits in her bank account that she felt had been made in error. In doing so, she was assured by Senate Staff that under current Senate procedures, she was entitled to the payments she had received.

To date, Senator Flowers has made three (3) separate reimbursements of amounts erroneously paid to her during the 2021 Regular Session, as follows: a deduction to her Week 4 Regular Session reimbursements for the amount paid to her for mileage; \$2,714.00 on August 11, 2022; and \$217.60 on August 22, 2022.

Senator Flowers acted in a reasonable, responsible, and sufficient manner by contacting Senate staff with questions regarding Senate policies and procedures, and relying on the information that she was given by Senate staff. Senators should be able to rely on information provided to them by legislative staff, and Senator Flowers' decision to rely on the information provided to her by Senate staff was reasonable and sufficient.

It was communicated to Senator Flowers by Senate staff that the amount erroneously paid to her for per diem was overestimated (due to her having paid an amount based on \$59/day rather than the correct amount of \$55/day), and that she overpaid in her reimbursement of \$2,714.00. It was later communicated to Senator Flowers that she owed the state additional money for payments made to her on days that she was on leave during the 2021 Regular Session and that the amount of the previous overpayment would be deducted from the amount she owed, resulting in Senator Flowers making an additional payment to the Senate of \$217.60. Every time Senator Flowers was notified by Senate staff that Senate staff clerical errors had resulted

¹ Ms. Lewis testified that she is still working with the Department of Finance and Administration regarding reconciliation of the amounts to be returned to Senator Flowers due to her having paid an amount to the Senate that included taxes that had been withheld. The amount of reimbursement to be paid to Sen. Flowers will be determined once a resolution has been reached with DFA on this issue.

in erroneous payments to her account, Senator Flowers immediately worked with Senate staff to determine the amounts of the overpayments and repay those amounts to the Arkansas Senate. At this time, based on fiscal accounting research, all of the accounting regarding this matter has been reconciled, with the exception of the amount to be reimbursed to Senator Flowers for the amount she paid representing taxes that had been withheld, and all amounts owed by Senator Flowers to the Senate have been repaid.

The fact scenario presented by Senator Clark's allegations is not unprecedented. Testimony was given by Ms. Cornwell, during the committee hearing, that when similar overpayments to Senators have occurred over past years, the Senator was notified of the error and allowed to repay the erroneous payments to the Senate. Ms. Lewis testified that at this time Senator Flowers has repaid in full the amounts overpaid to her by the Senate.

It is the Committee's belief and determination that in dealing with the unprecedented circumstances of conducting a legislative session during a pandemic, which included wholly new procedures and scenarios, including remote participation by members, clerical errors occurred. While regrettable, the clerical errors were understandable and resulted in the unintentional overpayments of reimbursements to Senators, including Senator Flowers.

None of the actions alleged or facts presented to the committee amount to an ethical violation of Senate Rule 24 by Senator Flowers. In addition, all staff acted with high integrity and within the scope of their positions with the Senate in the handling of these matters, including this ethics investigation.

B. Senate Ethics Committee Recommendations.

As such, it is the recommendation of the Senate Ethics Committee to the Senate of the Ninety-Third General Assembly that the Senate of the Ninety-Third General Assembly of the State of Arkansas concur in and uphold the recommendations of its Senate Ethics Committee, as follows:

1. Senate Code of Ethics Violations.

a. Senate Rule 24.03

The Senate Ethics Committee finds that Senator Stephanie Flowers has not violated Senate Rule 24.03, and recommends that the Senate of the Ninety-Third General Assembly of the State of Arkansas find Senator Flowers to not be in violation of the Senate's Code of Ethics with regard to Rule 24.03, which reads as follows:

24.03 Compliance with Law

Senators shall comply with all constitutional and statutory provisions relating to elected office. Violation of any constitutional or statutory provision shall be grounds for administering penalties as provided in the Code of Ethics. Any penalty imposed by the Senate shall not bar any other civil or criminal proceedings.

The committee determined that no provision of constitutional or statutory law was violated by the actions alleged by Senator Flowers in the petition filed by Senator Clark or in relation to any of the information provided during the committee hearing. In fact, Senator Flowers actions in conferring with Senate staff upon noticing the direct deposits to her account, and swift repayment of the erroneous amounts paid to her during the 2021 Regular Session once those errors were brought to her attention, demonstrate a desire by Senator Flowers to remain in compliance with the law, as well as Senate procedures and policies.

Conclusion: *Senator Flowers has not violated any provision of constitutional or statutory law in relation to the facts alleged in the petition before the committee. As such, the committee finds and recommends concurrence by the Senate that Senator Flowers did not violate Rule 24.03, as evidenced by the findings of fact, stated above, and the exhibits provided as attachments to this report.*

b. Senate Rule 24.06 (1)(c)

The Senate Ethics Committee finds that Senator Stephanie Flowers has not violated Senate Rule 24.06(1)(c), and recommends that the Senate of the Ninety-Third General Assembly of the State of Arkansas find Senator Flowers to not be in violation of the Senate's Code of Ethics with regard to Rule 24.06(1)(c), which reads as follows:

(1) A Senator shall not knowingly: [. . .] (c) Seek, accept, use, allocate, grant, or award public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for compensation, reimbursement or travel allowances from public funds. (emphasis added)

Senator Flowers did not knowingly seek, accept, or use any compensation or reimbursement to which she was not entitled, as she justifiably sought the input and guidance of Senate staff as to whether the reimbursements being made to her were permitted under Senate procedures. She was assured by staff that she was entitled to the per diem reimbursements she was receiving and worked with staff to reimburse the Senate for the erroneously paid mileage reimbursements. In addition, when it was brought to Senator Flowers' attention that she had been paid per diem in error during the 2021 Regular Session for days that she participated remotely or was on leave, she immediately reimbursed the Senate for those amounts. Senator Flowers' actions related to these payments, including her reliance on information provided to her by the Senate Fiscal Officer and the Director/Secretary of the Senate, was reasonable, justifiable, and sufficient.

Conclusion: *Senator Flowers did not knowingly seek, accept, or use any public funds to which she was not entitled, nor did she make a false statement in connection with a claim or request for compensation or reimbursement from public funds. As such, the committee finds and recommends concurrence by the Senate that Senator Flowers did not violate Rule 24.06 (1)(c), as evidenced by the findings of fact, stated above, and the exhibits provided as attachments to this report.*

III. Spurious, Frivolous, and Retaliatory Accusations.

Senate Rule 24.13 Spurious or Frivolous Accusations

If the Senate votes to absolve a respondent of any ethical violation, the membership may levy against the claimant one or more of the penalties as described in Rule 24.11 if it determines that the accusations were spurious or frivolous.

A. Senate Ethics Committee Findings.

1. Findings of Fact.

- a. Beginning on June 22, 2022, the Senate Ethics Committee held hearings on ethics violation petitions filed by Senator Jimmy Hickey, Jr. against Senator Alan Clark. The committee ultimately adopted findings and recommendations that were sent to the full Senate recommending that Senator Clark be found in violation of Senate Ethics Rule 24 and that penalties be imposed against them. At a business meeting on Thursday, July 21, 2022, the Senate adopted the findings and recommendations of the Committee, and voted to impose penalties against Senator Clark.
- b. Senator Stephanie Flowers is a member of the Senate Ethics Committee and spoke out in support of finding Senator Clark in violation of Rule 24 and of imposing additional penalties against Senator Clark at both the committee meeting and the Senate Business Meeting.
- c. On June 22, 2022, while the committee was in deliberations related to the petition against Senator Clark, Senator Clark submitted a Freedom of Information Act request to Ms. Marty Garrity, Director, Bureau of Legislative Research, requesting all supplemental sign-in sheets submitted by members of the General Assembly for the past ten (10) years.
- d. On Monday, June 27, 2022, the Senate Ethics Committee adopted motions finding Senator Alan Clark in violation of two (2) provisions of the Senate's Code of Ethics and recommended penalties be imposed against Senator Clark by the full Senate.
- e. Since the hearing at which the Senate Ethics Committee made its findings and recommendations against him, Senator Clark has made various public comments demonstrating his intentions to take retaliatory action against the members of the Committee and the members of the Senate, including without limitation, the following:
 - On Thursday, June 30, 2022, Senator Clark made the following post on Facebook:

“I’ve overcome the blow, I’ve learned to take it well
I only wish my words could just convince myself
That it just wasn’t real but that’s not the way it feels”

Working in LR with my best old ex-friends, say, people you thought you knew well *but turns out you really hated.*

(See, Exhibit E.6., Alan Clark Facebook, June 30, 2022.) (emphasis added).

- On Sunday, July 3, 2022, the Arkansas Democrat-Gazette ran an article in which Senator Clark was quoted as saying “When it comes to Mark [Johnson], *I will burn the house down.* We’ll talk about all the things that could be ethics charges, and *some people will get real uncomfortable* [. . .].” (See, Exhibit E.7., “Made a mistake, Senator concede”, by Michael R. Wickline, Arkansas Democrat-Gazette, July 3, 2022.) (emphasis added). Senator Clark went on in that article to state that he plans to continue to serve in the Senate, and “will probably be more effective than ever and *‘a little meaner.’*” (See, Exhibit E.7.)(emphasis added).
- On Friday, July 22, 2022, the day after the Senate Business Meeting, in which Senator Clark was found to have violated Senate Rule 24 and had penalties imposed on him by the full Senate, Senator Clark was photographed at a Republican Party of Arkansas event wearing a scarlet letter “E” around his neck. (See, Exhibit E.8., “Sen. Alan Clark wears a scarlet letter to Republican Party gala” by Max Brantley, July 23, 2022.)
- On Friday, July 29, 2022, Senator Flowers was advised that Senator Clark submitted a Freedom of Information Act request to Bureau of Legislative Research Staff for the attendance records of the Senate Judiciary Committee for the 93rd General Assembly and in particular, “How many Senate Judiciary meetings Senator Flowers attended; and How many times Senator Flowers attended the Senate Judiciary meeting via Zoom.” (See, Exhibit D.2. email dated July 29, 2022 from Ms. Garrity to Senator Flowers.)
- In his testimony to the Senate Ethics Committee at its hearing on Thursday, September 1, 2022, Senator Jimmy Hickey, Jr. testified that Senator Clark had told him he has drafted additional ethics complaints against thirty (30) to thirty-two (32) additional Senators.
- On Tuesday, August 16, 2022, two (2) days prior to filing his ethics petition against Senator Flowers, Senator Clark made a lengthy Facebook post, as follows:

Secrets to giant killing:

You need to be practiced and skilled with YOUR weapon.

Use YOUR weapon. Don’t listen to the experts.

NO ONE but you will expect you to win.

If you want to get paid for killing giants, sign a contract on the front end. People have no fear of and no need of anyone to help them kill dead giants.

The king's advisors don't care you are going to die. They just hope you buy them another day.

Your family thinks you have a hero complex and THEY are the ones your father will blame for your death because they didn't talk you out of this foolhardy mission. You cannot be a giant killer AND listen to your family.

Don't be dismayed that people underestimate you. Giant killers are ALWAYS underestimated.

You can't be afraid to go out on the battlefield. Most people are afraid to actually enter the battlefield. If you do not have a confidence that makes you seem crazy to others, DON'T enter the battlefield. *The battle is real and there WILL be a loser. Life's battlefields are littered with the bodies of dead, would be giant killers. The giant did not get his reputation without a body count.*

Stop and pick up some ammunition.

If/when the giant threatens you, you must answer. Others will think you are arrogant, cocky, overconfident. *If the giant says he is going to kill you, very calmly let him know that he is the one that is going to die.*

Look for the right moment to attack. Attack.

Be sure that this is a giant you are supposed to kill. If God hasn't ordained the battle there is a good chance everyone else will be right.

Be sure you are ANOINTED to kill giants. It is not a job for everyone. And as David said it is God who actually wins the victory.

Expect people, especially in leadership, to be jealous.

Don't forget to collect your earnings as agreed on in the contract.

Mind your own business, play your harp, write your songs (allegorically) and wait for the next giant to cross your path and threaten.

(See, Exhibit E.9., Alan Clark, Facebook Post, August 9, 2022) (emphasis added).

- f. In addition to his own statements as evidence of his retaliatory intent towards the Senate Ethics Committee and the members of the Senate, Senator Clark's actions and words

related to the current allegations against Senator Flowers show that his filing of this petition was spurious and frivolous.

- g. Senator Clark was aware that Senator Flowers was not the only senator to have erroneously received per diem and mileage reimbursements on days when he or she participated in the Senate Chamber proceedings via Zoom during the 2021 Regular Session. Senator Clark testified that he knew that another Senator had also received reimbursements while participating remotely in the 2021 Regular Session.
- h. Two (2) Senators received per diem and mileage payments from the Senate for days on which the Senators participated via Zoom. Senator Clark did not file any Freedom of Information Act requests with the Senate requesting attendance records on the other senator who received per diem while participating in the chamber proceedings remotely, nor did he make a request to the Senate Fiscal Officer regarding the amounts paid to the other senator. With regard to the information request made to Director Garrity concerning attendance at the Senate Judiciary Committee meetings, Senator Clark did not ask for specific information on the other Senate member that also participated by Zoom.
- i. The other Senator lives a distance greater than fifty (50) miles from the State Capitol, and is therefore eligible for per diem reimbursements at a rate higher than the amount paid to Senator Flowers. Senator Clark is aware of this. Senator Clark did not request payment information from the Senate regarding the other Senator. Yet, when asked by various Committee members why he had chosen not to file a petition against the other senator, Senator Clark responded only that he felt that the payments of per diem to Senator Flowers while she was participating remotely was the “most egregious”.
- j. Senator Clark stated that he chose to file his petition against Senator Flowers because of the amount of money involved in Senator Flowers’ reimbursements. However, Senator Clark did not receive the table showing the amount of those reimbursements to Senator Flowers until August 24, 2022. As such, Senator Clark was not aware of the amounts actually paid to Senator Flowers until six (6) days after filing his ethics petition against her.
- k. During the hearing on September 1, 2022, Senator Clark was asked whether he had been aware of the facts included in Senator Flowers’ response to his petition, including her contact with Senate staff to inquire as to whether she should be receiving the per diem payments, and her repayment of amounts erroneously paid to her, before he received Senator Flowers’ response on August 25, 2022. He said that he had not been. Also during the hearing on September 1, Senator Clark heard both Ms. Lewis and Ms. Cornwell testify that the payments made to Senator Flowers were their responsibility. However, when the committee members asked Senator Clark on two (2) occasions during the hearing whether, in light of this new evidence, he would be willing to withdraw his petition, Senator Clark refused.

- l. When asked repeatedly whether Senator Flowers had acted reasonably with regard to her attempts to determine the appropriateness of the payments made to her during the 2021 Regular Session, Senator Clark agreed that she had, but testified that he would have gone further.
- m. In addition, Senator Clark made allegations against the members of the Senate Ethics Committee on two (2) occasions during the September 1 hearing, in which he accused them of having prejudged the matter before them. When asked to be specific in his allegation of unethical behavior by the members, Senator Clark first refused to provide specifics. When pressed again, he made a statement to two of the members of the committee that “it wasn’t you.” Finally, Senator Clark, rather than provide evidence for his allegation, retracted his statement.

2. *Committee Analysis.*

Senator Clark made no secret of his anger against the members of the Senate Ethics Committee and the Senate for finding both him and Senator Mark Johnson in violation of the Senate’s Ethics Code and imposing penalties against them both. Senator Clark has both implied and made frank statements regarding his intent to retaliate against members for the perceived harm/wrong done to him. The Committee provided Senator Clark with the opportunity to explain his public comments during the hearing process, and the Committee found Senator Clark’s responses unpersuasive. Senator Clark’s intention in filing this petition against Senator Flowers does not appear to be for the purpose of reporting an ethics violation. If it were, then Senator Clark would have felt compelled to file a similar petition against the other senator that he knows received reimbursements while participating remotely during the 2021 Regular Session. He did not do so. Rather, he filed a petition against a Senator who was a member of the committee that found him to be in violation of the Senate’s Code of Ethics, and who was vocal in her condemnation of his actions in both the committee hearings and the Senate Business Meeting, demonstrating the retaliatory intent of Senator Clark in filing this ethics petition against Senator Flowers.

The retaliatory, frivolous, and spurious nature of Senator Clark’s petition is further evidenced by the fact that he chose to file a petition only against the Senator who is a member of the Senate Ethics Committee, and made no ethical accusations against the other senator who was not present at the time of the vote against Senator Clark in the Senate Business Meeting. Senator Clark provided as his reasoning for filing a petition only against Senator Flowers and not the other Senator, that he felt the payments to Senator Flowers were the “most egregious”, yet he never requested information regarding amounts paid to the other Senator who also participated remotely. Unlike Senator Flowers, the other Senator lives more than fifty (50) miles from the State Capitol, making him eligible for a greater amount of per diem. Senator Clark, also living more than fifty (50) miles from the State Capitol, is aware of this. Knowing all of this, Senator Clark still filed his petition against Senator Flowers six (6) days prior to receiving the actual amounts of the payments made to her and without ever inquiring as to the amounts of payments made to the other Senator. It is unclear on what he bases his claim that hers is the more egregious incident, when he in fact had no knowledge of the amounts paid to either Senator at the time of filing his petition.

The Committee asserts that you cannot put a price on ethics, and any amount taken knowingly and wrongfully is too much, yet Senator Clark in his reasoning seemed to assert that a larger amount (which he was not even sure was the case) erroneously paid to Senator Flowers amounted to a more egregious transgression. Senator Clark made the statement during his testimony that he felt Senator Flowers had not gone far enough in investigating whether the payments made to her were in error or not – he felt she did not dig deep enough with her inquiry; yet he filed his complaint prior to having all of the information needed to know whether an ethical violation had occurred, not waiting until he had received the financial information from Senate staff, and never inquiring of them whether payments had been made to other Senators who had participated remotely, or asking of Senator Flowers whether she was aware that she had been erroneously paid. The committee asserts that Senator Clark, who looked for more action from Senator Flowers, did not dig deep enough himself before filing an ethics petition. For these reasons, the Committee finds that Senator Clark’s stated rationale for filing an ethics complaint against Senator Flowers but not the other senator are not credible, reasonable, or persuasive.

Not only was Senator Clark’s investigation prior to filing this ethics complaint, inadequate, Senator Clark had the opportunity to review Senator Flowers’ response to his petition when he received it on August 25, 2022, which denied the claims in his petition and demonstrated the petition had no merit. In addition, Senator Clark was presented with all the evidence in this matter at the Committee’s hearing held on September 1, 2022, which once again showed that his allegations had no merit; yet, when presented two (2) times during that hearing with the opportunity to withdraw his petition, Senator Clark declined and insisted on proceeding.

Senator Hickey’s testimony that Senator Clark has drafted additional ethics petitions against thirty (30) to thirty-two (32) senators, of which his allegations against Senator Flowers is just the first, is demonstrative of the frivolous nature of this petition, due to the fact that the volume of petitions filed with the Committee would result in a huge burden in the way of use of committee and staff time and resources. Indeed, the only purpose to the filing of this petition, and any that he has plans to file going forward, seems to be to fulfill his promise of July 3 to “burn the house down”. The committee feels it is worth noting that his absolute disregard for the number of Senate staff hours that must be engaged in responding to the information requests and preparation of financial information related to multiple ethics violations constitutes a waste of valuable staff time and Senate resources.

Moreover, this committee understands the serious nature of any allegation made and takes its responsibilities in a thoughtful, measured, and bi-partisan manner. However, the committee cannot allow this process to be used in a manner that is retaliatory and these types of meritless petitions will not be tolerated. These frivolous and spurious allegations only serve to create a divisive environment within the Senate and bring dishonor to the institution of the Senate.

B. Senate Ethics Committee Recommendations.

As such, it is the recommendation of the Senate Ethics Committee to the Senate of the Ninety-Third General Assembly that the Senate of the Ninety-Third General Assembly of the State of Arkansas concur in and uphold the recommendations of its Senate Ethics Committee, as follows:

1. Senate Ethics Code Violations.

a. Senate Rule 24.13

The Senate Ethics Committee has recommended to the Senate that it absolve Senator Stephanie Flowers of any ethical violation. The committee further recommends that upon doing so, the Senate find that Senator Alan Clark's petition against Senator Flowers is spurious, frivolous, and retaliatory, in violation of Senate Rule 24.13, which reads as follows:

24.13 Spurious or Frivolous Accusations

If the Senate votes to absolve a respondent of any ethical violation, the membership may levy against the claimant one or more of the penalties as described in Rule 24.11 if it determines that the accusations were spurious or frivolous.

Senator Clark made clear in various forums that his intent was to retaliate against the members of the Senate for the penalties imposed against him in July of this year. Senator Clark's petition filed against Senator Flowers is an example of that stated retaliatory intent being acted upon. In addition, his failure to file a petition against another senator who had also received erroneous reimbursements during the 2021 Regular Session, clearly demonstrates the spurious and frivolous nature of the petition filed against Senator Flowers by Senator Clark.

Conclusion: The Committee finds and recommends concurrence by the Senate that Senator Clark violated Senate Rule 24.13, by making spurious, frivolous, and retaliatory accusations against Senator Stephanie Flowers, as evidenced by the findings of fact, stated above, and the exhibits provided as attachments to this report, including without limitation the following:

- The allegations made against Senator Flowers did not have merit;***
- Senator Clark has made repeated public statements regarding his intent to retaliate against the Senate;***
- Senator Clark's investigation of the facts before filing his petition against Senator Flowers was reckless, with deliberate intent;***
- The evidence demonstrates that Senator Clark singled out Senator Flowers for an ethics complaint, and his stated reason for filing his petition was untrue; and***
- After being provided with additional evidence in Senator Flowers' response to the petition and through evidence presented to the Committee, the Committee asked Senator Clark twice if he would like to withdraw his petition, and he refused to do so.***

2. Penalties.

Under Senate Rule 24.11, the Senate Ethics Committee may recommend the Senate take disciplinary action against a Senator found to be in violation of the Senate's Code of Ethics, and may recommend that the disciplinary action be carried out by imposing one or more of the following penalties:

- (a) Letter of caution;
- (b) Loss of committee assignment(s);
- (c) Loss of leadership assignment(s);
- (d) Loss of seniority;
- (e) Temporary suspension;
- (f) Expulsion;
- (g) Other measures to be determined by the members of the Senate.

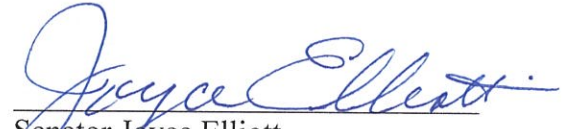
The Senate Ethics Committee recommends that upon a determination by the Senate of the Ninety-Third General Assembly that Senator Alan Clark has violated the Senate Code of Ethics, the Senate impose the following penalties against Senator Clark:

- a. Immediate loss of seniority, moving Senator Clark to position 35 for the remainder of the 93rd General Assembly;*
- b. A recommendation to the 94th General Assembly that Sen. Clark's loss of seniority be sustained, as the first order of business at the organizational meeting to be held in November, and that he remain at position 35 during the 94th General Assembly; and*
- c. Suspension for the remainder of the 93rd General Assembly, effective immediately upon adoption of these findings and recommendations to the Senate, to include loss of:*
 - Reimbursement for conference registration fees or travel reimbursements related to in-state or out-of-state travel;*
 - Attendance and participation at legislative committee meetings or meetings of the Senate, with the exception of any Senate organizational or Senate orientation meetings of the 94th General Assembly, including access to the member and staff only areas of committee rooms and facilities; and*
 - Access to and use of Senate, the Bureau of Legislative Research, Legislative Audit, and other legislative facilities, equipment, or staff resources, including his Senate email account.*

Respectfully Submitted,



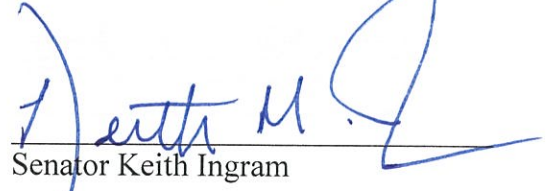
Senator Kim Hammer,
Chair, Senate Ethics Committee



Senator Joyce Elliott,
Vice-Chair, Senate Ethics Committee




Senator Missy Irvin



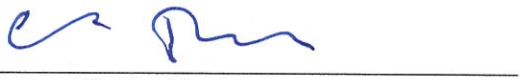
Senator Keith Ingram



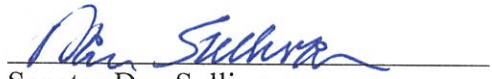
Senator Mathew Pitsch



Senator David Wallace



Senator Clarke Tucker



Senator Dan Sullivan