

Part 7

General Provisions Governing Hearings on Ethics Complaints

63A-14-701 Title.

This part is known as "General Provisions Governing Hearings on Ethics Complaints."

Enacted by Chapter 426, 2013 General Session

63A-14-702 General procedures for conducting a hearing on an ethics complaint.

- (1) In conducting a hearing on a complaint, the commission shall comply with the following process in the order specified:
 - (a) introduction and instructions for procedure and process, at the discretion of the chair;
 - (b) procedural motions, adoption of evidentiary standards, or other general matters;
 - (c) complainants' opening argument, to be presented by a complainant or complainants' counsel;
 - (d) complainants' presentation of evidence and witnesses in support of allegations in the complaint;
 - (e) consideration of motions to dismiss the complaint or motions for a directed verdict, as applicable;
 - (f) respondent's opening argument, to be presented by the respondent or respondent's counsel;
 - (g) respondent's presentation of evidence and witnesses refuting the allegations in the complaint;
 - (h) presentation of rebuttal evidence and witnesses by the complainants, at the discretion of the chair;
 - (i) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;
 - (j) complainants' closing argument, to be presented by a complainant or complainants' counsel;
 - (k) respondent's closing argument, to be presented by the respondent or respondent's counsel;
 - (l) deliberations by the commission; and
 - (m) adoption of the commission's findings.
- (2) The commission may, in extraordinary circumstances, and consistent with due process considerations, vary the order described in Subsection (1) by majority vote and by providing notice to the parties.
- (3) In addition to witnesses or evidence subpoenaed at the request of a complainant or a respondent, the chair or the commission may, consistent with due process considerations, subpoena and schedule the examination of witnesses or evidence that the chair or the commission determines will assist the commission in making a determination on the merits of the complaint.

Enacted by Chapter 426, 2013 General Session

63A-14-703 Chair as presiding judge.

- (1) Except as expressly provided otherwise in this chapter, the chair is vested with the power to direct the commission during meetings authorized by this chapter.
- (2) Except as otherwise provided in this chapter, the commission may overrule a decision of the chair if:
 - (a) a member of the commission:
 - (i) states that the member desires to overrule the decision of the chair; and
 - (ii) states the basis for the member's objection to the decision of the chair; and

- (b) a majority of the commission votes to overrule the decision of the chair.
- (3) The chair may set time limitations on any part of a meeting authorized by this chapter.

Enacted by Chapter 426, 2013 General Session

63A-14-704 Subpoena powers.

- (1) For all proceedings authorized by this chapter, the commission may issue a subpoena to:
 - (a) require the attendance of a witness; or
 - (b) direct the production of evidence.
- (2) The commission shall issue a subpoena under this section:
 - (a) as required under Section 63A-14-706;
 - (b) at the direction of the chair, if the chair determines that the testimony or evidence is relevant to the review of a complaint; or
 - (c) upon a vote of a majority of the commission members.

Enacted by Chapter 426, 2013 General Session

63A-14-705 Contempt of the commission -- Enforcement.

- (1) Except as provided in Subsection (9), the following actions constitute contempt of the commission:
 - (a) disobedience to a direction of the commission or the chair in relation to actions and proceedings under this chapter;
 - (b) failure to answer a question during a commission meeting when directed to answer a question by:
 - (i) the chair, unless the direction is overridden by the commission under Section 63A-14-703; or
 - (ii) a majority of the members of the commission;
 - (c) failure to comply with a subpoena or other order issued under the authority of this chapter;
 - (d) violation of the provisions of Subsection 63A-14-403(1);
 - (e) violation of the communication provisions described in Section 63A-14-707;
 - (f) violation of a request to comply with a provision of this chapter by the chair or a majority of the members of the commission; or
 - (g) any other ground that is specified in statute or recognized at common law.
- (2) The following persons may authorize an enforcement action against a person in contempt of the commission under the provisions of this chapter:
 - (a) the chair, subject to the provisions of Section 63A-14-703; or
 - (b) a majority of the members of the commission;
- (3) If a person that is the subject of a subpoena issued under this chapter fails to comply with the subpoena, refuses to testify to a matter upon which the person may be lawfully interrogated, or is otherwise in contempt of the commission, the commission or the chair may:
 - (a) file in district court a motion for an order to compel obedience to a subpoena or a lawful order of the commission or the chair;
 - (b) file in district court a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person for contempt of the commission; or
 - (c) pursue other remedies against a person in contempt of the commission.
- (4) The court shall expedite the hearing and decision on a motion described in Subsection (3).
- (5) A court may:

- (a) order the person named in the subpoena, or subject to an order, to comply with the subpoena or order; or
 - (b) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena, subject to the order, or otherwise held in contempt of the commission.
- (6)
- (a) If a subpoena issued under this chapter requires the production of accounts, books, papers, documents, or other tangible items, the person to whom the subpoena is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.
 - (b) The commission or the chair may respond to a motion to quash or modify a subpoena by taking an action described in Subsection (3).
 - (c) If the court finds that a subpoena requiring the production of accounts, books, papers, documents, or other tangible items is unreasonable or oppressive, the court may quash or modify the subpoena.
- (7) Nothing in this section prevents the commission or the chair from seeking an extraordinary writ to remedy contempt of the commission.
- (8) A party aggrieved by a decision of a court under this section may appeal that action directly to the Utah Supreme Court.
- (9) An individual is not in contempt of the commission if the person's disobedience or failure to comply with a provision of Subsection (1) is due to a valid invocation of the person's Fifth Amendment right against self-incrimination.

Enacted by Chapter 426, 2013 General Session

63A-14-706 Testimony and examination of witnesses -- Oath -- Procedure -- Contempt.

- (1) The chair shall ensure that each witness listed in a complaint and response is subpoenaed for appearance at the hearing unless:
- (a) the witness is unable to be properly identified or located; or
 - (b) service is otherwise determined to be impracticable.
- (2) The chair shall determine the scheduling and order of witnesses and presentation of evidence.
- (3) The commission may, by majority vote:
- (a) overrule the chair's decision not to subpoena a witness under Subsection (1);
 - (b) modify the chair's determination on the scheduling and order of witnesses, and the presentation of evidence, under Subsection (2);
 - (c) decline to hear or call a witness who is requested by a complainant or a respondent;
 - (d) decline to review or consider evidence submitted in relation to an ethics complaint; or
 - (e) request and subpoena witnesses or evidence according to the procedures of Section 63A-14-704.
- (4)
- (a) Each witness shall testify under oath.
 - (b) The chair or the chair's designee shall administer the oath to each witness.
- (5) After the oath is administered to a witness, the chair shall direct testimony as follows:
- (a) allow the party that called the witness, or that party's counsel, to question the witness;
 - (b) allow the opposing party, or the opposing party's counsel, to cross-examine the witness;
 - (c) allow additional questioning by a party or a party's counsel as appropriate;
 - (d) give commission members the opportunity to question the witness; and

- (e) as appropriate, allow further examination of the witness by the commission, or the parties or their counsel.
- (6)
 - (a) If a witness, a party, or a party's counsel objects to a question, the chair shall:
 - (i) direct the witness to answer; or
 - (ii) rule that the witness is not required to answer the question.
 - (b) If a witness declines to answer a question after the chair or a majority of the commission determines that the witness is required to answer the question, the witness may be held in contempt in accordance with the provisions of Section 63A-14-705.
- (7)
 - (a) The chair or a majority of the members of the commission may direct a witness to furnish any relevant evidence for consideration if the witness brings the material voluntarily or was required to bring the material by subpoena.
 - (b) If a witness declines to provide evidence in response to a subpoena, the witness may be held in contempt under Section 63A-14-705.

Enacted by Chapter 426, 2013 General Session

63A-14-707 Communications of commission members.

- (1) As used in this section, "third party" means a person who is not a member of the commission or staff to the commission.
- (2) While a complaint is under review by the commission, a member of the commission may not initiate, engage in, or consider any communications concerning the complaint with a third party unless:
 - (a) the communication is expressly permitted under the procedures established by this chapter; or
 - (b) the communication is made by the third party, in writing, simultaneously to:
 - (i) all members of the commission; and
 - (ii) a staff member of the commission.
- (3) While the commission is reviewing a complaint under this chapter, a commission member may communicate outside of the meetings or deliberations with another member of, or staff to, the commission, if the member's communication does not materially compromise the member's responsibility to independently review and make decisions in relation to the complaint.

Enacted by Chapter 426, 2013 General Session

63A-14-708 Attorney fees and costs.

- (1) A complainant:
 - (a) may, but is not required to, retain legal representation during the complaint review process; and
 - (b) is responsible for payment of the complainant's attorney fees and costs incurred.
- (2) A respondent:
 - (a) may, but is not required to, retain legal representation during the complaint review process; and
 - (b) is responsible for payment of the respondent's attorney fees and costs incurred.
- (3) An attorney who participates in a hearing before the commission shall comply with:
 - (a) the Rules of Professional Conduct established by the Utah Supreme Court;
 - (b) the procedures and requirements of this chapter; and

- (c) the directions of the chair and the commission.
- (4) A violation of Subsection (3) may constitute:
 - (a) contempt of the commission under Section 63A-14-705; or
 - (b) a violation of the Rules of Professional Conduct, subject to enforcement by the Utah State Bar.

Enacted by Chapter 426, 2013 General Session