

COMPLAINANT'S SUPPLEMENTAL REPORT on the
INDEPENDENT EXECUTIVE BRANCH ETHICS COMMISSION

TO THE: UTAH LEGISLATIVE MANAGEMENT COMMITTEE



Commission Chair: Lorie Fowlke¹
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¹ Fowlke's spouse is employed by the executive against whom a complaint was filed, yet Fowlke has been involved in receiving, considering, and ignoring a complaint against that executive. See p. 3 below.

² Conrad was hired through a secret process, distinct from the hiring of Atwater. Chuck Conrad's law firm makes donations to the executive against whom a complaint was filed, one donation in particular was made the day after the executive appeared before the Committee, complaining about how much defending himself cost. Chuck Conrad was part of the decision-making team that determined to make that donation. See p. 3-4, 6 below.

Purpose of the Report

The purpose of this supplemental report is to advise the Legislative Management Committee of major ethical problems with the Independent Executive Branch Ethics Commission.

The Independent Executive Branch Ethics Commission was created by the Utah State Legislature in 2013 by Senate Bill 86; later codified at § 63A-14-201, et seq. The Commission's duties include reviewing ethics complaints regarding all five of Utah's state-wide elected officials: Governor, Lt. Governor, Attorney General, State Auditor and State Treasurer.

Bullet Points of Major Issues with the EBEC:

1. Commission Members have conflicts of interest - some acknowledge them, yet maintain control over complaints:
 - a. Chair's husband *works for executive*.
 - b. Acting chair worked closely with top deputy to executive.
 - c. Former executive director also acknowledged conflict, yet maintained control of complaint.
 - d. One commissioner accompanies executive on excursions which have been condemned by law enforcement.
2. Commission disregards complaints.
3. Commission fails and refuses to follow statute:
 - a. Does not meet timely.
 - b. Does not act timely.
 - c. Hired counsel with conflict of interest.
 - d. Submits update to legislature whenever, months or years late.
4. Commission provides false information - claiming no complaint filed in 2016.
5. No accountability - commission operates in complete secrecy - this might not be an issue if commissioners were competent and had no conflicts of interest. That's not true of the EBEC. Acting Chair Lisa-Michele Church did not know how, when or where to even sign a contract. She is not competent and has a conflict of interest.
6. Commission members remain on the commission despite the expiration of their tenure.
7. Procedures were defined by statute, yet acting chair Church hired counsel with a clear conflict of interest to represent it and "establish procedures" - when the statute already provides procedures.
8. Commission has four attorneys, and an executive director who is an attorney, yet hired outside counsel who has a clear and substantial conflict of interest.
9. Commission sent complaint to executive in general mail, thereby facilitating a breach of the confidentiality, and also enabling unscrupulous members of executive's office to pass the complaint around the office.
10. Unscrupulous high level employee of executive shared information about complaint with others in office, then bullied My co-complainant into withdrawing, thereby necessitating withdrawal of My co-complainant's name from the complaint - and necessitating that I obtain another signer.
11. Then executive and employee had ex-parte contact with acting director. How they learned she

was acting director, when complainants were not advised of that, appears to also have been through ex-parte contact.

12. Executive also tried to involve subordinate in these proceedings - subordinate had to be excused from proceedings. Executive's aim was to establish that My co-complainant' waived his complaint through other litigation. This effort was unethical as well.

13. Website not maintained for the citizens of Utah. E.g., last link to a public report is 2013.

Composition of Commission

1. **Chairwoman Lorie Fowlke** - Fowlke's husband is employed by the elected executive against whom I complained. Lorie Fowlke was elected by the Commission members as chair of the Commission for the 2017 Calendar year. It appears that she failed to advise her fellow Commission members of the fact that her husband was and is employed by one of the Elected Executives. Fowlke is licensed with the Utah State Bar.

2. **Lisa-Michele Church** - Church was formerly represented by a member of elected official's executive team; she benefitted from that relationship inasmuch as his representation, together with that of another attorney, resulted in the most significant accomplishment of Church's position, arguably of her entire career. Church is licensed with the Utah State Bar.

3. **Pastor Corey Hodges** - Hodges has been invited to and accepted invitation to accompany the executive on office outing - one at which law enforcement has evidence that the executive acted unlawfully.

4. Retired Judge Sandra Peuler - Peuler recused self from complaint, acknowledging a conflict, presumably for the same reason Fowlke has a conflict - her husband works for the executive. Peuler chose Retired **Judge Judith Atherton** to replace her. Judge Atherton is obviously licensed with the Utah State Bar.

5. **Gary Doxey** - Doxey is former counsel to the governor.

6. **Mary Street** - Street is a former legislator. (How or why Street came to be on the Commission and why the EBEC's update does not mention her, is unclear.)

6. Former Executive Director, **Doug Wawrzynski** - Wawrzynski acknowledged a conflict of interest in addressing any complaint I filed, yet continued to be involved with my complaint, he claimed as an "administrator." My complaint was buried and not addressed. The hard copy was returned to me by Justin Atwater at an EBEC hearing about a year later.

7. Current Executive Director is **Justin Atwater**. Atwater is licensed with the Utah State Bar. Atwater's position was advertised and appears to have been lawfully filled.

8. *Chuck Conrad* - Church secretly selected private attorney Conrad as “counsel” to the EBEC. In sharp contrast to the hiring of Executive Director Atwater, Church hired Conrad without any public announcement. Conrad’s law firm makes significant contributions to one elected executive - the one about whom I filed a complaint. What, if any, qualifications Conrad has, or what his job description is, separate and distinct from Atwater’s, has been kept secret.

The EBEC hiring Chuck Conrad was also in sharp contrast to the Political Subdivisions Ethics Committee, which did not hire *any* counsel. There appears to be no purpose in hiring Conrad, other than to protect the executive to whom he donates. For its part, the Legislative Branch Ethics Committee has posted an application for counsel to it. That application includes a job description and duties.

Considering the Commission has four attorney members, and an attorney for its executive director, we were surprised to learn that the commission hired yet another additional attorney to provide advice - we were shocked to learn his close affiliation with the executive.

Church hired Conrad after the Commission finally acknowledged that we filed a complaint. EBEC. Conrad was present at a hearing at which the executive complained about how much this matter was costing him personally. The next day, the elected official deposited a check in his account from Chuck Conrad’s law firm. Conrad participated in the decision to donate funds to the executive. Conrad’s firm appears to donate solely to this executive and does not appear to have donated to his predecessors. Part of the benefits of donation include “VIP” status at fundraisers and one-on-one contact with the executive.

Additionally, Conrad’s spouse has been a victim of sexual harassment while she worked in the executive’s office; her testimony had relevance to the complaint against the executive; and she did not want to have to testify about the sexual harassment which she endured.

Thus, Conrad’s conflict of interest is both as a supporter for the executive and as one who would prevent delving into the executive’s wrongdoing. It appears Conrad never disclosed his conflicts to the Commission in advance and when they were brought to the Commission’s attention, it failed to take appropriate action and discontinue its relationship with Conrad.

RELEVANT STATUTE:

See 63A-14-101 *et seq.*

63A-14-502. Initial review of ethics complaint -- Notice.

(1) *Within five business days* after the day on which the commission receives a complaint, the staff of the commission, in consultation with the chair, shall examine the complaint to determine if it is in compliance with Sections 63A-14-302 and 63A-14-402.

EBEC ETHICAL PROBLEMS:

COMPLAINT OBSCURED AND IGNORED

1. On Sept. 8, 2016, I hand-delivered a complaint to the EBEC. It takes two signatures, so I filed with a co-complainant.
2. I also emailed it to executive director Wawrzynski in addition to hand-delivering it.
3. Pursuant to 63A-14-502, that complaint should have been examined by Thursday, September 15, 2016.
4. The EBEC did not take any action regarding the complaint and did not meet until November 2, 2016.
5. At that meeting on November 2, 2016, of which there is a partial public record, Fowlke and Wawrzynski both acknowledged conflicts of interest, yet Fowlke and Wawrzynski remained involved in the decision-making process with regard to the complaint.
6. At that meeting it was determined to reach out to my co-complainant, to ask him for additional information.
7. No letter was generated to him until another six days passed, on November 8, 2016.
8. That letter was not sent to him on November 8, 2016, however, he did not receive it until December 12, 2016. This was another delay tactic as the requested information was contained in the original complaint.
9. My co-complainant sent the requested information two days later, on December 14, 2016.
10. Neither he nor I heard anything for another two months.
11. I therefore wrote to Fowlke on February 15, 2017, seeking an update.
12. On February 27, 2017, despite her admitted conflict of interest, Fowlke was still handling the complaint and indicated that she accepted the complaint, although she did not indicate it was only my co-complainant's portion which she accepted.
13. The filing of the initial complaint was therefore never addressed by the commission and the filing of the other half of the complaint was not recognized until February 27, 2017 - five MONTHS after the complaint was filed, and even then only a portion of the complaint was recognized.
14. Neither my co-complainant nor I were told that only half the complaint was recognized.
15. It would only be tacitly admitted, by Justin Atwater, months later, that my portion of the complaint was lost (or purposely misplaced).
16. Complainants were therefore left with the legitimate concern that this Commission is completely inept.

EX-PARTE COMMUNICATIONS BETWEEN EBEC, EXECUTIVE & A TOP ASSISTANT

17. Laurie Fowlke sent a letter to the Executive, ex parte, indicating that a complaint was filed against him and "provisionally" accepted by the Commission.
18. This is readily explainable by the fact that Fowlke's husband's paycheck comes from the executive's office.
19. The EBEC would not provide us a copy of that ex-parte letter; I was told I had to request it through GRAMA, then when I did GRAMA request, EBEC denied the request, *but* provided

the letter saying I was a party while simultaneously claiming that it was not ex parte in the first place. These two claims do not add up. If only one side was provided a copy initially, with no intention of providing it to the other side, that's the very definition of ex parte.

HIRING COUNSEL WITH A CONFLICT

20. Chuck Conrad was hired by the EBEC. Chuck Conrad made a determination, together with his firm, to donate money to the executive, *while Conrad was representing the EBEC*. This is an obvious conflict of interest.
21. The donation gave Conrad's small firm (with only male partners) "VIP" status at one of executive's fund-raisers and provided firm members with one-on-one contact with executive.
22. Conrad has made a monetary stake in the Executive by providing a donation - it stands to reason that he would support the executive while "advising" the EBEC.
23. Church hired Conrad through the procurement process, at a cost below \$50,000.00 to avoid scrutiny. When Church was asked to sign the contract too, she asked if she needed to sign the contract too, then signed the contract where there was no signature line. Church had to be asked to sign the contract on the appropriate "Agency signature" line.
24. Conrad has also helped the EBEC determine to eliminate one count that could include his spouse as a witness. She was sexually harassed by an employee of the executive's office and a member of the elected official's executive team helped cover that up. The employee who harassed her is still employed by the executive's office and the supervisor who covered it up has been promoted, despite covering up sexual harassment and unsuccessfully trying to cover up his own sexual improprieties with a subordinate.

CONTEMPT BY EXECUTIVE & A TOP ASSISTANT IGNORED + FAILURE TO MAKE APPROPRIATE RULINGS

25. A top assistant of the breached the EBEC act by contacting a subordinate in the office. She should have been held in contempt for that. That breach led to that subordinate strong-arming My co-complainant into withdrawing his complaint, forcing me to find a substitute signer.
26. The EBEC issued an order on June 27th, 2017, which furthers its myth that there was no complaint filed on Sept. 8, 2016. That order refers to My co-complainant as the "primary Complainant." In fact, My co-complainant was the secondary signer in case No. 2016-01 - although he was the CO-complainant.
27. That June 27th order was made without the benefit of any evidence. The EBEC refused to hear evidence, yet made findings as if they were based on evidence.
28. Pursuant to the unsupported findings it made in that June 27th Order, the executive's deputy should have already been held in contempt. If the EBEC could find there was no basis to hold th executive in contempt, and that spreading the complaint around the office was solely due to the deputy's actions, the EBEC could and should have already held the deputy in contempt. The EBEC's reluctance to do so is indicative of the fact that Respondent and his team are held to a different standard than Complainants. Respondent need not produce evidence to have the EBEC make findings in his favor, but Complainants need to produce evidence to

- have the EBEC make findings in their favor.
29. Each time such patently unreasonable rulings are made, it calls into question the fact that Acting Chairwoman Church, Corey Hodges and Chuck Conrad all have conflicts of interest which mandate taking action in Respondent's favor, regardless of the facts or the law.
 30. The EBEC tried to eliminate the prospect of having its errors brought to light by threatening complainants that they had better be "civil." It did so in an order with no reference to any language used by Complainants that it considered uncivil. There was no basis for that threat.
 31. Following that threat Church issued a letter on August 4, 2017, claiming that Chuck Conrad didn't have a conflict of interest because of his firm's donations to the executive's office when there were no donations to the executive's office. The donations were directly to the executive. Conrad has a clear conflict of interest.
 32. The EBEC also claimed, in a letter dated August 4, 2017, that Conrad was not part of the decision to make the donation.
 33. When confronted with the errors in her August 4, 2017, letter, Church wrote another letter, dated September 1, 2017, admitting that Conrad's donations were to the executive and that Conrad was involved in the decision to make the most recent donation. Deposit of that donation to the executive was made by the executive the day after a hearing in which the executive complained that the EBEC process was costing him money.

EVIDENCE OF UNETHICAL CONDUCT NEVER CONSIDERED

34. Dismissed case due to failure to comply with order for Amended Complaint. The executive sought more information in the complaint, the Commission wanted less.
35. Thus the EBEC found a technical reason to get rid of the complaint.
36. None of the ethical violations complained of in the complaint were ever addressed.
37. At the final hearing, when the EBEC determined to dismiss the complaint, my co-complainant appeared as counsel. Church was angered by this and, without any basis or motion to exclude him, excluded him from the proceedings, denying us the right to counsel.
38. Chuck Conrad was not present for that hearing.
39. Justin Atwater reported that Conrad's "contract expired" on September 17th. And that they wouldn't be hiring someone unless they had "complicated issues." It was clear that the decision to dismiss the petition had been made prior to any consideration of the parties' arguments with respect thereto.
40. Church makes decisions without any input from the other Commission members, e.g., regarding my co-complainant's appearance of counsel, she decided he would not be allowed. It was not a motion. There was nothing to decide. Yet she decided, unilaterally, not to allow him. She said the others could override her vote, then never takes a vote.
41. This whole process appears designed to defeat any effort to bring ethical violations to light.
42. When I asked for a copy of the annual update in the past, my request was ignored. When I pushed Acting Chair Church for a copy, she indicated that I would have to get it from Fowlke. When I asked Fowlke for a copy, she did not respond. Fowlke has never responded to any communications from me.
43. I have the documentation to substantiate the claims made herein.
44. Going up against the EBEC has proven futile for an attorney. One without any legal training could have no hope of having due process or equitable consideration of a complaint.