

Part 4

Hearing on Ethics Complaint

11-49-401 Hearing on ethics complaint -- General procedures.

- (1) In conducting a hearing on a complaint in accordance with Part 7, Commission Review of Ethics Violation, 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) complainant's opening argument, to be presented by a complainant or complainant's counsel;
 - (c) complainant's presentation of evidence and witnesses in support of allegations in the complaint;
 - (d) consideration of motions to dismiss the complaint or motions for a finding of no cause, as applicable;
 - (e) respondent's opening argument, to be presented by the respondent or respondent's counsel;
 - (f) respondent's presentation of evidence and witnesses refuting allegations in the complaint;
 - (g) presentation of rebuttal evidence and witnesses by the complainant, at the discretion of the chair;
 - (h) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;
 - (i) complainant's closing argument, to be presented by a complainant or complainant's counsel;
 - (j) respondent's closing argument, to be presented by the respondent or respondent's counsel;
 - (k) deliberations by the commission; and
 - (l) adoption of the commission's findings.
- (2) The commission may, in extraordinary circumstances, vary the order contained in Subsection (1) by majority vote and by providing notice to the parties.
- (3) The chair may schedule the examination of a witness or evidence subpoenaed at the request of the chair or the commission under Section 11-49-403 at the chair's discretion.

Enacted by Chapter 202, 2012 General Session

11-49-402 Chair as presiding officer.

- (1) Except as expressly provided otherwise in this chapter, the chair of the commission is vested with the power to direct the commission during meetings authorized by this chapter.
- (2) Unless expressly prohibited from doing so under this chapter, the commission may overrule a decision of the chair by using the following procedure:
 - (a) If a member objects to a decision of the chair, that member may appeal the decision by stating:
 - (i) "I appeal the decision of the chair."; and
 - (ii) the basis for the objection.
 - (b) A motion described in Subsection (2)(a) is nondebateable.
 - (c) The chair shall direct a roll call vote to determine if the commission supports the decision of the chair.
 - (d) A majority vote of the commission is necessary to overrule the decision of the chair.
- (3) The chair may set time limitations on any part of a meeting or hearing authorized by this chapter.

Enacted by Chapter 202, 2012 General Session

11-49-403 Subpoena powers.

- (1) Except for a preliminary review described in Section 11-49-602, for a proceeding authorized by this chapter, the commission may issue a subpoena to:
 - (a) require the attendance of a witness;
 - (b) direct the production of evidence; or
 - (c) require both the attendance of a witness and the production of evidence.
- (2) The commission shall issue a subpoena:
 - (a) in accordance with Section 11-49-405;
 - (b) at the direction of the commission chair, if the chair determines that the testimony or evidence is relevant to the review of a complaint under Part 7, Commission Review of Ethics Violations; or
 - (c) upon a vote of a majority of the commission members.
- (3) If the commission issues a subpoena authorized under this section, the commission shall give a reasonable period of time for the person or entity to whom the subpoena is directed to petition a district court to quash or modify the subpoena before the time specified in the subpoena for compliance.

Enacted by Chapter 202, 2012 General Session

11-49-404 Contempt of the commission.

- (1)
 - (a) The following actions constitute contempt of the commission in relation to actions and proceedings under this chapter:
 - (i) disobedience to a direction of the commission chair;
 - (ii) failure, without legal justification, to answer a question during a hearing when directed to do so by:
 - (A) the commission chair, unless the direction is overridden by the commission in accordance with Section 11-49-402; or
 - (B) a majority of the commission;
 - (iii) failure to comply with a subpoena or other order issued under authority of this chapter;
 - (iv) violation of privacy provisions established by Section 11-49-502;
 - (v) violation of the communication provisions established by Section 11-49-407;
 - (vi) violation of a request to comply with a provision of this chapter by a chair or a majority of the members of the commission; or
 - (vii) any other ground that is specified in statute or recognized by common law.
 - (b) Because the purpose of the Fifth Amendment privilege not to incriminate oneself is to prevent prosecution for criminal action, it is improper for a witness to invoke the Fifth Amendment privilege if the witness cannot be prosecuted for the crime to which the witness's testimony relates.
- (2)
 - (a) The following persons may authorize an enforcement action against a person in contempt of the commission under the provisions of this chapter:
 - (i) the commission chair, subject to the provisions of Section 11-49-402; or
 - (ii) members of the commission, by means of a majority vote.
 - (b) In initiating and pursuing an action against an individual for contempt of the commission, the plaintiff shall comply with the procedures and requirements of Section 11-49-405.

Enacted by Chapter 202, 2012 General Session

11-49-405 Order to compel -- Enforcement.

- (1)
- (a) When the subject of a subpoena issued in accordance with Section 11-49-403 disobeys or fails to comply with the subpoena, or if a person appears before the commission pursuant to a subpoena and refuses to testify to a matter upon which the person may be lawfully interrogated, the commission may:
 - (i) file a motion for an order to compel obedience to the subpoena with the district court within the jurisdiction of the applicable political subdivision;
 - (ii) file, with the 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 named in the subpoena for contempt of the commission; or
 - (iii) pursue other remedies against persons in contempt of the commission.
 - (b)
 - (i) Upon receipt of a motion under this section, the court shall expedite the hearing and decision on the motion.
 - (ii) A court may:
 - (A) order the person named in the subpoena to comply with the subpoena; and
 - (B) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena for contempt of the commission.
- (2)
- (a) If a commission subpoena requires the production of accounts, books, papers, documents, or other tangible things, the person or entity 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 may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by Subsection (1).
 - (c) If the court finds that a commission subpoena requiring the production of accounts, books, papers, documents, or other tangible things is unreasonable or oppressive, the court may quash or modify the subpoena.
- (3) Nothing in this section prevents the commission from seeking an extraordinary writ to remedy contempt of the commission.
- (4) Any party aggrieved by a decision of a court under this section may appeal that action directly to the Utah Supreme Court.

Enacted by Chapter 202, 2012 General Session

11-49-406 Testimony and examination of witnesses -- Oath -- Procedure -- Contempt.

- (1)
- (a) The chair shall ensure that each witness listed in the complaint and response is subpoenaed for appearance at the hearing unless:
 - (i) the witness is unable to be properly identified or located; or
 - (ii) service is otherwise determined to be impracticable.
 - (b) The chair shall determine the scheduling and order of witnesses and presentation of evidence.
 - (c) The commission may, by majority vote:
 - (i) overrule the chair's decision not to subpoena a witness under Subsection (1)(a);

- (ii) modify the chair's determination on the scheduling and order of witnesses under Subsection (1)(b);
 - (iii) decline to hear or call a witness that has been requested by the complainant or respondent;
 - (iv) decline to review or consider evidence submitted in relation to an ethics complaint; or
 - (v) request and subpoena witnesses or evidence according to the procedures of Section 11-49-403.
- (2)
- (a) Each witness shall testify under oath.
 - (b) The chair or the chair's designee shall administer the oath to each witness.
- (3) After the oath has been administered to the witness, the chair shall direct testimony as follows:
- (a) allow the party that has called the witness, or that party's counsel, to question the witness;
 - (b) allow the opposing party, or that 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.
- (4)
- (a) If the 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 the 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 as provided in Section 11-49-404.
- (5)
- (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 has brought the material voluntarily or has been required to bring it by subpoena.
 - (b) If the witness declines to provide evidence in response to a subpoena, the witness may be held in contempt as provided in Section 11-49-404.

Enacted by Chapter 202, 2012 General Session

11-49-407 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 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 a meeting, hearing, or deliberation with another member of, or staff to, the commission, only if the member's communication does not materially compromise the member's responsibility to independently review and make decisions in relation to the complaint.

Amended by Chapter 278, 2013 General Session

11-49-408 Attorney fees and costs.

- (1) A person filing a complaint under this chapter:
 - (a) may, but is not required to, retain legal representation during the complaint review process; and
 - (b) is responsible for payment of complainant's attorney fees and costs incurred.
- (2)
 - (a) A respondent against whom a complaint is filed under this chapter may:
 - (i) but is not required to, retain legal representation during the complaint review process; and
 - (ii) be entitled to the provision of legal defense by the political subdivision in accordance with Section 63G-7-902.
 - (b) For purposes of Subsection (2)(a)(ii), a complaint filed against a respondent in accordance with this chapter shall constitute an action against a governmental employee in accordance with Section 63G-7-902.
- (3)
 - (a) An attorney participating in a hearing before the commission shall comply with:
 - (i) the Rules of Professional Conduct established by the Utah Supreme Court;
 - (ii) the procedures and requirements of this chapter; and
 - (iii) the directions of the chair and commission.
 - (b) A violation of Subsection (3)(a) may constitute:
 - (i) contempt of the commission under Section 11-49-404; or
 - (ii) a violation of the Rules of Professional Conduct subject to enforcement by the Utah State Bar.

Enacted by Chapter 202, 2012 General Session