

## Part 6 Review of Complaint for Compliance

### **11-49-601 Review of ethics complaint for compliance with form requirements -- Independent requirements for complaint -- Notice.**

- (1) Within five business days after receipt of a complaint, the staff of the commission, in consultation with the chair of the commission, shall examine the complaint to determine if it is in compliance with Sections 11-49-301 and 11-49-501.
- (2)
  - (a) If the chair determines that the complaint does not comply with Sections 11-49-301 and 11-49-501, the chair shall:
    - (i) return the complaint to the first complainant named on the complaint with:
      - (A) a statement detailing the reason for the non-compliance; and
      - (B) a copy of the applicable provisions in this chapter; and
    - (ii) notify the applicable political subdivision governing body that:
      - (A) a complaint was filed against an unidentified political subdivision officer or employee but was returned for non-compliance with this chapter; and
      - (B) the fact that a complaint was filed and returned shall be kept confidential until the commission submits its annual summary data report as required by Section 11-49-202.
  - (b) If a complaint is returned for non-compliance with the requirements of this chapter, a complainant may file another complaint if the new complaint independently meets the requirements of Sections 11-49-301 and 11-49-501, including any requirements for timely filing.
- (3) If the chair determines that the complaint complies with the requirements of this section, the chair shall:
  - (a) accept the complaint;
  - (b) notify each member of the commission that the complaint has been filed and accepted;
  - (c) notify the applicable political subdivision that:
    - (i) a complaint has been filed against an unidentified political subdivision officer or employee;
    - (ii) the identity of the political subdivision officer or employee and the allegations raised in the complaint are confidential pending the commission's preliminary review of the complaint; and
    - (iii) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint via:
      - (A) notice of the commission's review of a complaint in accordance with Section 11-49-701; or
      - (B) submission of the commission's annual summary data report as required in Section 11-49-202; and
  - (d) promptly forward the complaint to the political subdivision officer or employee who is the subject of the ethics complaint via personal delivery or a delivery method that provides verification of receipt, together with a copy of this chapter and notice of the officer's or employee's deadline for filing a response to the complaint if the complaint is not dismissed under Section 11-49-602.

Enacted by Chapter 202, 2012 General Session

### **11-49-602 Preliminary review of complaint -- Standard of proof -- Notice.**

- (1)

- (a) By no later than 10 calendar days after the day on which a complaint is accepted under Section 11-49-601, the commission chair shall:
    - (i) schedule a commission meeting on a date no later than 60 calendar days after the date on which the commission accepts the complaint;
    - (ii) place the complaint on the agenda for consideration at the meeting;
    - (iii) provide a copy of the complaint to the members; and
    - (iv) provide notice of the date, time, and location of the meeting:
      - (A) to the respondent;
      - (B) the first complainant named in the complaint;
      - (C) each commission member; and
      - (D) in accordance with Section 52-4-202.
  - (b) The meeting described in Subsection (1)(a)(ii) is closed to the public in accordance with Section 52-4-204.
- (2)
- (a) At the meeting described in Subsection (1)(a)(i):
    - (i) the commission members shall review each allegation in the complaint;
    - (ii) the commission may not receive testimony, hear a motion from a party, or admit evidence; and
    - (iii) the chair shall conduct deliberations.
  - (b) The commission may, if necessary:
    - (i) request a formal response or affidavit from a respondent; and
    - (ii) review the response or affidavit at the meeting.
  - (c) Upon a motion made by a commission member, the commission may exclude commission staff from all or a portion of the deliberations by a majority vote.
- (3)
- (a) During deliberations, each commission member shall, for each allegation, determine:
    - (i) whether the facts alleged, if true, would be an ethics violation;
    - (ii) whether the complaint includes an affidavit from a person with firsthand knowledge of alleged facts described in Subsection (3)(a)(i); and
    - (iii) whether the complaint is frivolous or solely for a political purpose.
  - (b) A commission member shall vote to forward an allegation in a complaint for a final commission review in accordance with Part 7, Commission Review of Ethics Violation, if the commission member determines:
    - (i) an allegation, if true, would be an ethics violation;
    - (ii) the complaint contains an affidavit with firsthand knowledge of the allegation under Subsection (3)(a)(ii); and
    - (iii) the allegation is not frivolous or solely for a political purpose.
- (4)
- (a) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.
  - (b) The commission may not review an allegation for a final determination under Part 7, Commission Review of Ethics Violation, unless six of the seven members of the commission vote to review the allegation.
- (5)
- (a) An allegation that is not forwarded for a final determination is dismissed.
  - (b) Before the commission issues an order in accordance with this section, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.

- (c) A motion to reconsider a vote may only be made by a member of the commission who voted that the allegation should not be forwarded for a final determination.
- (6)
- (a) If each allegation stated in a complaint is dismissed in accordance with this section, the commission shall:
    - (i) issue and enter into the record an order that the complaint is dismissed because no allegations, in accordance with this section, were forwarded for a final determination;
    - (ii) classify all recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this part as private records under Section 63G-2-302;
    - (iii) provide notice of the determination, in a manner determined by the chair, to:
      - (A) the respondent;
      - (B) the first complainant named on the complaint; and
      - (C) subject to Subsection (6)(b), the appropriate political subdivision; and
    - (iv) provide notice to each person or entity named in Subsections (6)(a)(iii)(A) through (C) that, under provisions of Section 11-49-502 and other provisions of this chapter, a person who discloses the findings of the commission in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt.
  - (b) The notification to the appropriate political subdivision shall notify the political subdivision that:
    - (i) a complaint against an unidentified political subdivision officer or employee has been dismissed; and
    - (ii) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint via submission of the commission's annual summary data report as required in Section 11-49-202.
- (7) If one or more of the allegations stated in a complaint are not dismissed in accordance with this section, the commission shall:
- (a) issue and enter into the record:
    - (i) an order for each allegation that is dismissed, if any, because the allegation was not forwarded for a final determination; and
    - (ii) an order for further review under Part 7, Commission Review of Ethics Violation, of each allegation that is not dismissed;
  - (b) classify all recordings, orders, findings, and other records or documents directly relating to a meeting authorized by this section as private records under Section 63G-2-302;
  - (c) if an allegation was dismissed, provide notice of the determination for each allegation dismissed in a manner determined by the chair, to:
    - (i) the respondent;
    - (ii) the first complainant named on the complaint; and
    - (iii) subject to Subsection (8), the appropriate political subdivision; and
  - (d) provide notice to each person or entity named in Subsections (7)(c)(i) through (iii) that:
    - (i) under provisions of Section 11-49-502 and other provisions of this chapter, a person who discloses the findings of the commission under this section in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt; and
    - (ii) the commission shall review the remaining allegations in the complaint at a meeting described in Section 11-49-603 and in accordance with Part 7, Commission Review of Ethics Violation.
- (8) The notification to the appropriate political subdivision shall notify the political subdivision that:
- (a) an unspecified allegation in a complaint against an unidentified political subdivision officer or employee has been dismissed; and

- (b) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint in accordance with the provisions of this chapter.
- (9) For a complaint described in Subsection (7), the commission members shall ensure that, within five business days after the day of the meeting described in Subsection (1)(a)(ii), the complaint is redacted to remove references to an allegation that is dismissed under this section.
- (10) The chair shall ensure that a record of the meeting held under this section is kept in accordance with Section 11-49-702.

Enacted by Chapter 202, 2012 General Session

**11-49-603 Meeting of the Commission to review a complaint -- Procedures.**

By no later than 10 calendar days after the day on which a complaint is accepted under Section 11-49-602 for further review, the commission chair shall:

- (1) schedule a commission meeting on a date no later than 45 calendar days after the date on which the commission votes to forward a complaint for final determination in accordance with Section 11-49-602;
- (2) place the complaint on the agenda for consideration at the meeting described in Subsection (1);
- (3) provide notice of the date, time, and location of the meeting:
  - (a) to:
    - (i) the members of the commission;
    - (ii) the first complainant named in the complaint; and
    - (iii) the respondent; and
  - (b) in accordance with Section 52-4-202; and
- (4) provide a copy of the complaint or redacted complaint, as required in Section 11-49-602, to each member of the commission.

Enacted by Chapter 202, 2012 General Session

**11-49-604 Response to ethics complaint -- Filing -- Form.**

- (1) The political subdivision officer or employee who is the subject of the complaint may file a response to the complaint no later than 30 days after the day on which the officer or employee receives delivery of an order issued by the commission under Subsection 11-49-602(7).
- (2) The respondent shall file the response with the commission and ensure that the response is in writing and contains the following information:
  - (a) the name, address, and telephone number of the respondent;
  - (b) for each alleged ethics violation in the complaint:
    - (i) each affirmative defense asserted in response to the allegation, including a general description of each affirmative defense and the facts and circumstances supporting the defense to be provided by one or more affidavits, each of which shall comply with Subsection (4);
    - (ii) the facts and circumstances refuting the allegation, which shall be provided by:
      - (A) copies of official records or documentary evidence; or
      - (B) one or more affidavits, each of which shall comply with Subsection (4);
  - (c) a list of the witnesses that the respondent wishes to have called, including for each witness:
    - (i) the name, address, and, if available, telephone number of the witness;
    - (ii) a brief summary of the testimony to be provided by the witness; and
    - (iii) a specific description of any documents or evidence the respondent desires the witness to produce;

- (d) a statement that the respondent:
  - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the response; and
  - (ii) believes the contents of the response to be true and accurate; and
- (e) the signature of the respondent.
- (3) Promptly after receiving the response, the commission shall provide copies of the response to:
  - (a) each member of the commission; and
  - (b) the first named complainant on the complaint.
- (4) An affidavit described in Subsection (2)(b)(i) or (2)(b)(ii)(B) shall include the following information:
  - (a) the name, address, and telephone number of the signer;
  - (b) a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;
  - (c) the facts and circumstances testified to by the signer;
  - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and
  - (e) the signature of the signer.

Enacted by Chapter 202, 2012 General Session