

Part 7 Commission Review of Ethics Violation

11-49-701 Commission review of ethics violation.

- (1) The scope of a review by the commission is limited to an alleged ethics violation stated in a complaint that has not been previously dismissed under Section 11-49-602.
- (2)
 - (a) Before holding the meeting for review of the complaint, the commission chair may schedule a separate meeting of the commission for the purposes of:
 - (i) hearing motions or arguments from the parties, including hearing motions or arguments relating to dismissal of a complaint, admission of evidence, or procedures;
 - (ii) holding a vote of the commission, with or without the attendance of the parties, on procedural or commission business matters relating to a complaint; or
 - (iii) reviewing a complaint, with or without the attendance of the parties, to determine if the complaint should be dismissed in whole or in part, by means of a majority vote of the commission, because the complaint pleads facts or circumstances against a political subdivision officer or employee that have already been reviewed by, as provided in Section 11-49-301, the commission, a municipal ethics commission established in accordance with Section 10-3-1311, a county ethics commission established in accordance with Section 17-16a-11, or a local political subdivision ethics commission established in accordance with Section 11-49-103.
 - (b) Notwithstanding Section 11-49-603, the commission may, by a majority vote, change the date of the meeting for review of the complaint in order to accommodate:
 - (i) a meeting authorized under Subsection (2)(a); or
 - (ii) necessary scheduling requirements.
- (3)
 - (a) The commission shall comply with the Utah Rules of Evidence except where the commission determines, by majority vote, that a rule is not compatible with the requirements of this chapter.
 - (b) The chair shall make rulings on admissibility of evidence consistent with the provisions of Section 11-49-402.
- (4)
 - (a) A meeting or hearing authorized in this part is open to the public except as provided in Section 52-4-204.
 - (b) The following individuals may be present during the presentation of testimony and evidence to the commission:
 - (i) the complainant;
 - (ii) the complainant's counsel, if applicable;
 - (iii) the respondent;
 - (iv) the respondent's counsel, if applicable;
 - (v) members of the commission;
 - (vi) staff to the commission;
 - (vii) a witness, while testifying before the commission; and
 - (viii) necessary security personnel.
 - (c) The commission may, in accordance with Section 52-4-204, close a meeting to:
 - (i) seek or obtain legal advice on legal, evidentiary, or procedural matters; or
 - (ii) conduct deliberations to reach a decision on the complaint.

- (5) If a majority of the commission determines that a continuance is necessary to obtain further evidence and testimony, to accommodate administrative needs, or to accommodate the attendance of commission members, witnesses, or a party, the commission shall:
 - (a) adjourn and continue the meeting to a future date and time after notice to the parties; and
 - (b) establish that future date and time by majority vote.
- (6) A record, as defined in Section 63G-2-103, created by the commission under this part, reviewed by the commission under this part, or received by the commission under this part, is a public record, as defined in Section 63G-2-103.

Enacted by Chapter 202, 2012 General Session

11-49-702 Record -- Recording of meetings.

- (1)
 - (a) Except as provided in Subsection (1)(b), an individual may not use a camera or other recording device in a meeting authorized by this part.
 - (b)
 - (i) The commission shall keep an audio or video recording of all portions of each meeting authorized by this part.
 - (ii) The commission may, by a majority vote of the commission, permit a camera or other recording device in the meeting in which the commission releases the commission's recommendation under this part.
- (2) In addition to the recording required in Subsection (1), the chair shall ensure that a record of the meeting or hearing is made, which shall include:
 - (a) official minutes taken during the meeting or hearing, if any;
 - (b) copies of all documents or other items admitted into evidence by the commission;
 - (c) copies of a document or written order or ruling issued by the chair or the commission; and
 - (d) any other information that a majority of the commission or the chair directs.

Enacted by Chapter 202, 2012 General Session

11-49-703 Commission deliberations -- Standard of proof.

- (1) After each party has presented a closing argument, the commission shall, at the direction of the chair, begin its deliberations:
 - (a) immediately after conclusion of the closing arguments; or
 - (b) at a future meeting of the commission, on a date and time determined by a majority of the members of the commission.
- (2)
 - (a) The chair of the commission shall conduct the deliberations.
 - (b) Upon a motion made by a commission member, the commission may:
 - (i) exclude commission staff from all or a portion of the deliberations by a majority vote of the commission; or
 - (ii) close the meeting in accordance with Section 52-4-204.
- (3)
 - (a) During deliberations, for each allegation reviewed by the commission, each member shall determine and cast a vote stating:
 - (i) whether the allegation is:
 - (A) proven by clear and convincing evidence; or
 - (B) not proven; and

- (ii) for each allegation proven, whether the commission would recommend to the appropriate political subdivision governing body to take one or more of the following actions:
 - (A) censure;
 - (B) in the case of a political subdivision employee, termination;
 - (C) in the case of a political subdivision officer, removal from office; or
 - (D) any other action or reprimand that the commission determines is appropriate.
- (b)
 - (i) A verbal roll call vote shall be taken on each allegation, and each recommended action described in Subsection (3)(a)(ii) on each allegation.
 - (ii) Each member's vote shall be recorded.
- (4)
 - (a) An allegation is not considered to be proven unless six of the seven members of the commission vote that the allegation is proven.
 - (b) An allegation that is not considered to be proven is dismissed.
 - (c)
 - (i) Before the commission issues its recommendation in accordance with Section 11-49-704, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.
 - (ii) A motion to reconsider a vote may only be made by a member of the commission who voted that the allegation was not proved.
- (5) At the conclusion of deliberations, the commission shall prepare its recommendations as provided in Sections 11-49-704 and 11-49-705.

Enacted by Chapter 202, 2012 General Session

11-49-704 Recommendations of commission.

- (1)
 - (a) If the commission determines that no allegations in the complaint were proved, the commission shall:
 - (i) issue and enter into the record an order that the complaint is dismissed because no allegations in the complaint were found to have been proved;
 - (ii) provide notice of the determination at a public meeting; and
 - (iii) provide written notice of the determination to:
 - (A) the respondent;
 - (B) the first complainant named on the complaint; and
 - (C) the appropriate political subdivision.
 - (2) If the commission determines that one or more of the allegations in the complaint were proved, the commission shall:
 - (a) if one or more allegations were not found to have been proven, enter into the record an order dismissing those unproven allegations; and
 - (b) prepare a written recommendation to the applicable political subdivision governing body that:
 - (i) lists the name of each complainant;
 - (ii) lists the name of the respondent;
 - (iii) states the date of the recommendation;
 - (iv) for each allegation that was found to be proven:
 - (A) provides a reference to the statute or criminal provision allegedly violated;
 - (B) states the number and names of commission members voting that the allegation was proved and the number and names of commission members voting that the allegation was not proved;

- (C) at the option of those members voting that the allegation was proved, includes a statement by one or all of those members stating the reasons for voting that the allegation was proved; and
 - (D) at the option of those members voting that the allegation was not proved, includes a statement by one or all of those members stating the reasons for voting that the allegation was not proved;
 - (v) contains any general statement that is adopted for inclusion in the recommendation by a majority of the members of the commission;
 - (vi) contains a statement referring the allegations found to have been proved to the appropriate political subdivision governing body for review and, if necessary, further action;
 - (vii) contains a statement referring to each allegation proven the commission's recommendation under Subsection 11-49-703(3)(a)(ii);
 - (viii) states the name of each member of the commission; and
 - (ix) is signed by each commission member.
- (3) The commission shall provide notice of the determination:
- (a) at a public meeting; and
 - (b) in writing to:
 - (i) the respondent;
 - (ii) the first complainant named on the complaint; and
 - (iii) in accordance with Subsection (4), the appropriate political subdivision.
- (4) The commission shall ensure that, within five business days of the date of public issuance of the determination in accordance with Subsection (3), the following documents are provided to the political subdivision governing body:
- (a) a cover letter referring the proven allegations contained in the complaint to the political subdivision governing body for review;
 - (b) a copy of the complaint;
 - (c) a copy of the response; and
 - (d) a copy of the commission's recommendation.

Enacted by Chapter 202, 2012 General Session

11-49-705 Criminal allegation -- Recommendation to county or district attorney.

- (1) If the commission finds that a political subdivision officer or employee allegedly violated a criminal provision, the commission shall, in addition to sending a recommendation to a political subdivision governing body in accordance with Section 11-49-704, send a recommendation for further investigation to the county or district attorney of jurisdiction by delivering to the county or district attorney a written recommendation that:
- (a) lists the name of each complainant;
 - (b) lists the name of the respondent;
 - (c) states the date of the recommendation;
 - (d) for each allegation of a criminal violation, provide a reference to the criminal provision allegedly violated;
 - (e) includes a general statement that is adopted by a majority of the members of the commission; and
 - (f) gives the name of the political subdivision governing body that the commission sent a recommendation to in accordance with Section 11-49-704.
- (2) If the commission sends a recommendation in accordance with Subsection (1)(a), the commission shall enter into the record:

- (a) a copy of the recommendation; and
 - (b) the name of the county or district attorney of jurisdiction to whom it was sent.
- (3) A recommendation prepared and delivered in accordance with this section is a public record.

Enacted by Chapter 202, 2012 General Session

11-49-706 Action by political subdivision governing body.

A political subdivision governing body that receives a recommendation in accordance with Section 11-49-704 shall:

- (1) review the recommendation; and
- (2) take further action in accordance with a political subdivision's governing ordinance, bylaws, or other applicable governing rule.

Enacted by Chapter 202, 2012 General Session