

**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