

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