

Chapter 49 Political Subdivisions Ethics Review Commission

Part 1 General Provisions

11-49-101 Title.

This chapter is known as "Political Subdivisions Ethics Review Commission."

Enacted by Chapter 202, 2012 General Session

11-49-102 Definitions.

- (1) "Commission" means the Political Subdivisions Ethics Review Commission established in Section 11-49-201.
- (2) "Complainant" means a person who files a complaint in accordance with Section 11-49-501.
- (3) "Ethics violation" means a violation of:
 - (a) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
 - (b) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
 - (c) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (4) "Local political subdivision ethics commission" means an ethics commission established by a political subdivision within the political subdivision or with another political subdivision by interlocal agreement in accordance with Section 11-49-103.
- (5) "Political subdivision" means a county, municipality, school district, community reinvestment agency, local district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, a local building authority, or any other governmental subdivision or public corporation.
- (6)
 - (a) "Political subdivision employee" means a person who is:
 - (i)
 - (A) in a municipality, employed as a city manager or non-elected chief executive on a full or part-time basis; or
 - (B) employed as the non-elected chief executive by a political subdivision other than a municipality on a full or part-time basis; and
 - (ii) subject to:
 - (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
 - (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
 - (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
 - (b) "Political subdivision employee" does not include:
 - (i) a person who is a political subdivision officer;
 - (ii) an employee of a state entity; or
 - (iii) a legislative employee as defined in Section 67-16-3.
- (7) "Political subdivision governing body" means:
 - (a) for a county, the county legislative body as defined in Section 68-3-12.5;
 - (b) for a municipality, the council of the city or town;
 - (c) for a school district, the local board of education described in Section 53A-3-101;
 - (d) for a community reinvestment agency, the agency board described in Section 17C-1-203;
 - (e) for a local district, the board of trustees described in Section 17B-1-301;

- (f) for a special service district:
 - (i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or
 - (ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301;
 - (g) for an entity created by an interlocal agreement, the governing body of an interlocal entity, as defined in Section 11-13-103;
 - (h) for a local building authority, the governing body, as defined in Section 17D-2-102, that creates the local building authority; or
 - (i) for any other governmental subdivision or public corporation, the board or other body authorized to make executive and management decisions for the subdivision or public corporation.
- (8)
- (a) "Political subdivision officer" means a person elected in a political subdivision who is subject to:
 - (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
 - (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
 - (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
 - (b) "Political subdivision officer" does not include:
 - (i) a person elected or appointed to a state entity;
 - (ii) the governor;
 - (iii) the lieutenant governor;
 - (iv) a member or member-elect of either house of the Legislature; or
 - (v) a member of Utah's congressional delegation.
- (9) "Respondent" means a person who files a response in accordance with Section 11-49-604.

Amended by Chapter 350, 2016 General Session

11-49-103 Local ethics commission permitted -- Filing requirements.

- (1) A political subdivision, other than a municipality described in Section 10-3-1311 or a county described in Section 17-16a-11, may establish a local political subdivision ethics commission within the political subdivision to review a complaint against a political subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
 - (2) A political subdivision may enter into an interlocal agreement with another political subdivision, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, to establish a local political subdivision ethics commission to review a complaint against a political subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (3)
- (a) A person filing a complaint for an ethics violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, shall file the complaint with:
 - (i) a local political subdivision ethics commission, if the political subdivision has established a local political subdivision ethics commission under Subsection (1) or (2); or
 - (ii) the commission if the political subdivision has not established a local political subdivision ethics commission.
 - (b) A political subdivision that receives a complaint described in Subsection (3)(a) may:
 - (i) accept the complaint if the political subdivision has established a local political subdivision ethics commission in accordance with Subsection (1) or (2); or
 - (ii) forward the complaint to the commission:

- (A) regardless of whether the political subdivision has established a local political subdivision ethics commission; or
- (B) if the political subdivision has not established a local political subdivision ethics commission.

Enacted by Chapter 202, 2012 General Session

Part 2

Political Subdivisions Ethics Review Commission

11-49-201 Commission established -- Membership.

- (1) There is established a Political Subdivisions Ethics Review Commission.
- (2) The commission is composed of seven persons, each of whom is registered to vote in this state and appointed by the governor with the advice and consent of the Senate, as follows:
 - (a) one member who has served, but no longer serves, as a judge of a court of record in this state;
 - (b) one member who has served as a mayor or municipal council member no more recently than four years before the date of appointment;
 - (c) one member who has served as a member of a local board of education no more recently than four years before the date of appointment;
 - (d) two members who are lay persons; and
 - (e) two members, each of whom is one of the following:
 - (i) a municipal mayor no more recently than four years before the date of appointment;
 - (ii) a municipal council member no more recently than four years before the date of appointment;
 - (iii) a county mayor no more recently than four years before the date of appointment;
 - (iv) a county commissioner no more recently than four years before the date of appointment;
 - (v) a special service district administrative control board member no more recently than four years before the date of appointment;
 - (vi) a local district board of trustees member no more recently than four years before the date of appointment; or
 - (vii) a judge who has served, but no longer serves, as a judge of a court of record in this state.
- (3) A member of the commission may not, during the member's term of office on the commission, act or serve as:
 - (a) a political subdivision officer;
 - (b) a political subdivision employee;
 - (c) an agency head as defined in Section 67-16-3;
 - (d) a lobbyist as defined in Section 36-11-102; or
 - (e) a principal as defined in Section 36-11-102.
- (4)
 - (a)
 - (i) Except as provided in Subsection (4)(a)(ii), each member of the commission shall serve a four-year term.
 - (ii) When appointing the initial members upon formation of the commission, a member described in Subsections (2)(b) through (d) shall be appointed to a two-year term so that approximately half of the commission is appointed every two years.

- (b)
 - (i) When a vacancy occurs in the commission's membership for any reason, a replacement member shall be appointed for the unexpired term of the vacating member using the procedures and requirements of Subsection (2).
 - (ii) For the purposes of this section, an appointment for an unexpired term of a vacating member is not considered a full term.
 - (c) A member may not be appointed to serve for more than two full terms, whether those terms are two or four years.
 - (d) A member of the commission may resign from the commission by giving one month's written notice of the resignation to the governor.
 - (e) The governor shall remove a member from the commission if the member:
 - (i) is convicted of, or enters a plea of guilty to, a crime involving moral turpitude;
 - (ii) enters a plea of no contest or a plea in abeyance to a crime involving moral turpitude; or
 - (iii) fails to meet the qualifications of office as provided in this section.
 - (f) If a commission member is accused of wrongdoing in a complaint, or if a commission member determines that the commission member has a conflict of interest in relation to a complaint, a temporary commission member shall be appointed to serve in that member's place for the purposes of reviewing that complaint using the procedures and requirements of Subsection (2).
- (5)
- (a) Except as provided in Subsection (5)(b)(i), a member of the commission may not receive compensation or benefits for the member's service.
 - (b)
 - (i) A member may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
 - (ii) A member may decline to receive per diem and expenses for the member's service.
- (6)
- (a) The commission members shall convene a meeting annually each January and elect, by a majority vote, a commission chair from among the commission members.
 - (b) A person may not serve as chair for more than two consecutive years.

Enacted by Chapter 202, 2012 General Session

11-49-202 Meetings -- Staff.

- (1) The commission shall meet for the purpose of reviewing an ethics complaint when:
 - (a) except otherwise expressly provided in this chapter, called to meet at the discretion of the chair; or
 - (b) a majority of members agree to meet.
- (2) A majority of the commission is a quorum.
- (3)
 - (a) The commission shall prepare, on an annual basis, a summary data report that contains:
 - (i) a general description of the activities of the commission during the past year;
 - (ii) the number of ethics complaints filed with the commission;
 - (iii) the number of ethics complaints dismissed in accordance with Section 11-49-602;
 - (iv) the number of ethics complaints reviewed by the commission in accordance with Section 11-49-701;
 - (v) an executive summary of each complaint review in accordance with Section 11-49-701; and

- (vi) an accounting of the commission's budget and expenditures.
 - (b) The summary data report shall be submitted to the Political Subdivisions Interim Committee on an annual basis.
 - (c) The summary data report shall be a public record.
- (4)
- (a) The Senate and the House of Representatives shall employ staff for the commission at a level that is reasonable to assist the commission in performing its duties as established in this chapter.
 - (b) The Legislative Management Committee shall:
 - (i) authorize each staff position for the commission; and
 - (ii) approve the employment of each staff member for the commission.
 - (c) Staff for the commission shall work only for the commission and may not perform services for the Senate, House of Representatives, other legislative offices, or a political subdivision.
- (5) A meeting held by the commission is subject to Title 52, Chapter 4, Open and Public Meetings Act, unless otherwise provided.

Amended by Chapter 278, 2013 General Session

Part 3

General Powers and Procedures

11-49-301 Authority to review complaint -- Grounds for complaint -- Limitations on filings.

- (1) Subject to the requirements of this chapter and Section 10-3-1311 or 17-16a-11, the commission is authorized to review an ethics complaint against a political subdivision officer or employee if the complaint alleges:
- (a) if the applicable political subdivision is a municipality, an ethics violation of Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act by:
 - (i) a city manager or non-elected chief executive; or
 - (ii) an elected officer, as defined in Section 10-3-1303;
 - (b) if the applicable political subdivision is a county, an ethics violation of Title 17, Chapter 16a, County Officers and Employees Disclosure Act by:
 - (i) an appointed officer, as defined in Section 17-16a-3;
 - (ii) an elected officer, as defined in Section 17-16a-3; or
 - (iii) an employee subject to Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
 - (c) for a political subdivision officer or employee other than a municipal officer or employee described in Subsection (1)(a) or a county officer or employee described in Subsection (1)(b), an ethics violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- (2) A complaint described in Subsection (1) shall be filed in accordance with the time limit provisions, if any, of the applicable part or chapter.
- (3)
- (a) A complaint may not contain an allegation if that allegation and the general facts and circumstances supporting that allegation have been previously reviewed by a municipal ethics commission established under Section 10-3-1311, a county ethics commission established under Section 17-16a-11, or a local political subdivision ethics commission established under Section 11-49-103, as applicable, or the commission unless:

- (i) the allegation was previously reviewed and dismissed by the commission under Section 11-49-602 or 11-49-701;
 - (ii) the allegation is accompanied by material facts or circumstances supporting the allegation that were not raised or pled to the commission; and
 - (iii) the allegation and the general facts and circumstances supporting that allegation have only been reviewed by the commission in accordance with Section 11-49-701 on one previous occasion.
- (b) The commission may not review a complaint that is currently before:
- (i) a municipal ethics commission established under Section 10-3-1311;
 - (ii) a county ethics commission established under Section 17-16a-11; or
 - (iii) a local political subdivision ethics commission established under Section 11-49-103.
- (c) If an allegation in the complaint does not comply with the requirements of Subsection (3)(a) or (b), the allegation shall be summarily dismissed with prejudice by:
- (i) the chair when reviewing the complaint under Section 11-49-601; or
 - (ii) the commission, when reviewing the complaint under Section 11-49-602 or 11-49-701.

Enacted by Chapter 202, 2012 General Session

11-49-302 General powers -- Jurisdiction.

- (1) The commission has jurisdiction only over an individual who is a political subdivision officer or employee.
- (2) The commission shall dismiss an ethics complaint if:
 - (a) the respondent resigns or is terminated from the political subdivision; or
 - (b) except as provided in Subsection (3):
 - (i) the respondent is charged with a criminal violation of:
 - (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
 - (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
 - (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
 - (ii) the facts and allegations presented in the ethics complaint assert the same or similar facts and allegations as those asserted in the criminal charges.
- (3) If an ethics complaint asserts an ethics violation in addition to a criminal violation described in Subsection (2)(b), the commission shall:
 - (a) dismiss an allegation described in Subsection (2)(b)(ii); and
 - (b) proceed with any remaining allegation in the complaint.

Enacted by Chapter 202, 2012 General Session

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 nondebatable.
 - (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

Part 5 Complaint of Ethics Violation

11-49-501 Ethics complaints -- Who may file -- Form.

- (1)
- (a) Notwithstanding any other provision, the following may file a complaint, subject to the requirements of Subsections (1)(b) and (c) and Section 11-49-301, against a political subdivision officer or employee:
 - (i) two or more registered voters who reside within the boundaries of a political subdivision;
 - (ii) two or more registered voters who pay a fee or tax to a political subdivision; or
 - (iii) one or more registered voters who reside within the boundaries of a political subdivision and one or more registered voters who pay a fee or tax to the political subdivision.
 - (b) A person described in Subsection (1)(a) may not file a complaint unless at least one person described in Subsection (1)(a)(i), (ii), or (iii) has actual knowledge of the facts and circumstances supporting the alleged ethics violation.
 - (c) A complainant may file a complaint only against an individual who, on the date that the complaint is filed, is serving as a political subdivision officer or is a political subdivision employee.
- (2)
- (a) The lieutenant governor shall post, on the homepage of the lieutenant governor's website, a conspicuous and clearly identified link to the name and address of an individual authorized to accept a complaint on behalf of the commission.
 - (b) A complainant shall file a complaint with the individual described in Subsection (2)(a).
 - (c) An individual may not file a complaint during the 60 calendar days immediately preceding:
 - (i) a regular primary election, if the accused political subdivision officer is a candidate in the primary election; or

- (ii) a regular general election in which an accused political subdivision officer is a candidate, unless the accused political subdivision officer is unopposed in the election.
- (3) A complainant shall ensure that each complaint filed under this section is in writing and contains the following information:
 - (a) the name and position of the political subdivision officer or employee alleged to be in violation;
 - (b) the name, address, and telephone number of each individual who is filing the complaint;
 - (c) a description of each alleged ethics violation, as applicable of:
 - (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
 - (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
 - (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
 - (d) include for each alleged ethics violation:
 - (i) a reference to the section of the code alleged to have been violated;
 - (ii) the name of the complainant who has actual knowledge of the facts and circumstances supporting each allegation; and
 - (iii) with reasonable specificity, the facts and circumstances supporting each allegation, which shall be provided by:
 - (A) copies of official records or documentary evidence; or
 - (B) one or more affidavits that include the information required in Subsection (4);
 - (e) a list of the witnesses that a complainant wishes to have called, including for each witness:
 - (i) the name, address, and, if available, one or more telephone numbers 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 a complainant desires the witness to produce;
 - (f) a statement that each complainant:
 - (i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;
 - (ii) believes that the complaint is submitted in good faith and not for any improper purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the respondent's reputation, or causing unnecessary expenditure of public funds; and
 - (iii) believes the allegations contained in the complaint to be true and accurate; and
 - (g) the signature of each complainant.
- (4) An affidavit described in Subsection (3)(d)(iii)(B) shall include:
 - (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 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.

Amended by Chapter 160, 2016 General Session

11-49-502 Privacy of ethics complaint -- Contempt -- Enforcement of finding of contempt -- Dismissal.

- (1)
 - (a) Except as provided in Subsection (1)(b) or (c), a person, including a complainant, the respondent, a commission member, or staff to the commission, may not disclose the

existence of a complaint, a response, nor any information concerning any alleged ethics violation that is the subject of a complaint:

- (i) unless otherwise provided in this chapter; or
 - (ii) after a complaint is presented at the meeting described in Section 11-49-701.
- (b) The restrictions in Subsection (1)(a) do not apply to the respondent's voluntary disclosure of a finding by the commission that no allegations in a complaint were proved after that finding is issued by the commission under the procedures and requirements of Section 11-49-602.
 - (c) Nothing in this section shall prevent a person from disclosing facts or allegations about potential criminal violations to a law enforcement authority.
 - (d) Nothing in this section may be construed to hinder or prevent a respondent from preparing a defense to a complaint, including contacting a witness or other actions in preparation for review by the commission.
- (2) A person who violates the provisions of Subsection (1)(a) is in contempt of the commission and proceedings may be initiated to enforce the finding of contempt using the procedures provided in Sections 11-49-404 and 11-49-405.
 - (3) If the existence of an ethics complaint is publicly disclosed before or during the preliminary review period described in Section 11-49-602, the complaint shall be summarily dismissed without prejudice.

Enacted by Chapter 202, 2012 General Session

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

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