

Chapter 14 **Review of Executive Branch Ethics Complaints**

Part 1 **General Provisions**

63A-14-101 Title.

- (1) This chapter is known as "Review of Executive Branch Ethics Complaints."
- (2) This part is known as "General Provisions."

Enacted by Chapter 426, 2013 General Session

63A-14-102 Definitions.

As used in this chapter:

- (1) "Commission" means the Independent Executive Branch Ethics Commission, created in Section 63A-14-202.
- (2) "Complainant" means an individual who files a complaint under Subsection 63A-14-402(1)(a).
- (3) "Executive branch elected official" means:
 - (a) the governor;
 - (b) the lieutenant governor;
 - (c) the state auditor;
 - (d) the state treasurer; or
 - (e) the attorney general.
- (4) "Improper purpose" includes harassing a respondent, causing unwarranted harm to a respondent's reputation, or causing unnecessary expenditure of public funds.
- (5) "Malfeasance in office" means an intentional act or omission relating to the duties of an executive branch elected official that:
 - (a) constitutes a crime; or
 - (b)
 - (i) constitutes a substantial breach of the trust imposed upon the executive branch elected official by the nature of the official's office; and
 - (ii) is against commonly accepted standards of honesty and morality.
- (6) "Respondent" means the executive branch elected official against whom an ethics complaint described in Section 63A-14-402 is filed.
- (7) "Violation" means a high crime, a misdemeanor, or malfeasance in office.

Amended by Chapter 461, 2018 General Session

Part 2 **Independent Executive Branch Ethics Commission**

63A-14-201 Title.

This part is known as "Independent Executive Branch Ethics Commission."

Enacted by Chapter 426, 2013 General Session

63A-14-202 Independent Executive Branch Ethics Commission -- Membership.

- (1)
 - (a) There is created the Independent Executive Branch Ethics Commission, consisting of the following five members appointed by the governor, each of whom shall be registered to vote in the state at the time of appointment:
 - (i) two members who served:
 - (A) as elected officials in state government no more recently than four years before the day on which the member is appointed; or
 - (B) in a management position in the state executive branch no more recently than four years before the day on which the member is appointed;
 - (ii) one member who:
 - (A) has served, but no longer actively serves, as a judge of a court in the state; or
 - (B) is a licensed attorney in the state and is not, and has not been, a judge; and
 - (iii) two citizen members.
 - (b) The governor shall make appointments to the commission as follows:
 - (i) each executive branch elected official, other than the governor, shall select, and provide to the governor, at least two names for potential appointment to one of the membership positions described in Subsection (1)(a);
 - (ii) the governor shall determine which of the executive branch elected officials described in Subsection (1)(b)(i) shall select names for which membership position;
 - (iii) the governor shall appoint to the commission one of the names provided by each executive branch elected official described in Subsection (1)(b)(i);
 - (iv) the governor shall directly appoint the remaining member of the commission; and
 - (v) if an executive branch elected official fails to submit names to the governor within 15 days after the day on which the governor makes the determination described in Subsection (1)(b)(ii), the governor shall directly appoint a person to fill the applicable membership position.
- (2) A member of the commission may not, during the member's term of office on the commission, act or serve as:
 - (a) an officeholder as defined in Section 20A-11-101;
 - (b) an agency head as defined in Section 67-16-3;
 - (c) a lobbyist as defined in Section 36-11-102;
 - (d) a principal as defined in Section 36-11-102; or
 - (e) an employee of the state.
- (3)
 - (a) Except as provided in Subsection (3)(b), each member of the commission shall serve a four-year term.
 - (b) The governor shall set the first term of two of the members of the commission at two years, so that approximately half of the commission is appointed, or reappointed, every two years.
 - (c) When a vacancy occurs in the commission's membership for any reason, the governor shall appoint a replacement member for the unexpired term of the vacating member, in accordance with Subsection (1).
 - (d) The governor may not appoint a member to serve more than two full terms, whether those terms are two or four years.
 - (e)
 - (i) The governor, or a majority of the commission, may remove a member from the commission only for cause.

- (ii) The governor may not remove a member from the commission during any period of time when the commission is investigating or considering a complaint alleging an ethics violation against the governor or lieutenant governor.
- (f) If a commission member determines that the commission member has a conflict of interest in relation to a complaint, the remaining members of the commission shall appoint an individual to serve in that member's place for the purpose of reviewing that complaint.
- (4)
 - (a) A member of the commission may not receive compensation or benefits for the member's service, but 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.
 - (b) A member may decline to receive per diem and expenses for the member's service.
- (5)
 - (a) The commission members shall convene a meeting annually each January and elect, by majority vote, a chair from among the commission members.
 - (b) An individual may not serve as chair for more than two consecutive years.
- (6) The commission:
 - (a) is an independent entity established within the department for budgetary and general administrative purposes only; and
 - (b) is not under the direction or control of the department, the executive director, or any other officer or employee of the department.

Amended by Chapter 125, 2022 General Session

63A-14-203 Independent Executive Branch Ethics Commission -- Meetings -- Annual summary report -- Staff -- Legal counsel -- Supplemental appropriations.

- (1) The commission shall meet for the purpose of reviewing an ethics complaint when:
 - (a) except as otherwise expressly provided in this chapter, called to meet at the discretion of the chair; or
 - (b) called to meet by a majority vote of the commission.
- (2)
 - (a) A majority of the commission is a quorum.
 - (b) A majority vote of a quorum present constitutes the action of the commission.
- (3)
 - (a) The commission shall prepare an annual 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 reviewed by the commission;
 - (iv) a summary description of ethics complaints that formed the basis for a commission finding that an allegation in a complaint has merit; and
 - (v) an accounting of the commission's budget and expenditures.
 - (b) The commission shall submit the summary data report to the governor before December 1 each year.
 - (c) The summary data report is a public record.
- (4) The commission:
 - (a) shall employ a director to provide administrative support to the commission and to assist the commission in fulfilling the commission's duties;
 - (b) may employ additional staff, to work under the direction of the director;

- (c) shall contract with private legal counsel to provide legal services to the commission, as needed; and
 - (d) may, in consultation with the Office of the Legislative Fiscal Analyst, request supplemental appropriations to pay the costs of legal fees and other staffing needs that exceed the commission's budget due to the number or complexity of the ethics complaints filed with or considered by the commission in a fiscal year.
- (5)
- (a) Except as provided in Subsection (5)(b), staff for the commission may not perform services for any other person in state government.
 - (b) A person employed as staff for the commission may be the same person employed as staff for the Independent Legislative Ethics Commission, if the staff ensures that proper protections are in place to preserve the confidentiality to both bodies and to avoid a conflict of interest.
- (6) Except as expressly otherwise provided in this chapter, all meetings held under this chapter are closed to the public.

Amended by Chapter 461, 2018 General Session

Part 3

General Powers and Procedures

63A-14-301 Title.

This part is known as "General Powers and Procedures."

Enacted by Chapter 426, 2013 General Session

63A-14-302 Authority to review complaint -- Grounds for complaint -- Limitations on filings.

- (1) Subject to the requirements of this chapter, the commission may review an ethics complaint against an executive branch elected official if the complaint alleges that the executive branch elected official has committed a violation.
- (2) The commission may not review an ethics complaint filed against an executive branch elected official unless the complaint alleges conduct that, if true, would constitute grounds for impeachment under the Utah Constitution.
- (3) A complaint against an executive branch elected official may not allege a violation by the executive branch elected official for an act by an individual under the authority of the executive branch elected official, unless the complaint evidences that the executive branch elected official:
 - (a) encouraged, condoned, or ordered the act;
 - (b)
 - (i) before the individual engaged in the act, knew or should have known that the individual was likely to engage in the act; and
 - (ii) failed to take appropriate action to prevent the act;
 - (c)
 - (i) while the individual engaged in the act, knew or should have known that the individual was engaging in the act; and
 - (ii) failed to take appropriate action to stop the act; or
 - (d)

- (i) after the individual engaged in the act, knew or should have known that the individual engaged in the act; and
 - (ii) failed to take appropriate action in response to the act.
- (4) A complaint against an executive branch elected official may not allege a violation by the executive branch elected official for an individual under the authority of the executive branch elected official failing to act, unless the complaint evidences that the executive branch elected official:
 - (a) encouraged, condoned, or ordered the failure to act;
 - (b)
 - (i) before the individual failed to act, knew or should have known that the individual was likely to fail to act; and
 - (ii) failed to take appropriate action to prevent the failure to act;
 - (c)
 - (i) while the individual was failing to act, knew or should have known that the individual was failing to act; and
 - (ii) failed to take appropriate action to prevent the failure to act; or
 - (d)
 - (i) after the individual failed to act, knew or should have known that the individual failed to act; and
 - (ii) failed to take appropriate action in response to the failure to act.
- (5) Individuals who file a complaint for an alleged violation shall file the complaint within two years after the later of:
 - (a) the day on which the action or omission that forms the basis for the alleged violation occurs or would have been discovered by a reasonable person; or
 - (b) the day on which a plea or conviction that forms the basis for the allegation is entered.
- (6)
 - (a) A complaint may not contain an allegation that was previously reviewed by the commission, unless:
 - (i) the allegation is accompanied by material facts or circumstances supporting the allegation that were not raised or pled to the commission when the allegation was previously reviewed; and
 - (ii) the allegation and the general facts and circumstances supporting the allegation were only reviewed by the commission on one previous occasion.
 - (b) If an allegation in a complaint does not comply with the requirements of Subsection (6)(a), the commission or the chair shall dismiss the allegation with prejudice.
- (7)
 - (a) An individual may not file a complaint under this chapter that alleges the same conduct alleged in a grievance filed under Title 67, Chapter 19a, Grievance Procedures, unless the individual files the complaint within seven days before or after the day on which the individual files the grievance under Title 67, Chapter 19a, Grievance Procedures.
 - (b) If an allegation in a complaint does not comply with the requirements of Subsection (7)(a), the commission or the chair shall dismiss the allegation with prejudice.
 - (c) If an individual files a complaint under this chapter, in accordance with the time requirement described in Subsection (7)(a), that alleges the same conduct alleged in a grievance filed under Title 67, Chapter 19a, Grievance Procedures:
 - (i) the commission may stay proceedings before the commission in relation to the allegation, pending resolution of the grievance filed under Title 67, Chapter 19a, Grievance Procedures; and

- (ii) the Career Service Review Office, created in Section 67-19a-201, shall, upon request of the commission, inform the commission of the progress and final disposition of the grievance proceeding.
- (8) If the commission stays proceedings under Subsection (7)(c), the matter shall proceed as follows after the grievance under Title 67, Chapter 19a, Grievance Procedures, is resolved:
 - (a) if the individual who filed the complaint under this chapter desires to proceed with the complaint:
 - (i) the individual shall, within 15 days after the day on which a final decision is rendered under Title 67, Chapter 19a, Grievance Procedures, file a written document with the commission:
 - (A) describing the final decision; and
 - (B) stating that the individual desires to proceed with the complaint;
 - (ii) the Career Service Review Office, created in Section 67-19a-201, shall, upon request of the commission, provide copies of all records relating to the grievance described in Subsection (7)(c)(i), in accordance with Section 63G-2-206; and
 - (iii) the commission shall:
 - (A) review the records described in Subsection (8)(a)(ii);
 - (B) consider any additional evidence that the commission determines necessary;
 - (C) in the discretion of the commission, hear closing arguments from the parties; and
 - (D) comply with Section 63A-14-604; or
 - (b) if the individual who filed the complaint under this chapter does not desire to proceed with the complaint, the individual shall, within 15 days after the day on which a final decision is rendered under Title 67, Chapter 19a, Grievance Procedures, file a written document with the commission stating that the individual does not desire to proceed with the complaint.
- (9) The commission shall dismiss a complaint for which the commission stayed proceedings under Subsection (7)(c) if the individual who filed the complaint:
 - (a) fails to timely comply with Subsection (8)(a)(i); or
 - (b) files the document described in Subsection (8)(b).

Amended by Chapter 461, 2018 General Session

63A-14-303 General powers -- Jurisdiction.

- (1) The commission has jurisdiction only over an individual who is currently serving as an executive branch elected official.
- (2) The commission or the chair shall dismiss an ethics complaint if:
 - (a) the respondent resigns from the respondent's position as an executive branch elected official; or
 - (b) the House of Representatives convenes to consider impeachment of the executive branch elected official.
- (3)
 - (a) The commission may suspend commission proceedings during a period of time when a criminal investigation or prosecution, based in whole or in part on an allegation in the complaint, is pending.
 - (b) The time periods and deadlines described in this chapter are tolled during a suspension described in Subsection (3)(a).
- (4) The commission does not have jurisdiction over a violation that occurs before March 14, 2013.

Enacted by Chapter 426, 2013 General Session

Part 4 Ethics Complaints

63A-14-401 Title.

This part is known as "Ethics Complaints."

Enacted by Chapter 426, 2013 General Session

63A-14-402 Ethics complaints -- Filing -- Form.

- (1)
 - (a) The following individuals may file an ethics complaint against an executive branch elected official if the complaint meets the requirements of Section 63A-14-302 and Subsection (1)(b):
 - (i) two or more executive branch elected officials, deputies of elected officials, executive directors of departments in the executive branch, or directors of divisions in the executive branch, if the complaint contains evidence or sworn testimony that:
 - (A) describes the facts and circumstances supporting the alleged violation; and
 - (B) is generally admissible under the Utah Rules of Evidence; or
 - (ii) two or more registered voters who currently reside in Utah and are not individuals described in Subsection (1)(a)(i), if, for each alleged violation pled in the complaint, at least one of those registered voters has personal knowledge of the facts and circumstances supporting the alleged violation.
 - (b) Complainants may file a complaint only against an individual who is serving as an executive branch elected official on the date that the complaint is filed.
- (2)
 - (a) The commission shall post, on the state's website, a conspicuous and clearly identified link to the name and address of a person authorized to accept a complaint on behalf of the commission.
 - (b) Complainants shall file a complaint with the person 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 in which the accused executive branch elected official is a candidate; or
 - (ii) a regular general election in which the accused executive branch elected official is a candidate, unless the accused executive branch elected official is unopposed in the election.
- (3) The complainants shall ensure that each complaint filed under this rule is in writing and contains the following information:
 - (a) the name and position or title of the respondent;
 - (b) the name, address, and telephone number of each individual who is filing the complaint;
 - (c) a description of each alleged violation, including for each alleged violation:
 - (i) a reference to any criminal provision that the respondent is alleged to have violated;
 - (ii) a reference to any other provision of law that the respondent is alleged to have violated or failed to comply with;
 - (iii) the name of the complainant or complainants who have personal knowledge of the supporting facts and circumstances; and
 - (iv) the facts and circumstances supporting 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 the format described in Subsection (4);
 - (d) a list of the witnesses that the complainants desire to call, 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 the complainants desire the witness to produce;
 - (e) a statement that each complainant:
 - (i) has reviewed the allegations contained in the complaint and the affidavits and documents attached to the complaint;
 - (ii) believes that the complaint is submitted in good faith and not for any improper purpose; and
 - (iii) believes the allegations contained in the complaint to be true and accurate; and
 - (f) the signature of each complainant.
- (4) An affidavit described in Subsection (3)(c)(iv)(B) shall include:
- (a) the name, address, and telephone number of the affiant;
 - (b) a statement that the affiant has personal knowledge of the facts and circumstances described in the affidavit;
 - (c) the facts and circumstances testified to by the affiant;
 - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties for perjury; and
 - (e) the signature of the affiant.

Amended by Chapter 461, 2018 General Session

63A-14-403 Privacy of ethics complaint -- Dismissal -- Contempt.

- (1)
- (a) Except as provided in Subsection (2) or (4), a person, including the complainant, the respondent, a commission member, or staff to the commission may not disclose the existence of a complaint, a response, or any information concerning an alleged violation that is the subject of a complaint.
 - (b) A person that violates this Subsection (1) may be held in contempt of the commission in accordance with Section 63A-14-705.
- (2) The restrictions described in Subsection (1) do not apply to:
- (a) a complaint or response that is publicly released by the commission and referred to the Legislature;
 - (b) the respondent's voluntary disclosure that the commission determined that all allegations in a complaint are without merit, after the commission issues an order dismissing the complaint under Section 63A-14-605;
 - (c) a disclosure by a respondent that is made solely for the purpose of, and only to the extent necessary for, retaining counsel or conducting an interview, seeking evidence, or taking other action to prepare to defend against a complaint;
 - (d) a communication between a commission member and the commission's attorney or a member of the commission's staff; or
 - (e) a disclosure to a person that is determined necessary, by a majority vote of the commission, to conduct the duties of the commission.
- (3) When a person makes a disclosure under Subsection (2)(c) or (e), the person making the disclosure shall inform the person to whom the disclosure is made of the nondisclosure requirements described in this section.

- (4) Nothing in this section prevents a person from disclosing facts or allegations regarding potential criminal violations to law enforcement authorities.
- (5) If the existence of an ethics complaint is publicly disclosed by a person, other than the respondent, an agent of the respondent, or a person who learns of the complaint under Subsection (2)(c) or (e), during the period that the commission is reviewing the complaint, the commission shall summarily dismiss the complaint without prejudice.

Amended by Chapter 461, 2018 General Session

63A-14-405 Motion to disqualify commission member for conflict of interest.

- (1) A complainant may file a motion to disqualify one or more members of the commission from participating in proceedings relating to the complaint if the individual files the motion within 20 days after the later of:
 - (a) the day on which the individual files the ethics complaint; or
 - (b) the day on which the individual knew or should have known of the grounds upon which the motion is based.
- (2) A respondent may file a motion to disqualify one or more members of the commission from participating in proceedings relating to the complaint if the respondent files the motion within 20 days after the later of:
 - (a) the day on which the respondent receives delivery of the complaint; or
 - (b) the day on which the respondent knew or should have known of the grounds upon which the motion is based.
- (3) A motion filed under this section shall include:
 - (a) a statement that the members to whom the motion relates have a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the members;
 - (b) a detailed description of the grounds supporting the statement described in Subsection (3)(a); and
 - (c) a statement that the motion is filed in good faith, supported by an affidavit or declaration under penalty of Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, stating that the motion and all accompanying statements and documents are true and correct to the best of the complainant's or respondent's knowledge.
- (4) A party may not file more than one motion to disqualify, unless the second or subsequent motion:
 - (a) is based on grounds of which the party was not aware, and could not have been aware, at the time of the earlier motion; and
 - (b) is accompanied by a statement, included in the affidavit or declaration described in Subsection (3)(c), explaining how and when the party first became aware of the grounds described in Subsection (4)(a).
- (5) The commission shall dismiss a motion filed under this section, with prejudice, if the motion:
 - (a) is not timely filed; or
 - (b) does not comply with the requirements of this section.
- (6) A member of the commission may:
 - (a) on the member's own motion, disqualify the member from participating in proceedings relating to a complaint if the member believes that the member has a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the member; or

- (b) ask the commission to disqualify another member of the commission if the member believes that the member has a conflict of interest that, under the circumstances, would lead a reasonable person to question the impartiality of the member.
- (7)
- (a) When a party files a motion under this section, or when a commission member makes a request under Subsection (6)(b), the commission member for whom disqualification is sought may make the initial determination regarding whether the commission member has a conflict of interest.
 - (b) If a commission member described in Subsection (7)(a) determines that the commission member has a conflict of interest, the commission member shall disqualify the commission member from participating in the matter.
 - (c) If a commission member described in Subsection (7)(a) determines that the commission member does not have a conflict of interest, or declines to make the determination, the remainder of the commission shall, by majority vote, determine whether the commission member has a conflict of interest.
 - (d) A vote of the commission, under Subsection (7)(c), constitutes a final decision on the issue of a conflict of interest.
- (8) In making a determination under Subsection (7)(c), the commission may:
- (a) gather additional evidence;
 - (b) hear testimony; or
 - (c) request that the commission member who is the subject of the motion or request file an affidavit or declaration responding to questions posed by the commission.

Amended by Chapter 136, 2019 General Session

Part 5 Preliminary Action

63A-14-501 Title.

This part is known as "Preliminary Action."

Enacted by Chapter 426, 2013 General Session

63A-14-502 Initial review of ethics complaint -- Notice.

- (1)
- (a) Except as provided in Subsection (1)(b), within five business days after the day on which the commission receives a complaint, the director of the commission, in consultation with the chair, shall examine the complaint to determine if the complaint is in compliance with Sections 63A-14-302 and 63A-14-402.
 - (b) The chair shall appoint another staff member or member of the commission to fulfill a duty described in Subsection (1)(a) if an individual described in Subsection (1)(a) has a conflict of interest in relation to the complaint.
- (2) If the chair determines that the complaint does not comply with Sections 63A-14-302 and 63A-14-402, the chair shall:
- (a) return the complaint to the first complainant named on the complaint with:
 - (i) a description of the reason for the noncompliance; and

- (ii) a copy of the applicable provisions of law; and
- (b) without disclosing the identity of the respondent, notify the other members of the commission that a complaint was filed against an executive branch elected official, but that the complaint was returned for noncompliance with the requirements of this chapter.
- (3) Each member of the commission and the commission's staff shall keep confidential the fact that a complaint was filed and returned until the commission submits the annual summary data report described in Section 63A-14-203.
- (4) If a complaint is returned for noncompliance with the requirements of this chapter, the complainants may file another complaint if the new complaint independently meets the requirements of Sections 63A-14-302 and 63A-14-402, including any requirements for timely filing.
- (5) If the chair determines that a complaint complies with the requirements of this chapter, the chair shall:
 - (a) accept the complaint;
 - (b) notify the members of the commission that:
 - (i) a complaint has been filed against an executive branch elected official; and
 - (ii) the chair has accepted the complaint; and
 - (c) within five business days after the day on which the commission receives the complaint, forward the complaint to the respondent via personal delivery or a delivery method that provides verification of receipt, and include with the complaint notice of the respondent's deadline for filing a response to the complaint.
- (6)
 - (a) The identity of the respondent and the allegations raised in a complaint are confidential pending the commission's review of the complaint.
 - (b) The fact that a complaint was filed is confidential until the commission publicly discloses the existence of the complaint by:
 - (i) issuing a finding that an allegation in the complaint has merit; or
 - (ii) submitting the annual summary data report described in Section 63A-14-203.

Amended by Chapter 461, 2018 General Session

63A-14-503 Meeting of the commission for review of complaint -- Procedures.

- (1) No later than 10 days after the day on which a complaint is accepted under Section 63A-14-502, the chair shall:
 - (a) except as provided in Subsection (2), schedule a commission meeting on a date:
 - (i) no later than 60 days after the day on which the chair accepts the complaint; and
 - (ii) no earlier than 40 days after the day on which the chair accepts the complaint;
 - (b) place the complaint on the agenda for consideration at that meeting;
 - (c) provide notice of the date, time, and location of the meeting to:
 - (i) the members of the commission;
 - (ii) the first complainant named in the complaint; and
 - (iii) the respondent; and
 - (d) provide a copy of the complaint to each member of the commission.
- (2) The commission may, by majority vote, change the date of the meeting for review of the complaint in order to accommodate:
 - (a) a meeting described in Subsection 63A-14-602(2); or
 - (b) necessary scheduling requirements.

- (3) The commission may conduct a vote to change the date of the meeting described in Subsection (2) by phone or electronic means if the members do not discuss any other matters relating to the complaint during the communication.

Enacted by Chapter 426, 2013 General Session

63A-14-504 Response to ethics complaint -- Filing -- Form.

- (1) A respondent shall file a response to a complaint with the commission no later than 20 days after the day on which the respondent receives delivery of the complaint.
- (2) A respondent shall 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 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, supported by one or more affidavits, each of which shall comply with the format described in Subsection (3); and
 - (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 the format described in Subsection (3);
 - (c) a list of the witnesses that the respondent desires to call, 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 that 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) An affidavit described in Subsection (2)(b) shall include:
 - (a) the name, address, and telephone number of the affiant;
 - (b) a statement that the affiant has personal knowledge of the facts and circumstances alleged in the affidavit;
 - (c) the facts and circumstances testified to by the affiant;
 - (d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties for perjury; and
 - (e) the signature of the affiant.
- (4) Within five business days after the day on which the commission receives 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.

Amended by Chapter 461, 2018 General Session

Part 6

Ethics Proceedings

63A-14-601 Title.

This part is known as "Ethics Proceedings."

Enacted by Chapter 426, 2013 General Session

63A-14-602 Review of ethics complaint by commission.

- (1) The scope of the commission's review of a complaint is limited to the alleged violations stated in the complaint.
- (2) Before holding a meeting for review of a complaint, the chair may schedule a separate meeting of the commission to:
 - (a) review 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 an executive branch elected official that have already been reviewed by the commission;
 - (b) hear motions or arguments from the parties, including hearing motions or arguments relating to dismissal of a complaint, admission of evidence, or procedures; or
 - (c) hold a vote of the commission, with or without the attendance of the parties, on procedural or commission business matters relating to a complaint.
- (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 63A-14-703.
- (4)
 - (a) The following individuals may be present during the presentation of testimony and evidence to the commission:
 - (i) the complainants, except that no more than three complainants may be present at one time;
 - (ii) the complainants' 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.
 - (b) The complainants, respondent, and counsel for a complainant or respondent may be excluded from a portion of the meeting when the commission discusses administrative, procedural, legal, or evidentiary issues by:
 - (i) the order of the chair, subject to override as provided in Section 63A-14-703; or
 - (ii) a majority vote of the commission.
 - (c) When the commission deliberates at the conclusion of presentation of testimony and evidence, the commission shall ensure that those deliberations are closed to all persons except for the members of the commission and commission staff.

- (5) If a majority of the commission determines that a continuance is necessary to obtain further evidence and testimony, accommodate administrative needs, or accommodate the attendance of commission members, witnesses, or a party, the commission may:
- (a) after notice to the parties, adjourn and continue the meeting to a future date and time; and
 - (b) establish that future date and time by majority vote.

Enacted by Chapter 426, 2013 General Session

63A-14-603 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 chapter.
 - (b) The commission shall keep an audio or video recording of all portions of each meeting authorized by this part.
 - (c) If the commission elects, by a majority vote, to release in a public meeting the commission's finding that an allegation in the complaint has merit, the commission may, upon a majority vote of the commission, open the public meeting to cameras or other recording devices.
- (2) In addition to the recording required in Subsection (1)(b), the chair shall ensure that a record of the meeting is made, that includes:
- (a) official minutes taken during the meeting, if any;
 - (b) copies of all documents or other items admitted into evidence by the commission;
 - (c) copies of any documents or written orders or rulings issued by the chair or the commission; and
 - (d) any other information that a majority of the commission or the chair directs.
- (3) Except for a finding prepared by the commission that is classified as public under Section 63A-14-605, any recording, testimony, evidence, or other record of a meeting authorized by this chapter is a private record under Section 63G-2-302 and may not be disclosed.

Enacted by Chapter 426, 2013 General Session

63A-14-604 Process for making a decision -- Deliberations.

- (1)
- (a) After each party presents a closing argument, the commission shall, at the direction of the chair, begin private deliberations.
 - (b) The deliberations described in Subsection (1)(a) may be held:
 - (i) immediately after conclusion of the closing arguments; or
 - (ii) 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 shall conduct the deliberations.
 - (b) 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 of the commission.
- (3)
- (a) During deliberations, for each allegation reviewed by the commission, each member shall determine and cast a vote stating whether the allegation is:
 - (i) proved, by clear and convincing evidence, to have merit; or
 - (ii) not proved to have merit.

- (b) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.
- (4)
 - (a) An allegation is determined to not have merit unless four of the five members of the commission vote that the allegation has merit.
 - (b) An allegation that is not determined to have merit is dismissed.
- (5)
 - (a) Before issuing an order or a finding under Section 63A-14-605, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.
 - (b) A motion to reconsider a vote may only be made by a member of the commission who voted in favor of the vote to be reconsidered.
- (6) At the conclusion of deliberations, the commission shall prepare an order or a finding in accordance with Section 63A-14-605.
- (7) The commission may not find that an allegation has merit if the allegation is based on an act by an individual under the authority of the executive branch elected official, unless the commission finds, by clear and convincing evidence, that the executive branch elected official:
 - (a) encouraged, condoned, or ordered the act;
 - (b)
 - (i) before the individual engaged in the act, knew or should have known that the individual was likely to engage in the act; and
 - (ii) failed to take appropriate action to prevent the act;
 - (c)
 - (i) while the individual engaged in the act, knew or should have known that the individual was engaging in the act; and
 - (ii) failed to take appropriate action to stop the act; or
 - (d)
 - (i) after the individual engaged in the act, knew or should have known that the individual engaged in the act; and
 - (ii) failed to take appropriate action in response to the act.
- (8) The commission may not find that an allegation has merit if the allegation is based on the failure of an individual under the authority of the executive branch elected official to act, unless the commission finds, by clear and convincing evidence, that the executive branch elected official:
 - (a) encouraged, condoned, or ordered the failure to act;
 - (b)
 - (i) before the individual failed to act, knew or should have known that the individual was likely to fail to act; and
 - (ii) failed to take appropriate action to prevent the failure to act;
 - (c)
 - (i) while the individual was failing to act, knew or should have known that the individual was failing to act; and
 - (ii) failed to take appropriate action to prevent the failure to act; or
 - (d)
 - (i) after the individual failed to act, knew or should have known that the individual failed to act; and
 - (ii) failed to take appropriate action in response to the failure to act.

Amended by Chapter 461, 2018 General Session

63A-14-605 Order or finding of merit by the commission.

- (1) If the commission determines that all allegations in the complaint are without merit, the commission shall:
 - (a) issue and enter into the record an order that the complaint is dismissed because no allegations in the complaint were found to have merit;
 - (b) 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;
 - (c) provide notice of the determination, in a manner determined by a majority vote of the commission, to:
 - (i) the respondent; and
 - (ii) the first complainant named on the complaint; and
 - (d) provide notice to each person named in Subsection (1)(c) that, under the provisions of Section 63A-14-403 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.
- (2) If the commission determines that one or more of the allegations in the complaint have merit, the commission shall:
 - (a) if one or more allegations were not found to have merit, enter into the record an order dismissing the allegations that were found not to have merit;
 - (b) within 30 business days after the day on which the commission makes the determination, prepare a written finding, for submission to the Legislature, that:
 - (i) lists the name of each complainant;
 - (ii) lists the name of the respondent;
 - (iii) states the date of the finding;
 - (iv) for each allegation that was found to have merit:
 - (A) describes the high crime, misdemeanor, or malfeasance in office allegedly committed by the respondent;
 - (B) states the number and names of commission members who voted that the allegation has merit and the number and names of commission members who voted that the allegation does not have merit;
 - (C) subject to Subsection (3), at the option of those members voting that the allegation has merit, includes a statement by one or all of those members stating the reasons that the members voted that the allegation has merit; and
 - (D) subject to Subsection (3), at the option of those members who voted that the allegation does not have merit, includes a statement by one or all of those members stating the reasons that the members voted that the allegation does not have merit;
 - (v) contains any general statement that is adopted for inclusion in the finding by a majority of the members of the commission;
 - (vi) describes the allegations found by the commission to have merit;
 - (vii) states the name of each member of the commission; and
 - (viii) is signed by each member of the commission;
- (c) direct staff to publicly release the finding, the complaint, and the response, subject to the redaction of any allegations that were dismissed; and
- (d) classify all other recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this chapter as private records under Section 63G-2-302.

- (3) A statement described in Subsection (2)(b)(iv)(C) or (D) may not cite specific evidence, specific testimony, or specific witnesses.
- (4) The commission shall ensure that, within five business days after the day on which the commission finishes preparing the written finding described in Subsection (2)(b):
 - (a) the complaint and the response are redacted to remove references to the allegations found by the commission to be without merit;
 - (b) a copy of the finding is made publicly available and provided to:
 - (i) the respondent;
 - (ii) the first complainant named on the complaint;
 - (iii) the speaker of the House of Representatives;
 - (iv) the president of the Senate; and
 - (v) the governor; and
 - (c) the following documents are made publicly available and are provided to the speaker of the House of Representatives and the president of the Senate:
 - (i) a cover letter generally describing the allegations in the edited complaint that are found by the commission to have merit;
 - (ii) a copy of the edited complaint;
 - (iii) a copy of the edited response; and
 - (iv) a copy of the finding.

Enacted by Chapter 426, 2013 General Session

63A-14-606 Comments on complaint under review by Legislature.

- (1) Except as provided in Subsection (2), while a complaint is under review by the Legislature, a member of the commission may not comment publicly or privately about the commission's decision, reasoning, or other matters relating to the ethics complaint, but may provide or refer a questioner to the commission's written finding.
- (2) Subsection (1) does not prohibit statements made:
 - (a) to an individual authorized by the Legislature to conduct an investigation for the purpose of assisting the Legislature in conducting proceedings related to impeachment or removal from office;
 - (b) to a legislative committee, the House, or the Senate in relation to proceedings for impeachment or trial of impeachment; or
 - (c) as part of a criminal investigation.

Enacted by Chapter 426, 2013 General Session

Part 7
General Provisions Governing Hearings on Ethics Complaints

63A-14-701 Title.

This part is known as "General Provisions Governing Hearings on Ethics Complaints."

Enacted by Chapter 426, 2013 General Session

63A-14-702 General procedures for conducting a hearing on an ethics complaint.

- (1) In conducting a hearing on a complaint, 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) procedural motions, adoption of evidentiary standards, or other general matters;
 - (c) complainants' opening argument, to be presented by a complainant or complainants' counsel;
 - (d) complainants' presentation of evidence and witnesses in support of allegations in the complaint;
 - (e) consideration of motions to dismiss the complaint or motions for a directed verdict, as applicable;
 - (f) respondent's opening argument, to be presented by the respondent or respondent's counsel;
 - (g) respondent's presentation of evidence and witnesses refuting the allegations in the complaint;
 - (h) presentation of rebuttal evidence and witnesses by the complainants, at the discretion of the chair;
 - (i) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;
 - (j) complainants' closing argument, to be presented by a complainant or complainants' counsel;
 - (k) respondent's closing argument, to be presented by the respondent or respondent's counsel;
 - (l) deliberations by the commission; and
 - (m) adoption of the commission's findings.
- (2) The commission may, in extraordinary circumstances, and consistent with due process considerations, vary the order described in Subsection (1) by majority vote and by providing notice to the parties.
- (3) In addition to witnesses or evidence subpoenaed at the request of a complainant or a respondent, the chair or the commission may, consistent with due process considerations, subpoena and schedule the examination of witnesses or evidence that the chair or the commission determines will assist the commission in making a determination on the merits of the complaint.

Enacted by Chapter 426, 2013 General Session

63A-14-703 Chair as presiding judge.

- (1) Except as expressly provided otherwise in this chapter, the chair is vested with the power to direct the commission during meetings authorized by this chapter.
- (2) Except as otherwise provided in this chapter, the commission may overrule a decision of the chair if:
 - (a) a member of the commission:
 - (i) states that the member desires to overrule the decision of the chair; and
 - (ii) states the basis for the member's objection to the decision of the chair; and
 - (b) a majority of the commission votes to overrule the decision of the chair.
- (3) The chair may set time limitations on any part of a meeting authorized by this chapter.

Enacted by Chapter 426, 2013 General Session

63A-14-704 Subpoena powers.

- (1) For all proceedings authorized by this chapter, the commission may issue a subpoena to:
 - (a) require the attendance of a witness; or
 - (b) direct the production of evidence.
- (2) The commission shall issue a subpoena under this section:

- (a) as required under Section 63A-14-706;
- (b) at the direction of the chair, if the chair determines that the testimony or evidence is relevant to the review of a complaint; or
- (c) upon a vote of a majority of the commission members.

Enacted by Chapter 426, 2013 General Session

63A-14-705 Contempt of the commission -- Enforcement.

- (1) Except as provided in Subsection (9), the following actions constitute contempt of the commission:
 - (a) disobedience to a direction of the commission or the chair in relation to actions and proceedings under this chapter;
 - (b) failure to answer a question during a commission meeting when directed to answer a question by:
 - (i) the chair, unless the direction is overridden by the commission under Section 63A-14-703; or
 - (ii) a majority of the members of the commission;
 - (c) failure to comply with a subpoena or other order issued under the authority of this chapter;
 - (d) violation of the provisions of Subsection 63A-14-403(1);
 - (e) violation of the communication provisions described in Section 63A-14-707;
 - (f) violation of a request to comply with a provision of this chapter by the chair or a majority of the members of the commission; or
 - (g) any other ground that is specified in statute or recognized at common law.
- (2) The following persons may authorize an enforcement action against a person in contempt of the commission under the provisions of this chapter:
 - (a) the chair, subject to the provisions of Section 63A-14-703; or
 - (b) a majority of the members of the commission;
- (3) If a person that is the subject of a subpoena issued under this chapter fails to comply with the subpoena, refuses to testify to a matter upon which the person may be lawfully interrogated, or is otherwise in contempt of the commission, the commission or the chair may:
 - (a) file in district court a motion for an order to compel obedience to a subpoena or a lawful order of the commission or the chair;
 - (b) file in 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 for contempt of the commission; or
 - (c) pursue other remedies against a person in contempt of the commission.
- (4) The court shall expedite the hearing and decision on a motion described in Subsection (3).
- (5) A court may:
 - (a) order the person named in the subpoena, or subject to an order, to comply with the subpoena or order; or
 - (b) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena, subject to the order, or otherwise held in contempt of the commission.
- (6)
 - (a) If a subpoena issued under this chapter requires the production of accounts, books, papers, documents, or other tangible items, the person 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 or the chair may respond to a motion to quash or modify a subpoena by taking an action described in Subsection (3).
- (c) If the court finds that a subpoena requiring the production of accounts, books, papers, documents, or other tangible items is unreasonable or oppressive, the court may quash or modify the subpoena.
- (7) Nothing in this section prevents the commission or the chair from seeking an extraordinary writ to remedy contempt of the commission.
- (8) A party aggrieved by a decision of a court under this section may appeal that action directly to the Utah Supreme Court.
- (9) An individual is not in contempt of the commission if the person's disobedience or failure to comply with a provision of Subsection (1) is due to a valid invocation of the person's Fifth Amendment right against self-incrimination.

Enacted by Chapter 426, 2013 General Session

63A-14-706 Testimony and examination of witnesses -- Oath -- Procedure -- Contempt.

- (1) The chair shall ensure that each witness listed in a complaint and response is subpoenaed for appearance at the hearing unless:
 - (a) the witness is unable to be properly identified or located; or
 - (b) service is otherwise determined to be impracticable.
- (2) The chair shall determine the scheduling and order of witnesses and presentation of evidence.
- (3) The commission may, by majority vote:
 - (a) overrule the chair's decision not to subpoena a witness under Subsection (1);
 - (b) modify the chair's determination on the scheduling and order of witnesses, and the presentation of evidence, under Subsection (2);
 - (c) decline to hear or call a witness who is requested by a complainant or a respondent;
 - (d) decline to review or consider evidence submitted in relation to an ethics complaint; or
 - (e) request and subpoena witnesses or evidence according to the procedures of Section 63A-14-704.
- (4)
 - (a) Each witness shall testify under oath.
 - (b) The chair or the chair's designee shall administer the oath to each witness.
- (5) After the oath is administered to a witness, the chair shall direct testimony as follows:
 - (a) allow the party that called the witness, or that party's counsel, to question the witness;
 - (b) allow the opposing party, or the opposing 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.
- (6)
 - (a) If a 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 a 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 in accordance with the provisions of Section 63A-14-705.
- (7)

- (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 brings the material voluntarily or was required to bring the material by subpoena.
- (b) If a witness declines to provide evidence in response to a subpoena, the witness may be held in contempt under Section 63A-14-705.

Enacted by Chapter 426, 2013 General Session

63A-14-707 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, engage in, 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 the meetings or deliberations with another member of, or staff to, the commission, if the member's communication does not materially compromise the member's responsibility to independently review and make decisions in relation to the complaint.

Enacted by Chapter 426, 2013 General Session

63A-14-708 Attorney fees and costs.

- (1) A complainant:
 - (a) may, but is not required to, retain legal representation during the complaint review process; and
 - (b) is responsible for payment of the complainant's attorney fees and costs incurred.
- (2) A respondent:
 - (a) may, but is not required to, retain legal representation during the complaint review process; and
 - (b) except as provided in Subsection (3), is responsible for payment of the respondent's attorney fees and costs incurred.
- (3)
 - (a) If the commission determines that all allegations in the complaint are without merit, the respondent may file a request with the Executive Appropriations Committee of the Legislature for the payment of reasonable attorney fees and costs for legal representation during the complaint review process.
 - (b) If the Executive Appropriations Committee of the Legislature receives a request described in Subsection (3)(a), the Legislature may appropriate money to reimburse the respondent for some or all of the reasonable attorney fees and costs described in Subsection (3)(a).
- (4) An attorney who participates in a hearing before the commission shall comply with:
 - (a) the Rules of Professional Conduct established by the Utah Supreme Court;
 - (b) the procedures and requirements of this chapter; and
 - (c) the directions of the chair and the commission.

(5) A violation of Subsection (4) may constitute:

(a) contempt of the commission under Section 63A-14-705; or

(b) a violation of the Rules of Professional Conduct, subject to enforcement by the Utah State Bar.

Amended by Chapter 432, 2019 General Session