

Part 3

General Provisions Governing Hearings on Ethics Complaint

JR6-2-301 General procedures for conducting a hearing on an ethics complaint.

- (1) In conducting a hearing on a complaint, the Independent Legislative Ethics Commission or the Senate or House Ethics Committee 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) complainants' opening argument, to be presented by a complainant or complainants' counsel;
 - (c) complainants' presentation of evidence and witnesses in support of allegations in the complaint;
 - (d) consideration of motions to dismiss the complaint or motions for a directed verdict, 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 complainants, at the discretion of the chair;
 - (h) presentation of rebuttal evidence and witnesses by the respondent, at the discretion of the chair;
 - (i) complainants' closing argument, to be presented by a complainant or complainants' counsel;
 - (j) respondent's closing argument, to be presented by the respondent or respondent's counsel;
 - (k) deliberations by the commission or committee; and
 - (l) adoption of the commission's or committee's findings.
- (2) The commission or an ethics committee 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 committee under JR6-2-303 at the chair's discretion.

JR6-2-302 Chair as presiding judge.

- (1) Except as expressly provided otherwise in this title, the chair of the Independent Legislative Ethics Commission and the chair of the Senate or House Ethics Committee is vested with the power to direct the commission or committee during meetings authorized by this title.
- (2) Unless expressly prohibited from doing so under this title, the commission or committee 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) This motion is nondebatable.
 - (c) The chair shall direct a roll call vote to determine if the commission or committee supports the decision of the chair.
 - (d) A majority vote of the commission or committee 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 title.

JR6-2-303 Subpoena powers.

- (1) For all proceedings authorized by this title, the Independent Legislative Ethics Commission or the Senate or House Ethics Committee 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 under this rule:
 - (a) as required under JR6-2-305;
 - (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 Chapter 4, Part 2, Review of Ethics Complaint by the Independent Legislative Ethics Commission; or
 - (c) upon a vote of a majority of the commission members.
- (3) An ethics committee shall issue a subpoena under this rule:
 - (a) as required under JR6-2-305;
 - (b) at the direction of the committee chair or vice chair, if the chair or vice chair determines that the testimony or evidence is relevant to review of a complaint under Chapter 4, Part 3, Review of Ethics Complaint by Ethics Committee; or
 - (c) upon a vote of a majority of the committee members.
- (4) The director of the Office of Legislative Research and General Counsel shall issue a subpoena on behalf of an ethics committee when requested to do so by one of the persons or entities authorized to do so under Subsection (3).

JR6-2-304 Contempt of the Legislature.

- (1)
 - (a) The following actions constitute contempt of the Legislature in relation to actions and proceedings under this title:
 - (i) disobedience to a direction of the commission chair;
 - (ii) disobedience to a direction of an ethics committee chair;
 - (iii) failure 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 under JR6-2-302;
 - (B) an ethics committee chair, unless the direction is overridden by the committee under JR6-2-302; or
 - (C) a majority of the commission or committee;
 - (iv) failure to comply with a subpoena or other order issued under authority of this title;
 - (v) violation of privacy provisions established by JR6-3-102;
 - (vi) violation of the communication provisions established by JR6-2-306;
 - (vii) violation of a request to comply with a provision of this title by a chair or a majority of the members of the commission or committee; or
 - (viii) any other ground that is specified in statute or recognized at 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 Legislature under the provisions of this title:

- (i) the commission chair, subject to the provisions of JR6-2-302;
 - (ii) members of the commission, by means of a majority vote;
 - (iii) an ethics committee chair, subject to the provisions of JR6-2-302; or
 - (iv) members of an ethics committee, by means of a majority vote.
- (b) In initiating and pursuing an action against an individual for contempt of the Legislature, the plaintiff shall comply with the procedures and requirements of Utah Code Section 36-14-5.

JR6-2-305 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 or committee 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 JR6-2-303.
- (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 or committee members the opportunity to question the witness; and
 - (e) as appropriate, allow further examination of the witness by the commission or committee, 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 or committee determines that the witness is required to answer the question, the witness may be held in contempt as provided in JR6-2-304.
- (5)
- (a) The chair or a majority of the members of the commission or committee 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 JR6-2-304.

JR6-2-306 Communications of commission and committee members.

- (1) As used in this section, "third party" means:
 - (a) for a member of the Independent Legislative Ethics Commission, a person who is not a member of the commission or staff to the commission; or
 - (b) for a member of an ethics committee, a person who is not a member of the committee or staff to the committee.
- (2) While a complaint is under review by the commission or an ethics committee, a member of that commission or committee 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 title; or
 - (b) the communication is made by the third party, in writing, simultaneously to:
 - (i) all members of the commission or committee; and
 - (ii) a staff member of the commission or committee.
- (3)
 - (a) While the commission is reviewing a complaint under this title, a commission member may communicate outside of the meetings, hearing, or deliberations 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.
 - (b) While a committee is reviewing a complaint under this title, a committee member may communicate outside of the meeting, hearing, or deliberations with another member of, or staff to, the committee, 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.
- (4) While a complaint is under review by an ethics committee, 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 recommendation.

JR6-2-307 Attorney fees and costs.

- (1) A person filing a complaint under this title:
 - (a) may, but is not required to, retain legal representation during the complaint review process; and
 - (b) is responsible for payment of complainants' attorney fees and costs incurred.
- (2)
 - (a) A legislator against whom a complaint is filed under this title:
 - (i) may, but is not required to, retain legal representation during the complaint review process; and
 - (ii) is responsible for that legislator's own attorney fees and costs involved, except as provided in Subsection (2)(b).
 - (b) The Senate, for a senator, or the House of Representatives, for a representative, shall pay the reasonable attorney fees and costs incurred by a legislator against whom a complaint is filed under this title if:
 - (i) the commission declines to recommend that any allegation in the complaint be reviewed by an ethics committee; or
 - (ii) an ethics committee determines that none of the allegations in the complaint that were recommended for review by the commission have been proved.

- (3)
- (a) An attorney participating in a hearing before the commission or an ethics committee shall comply with:
 - (i) the rules of professional conduct established by the Utah Supreme Court;
 - (ii) the procedures and requirements of this title; and
 - (iii) the directions of the chairs, commission, and ethics committees.
 - (b) Violations of Subsection (3)(a) may constitute:
 - (i) contempt of the Legislature under JR6-2-304; or
 - (ii) a violation of the rules of professional conduct subject to enforcement by the Utah State Bar.