

## Chapter 4 Procedures for Reviewing Ethics Complaints

### Part 1 Initial Review of Ethics Complaint and Response

#### **JR6-4-101 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 Independent Legislative Ethics Commission, in consultation with the chair of the commission, shall examine the complaint to determine if it is in compliance with JR6-2-201 or JR6-3-101.
- (2)
  - (a) If the chair determines that the complaint does not comply with JR6-2-201 or JR6-3-101, 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 legislative rules; and
    - (ii) notify the president of the Senate and the chair and vice-chair of the Senate Ethics Committee, if the legislator named in the complaint is a senator, or the speaker of the House of Representatives and the chair and vice-chair of the House Ethics Committee, if the legislator named in the complaint is a representative, that:
      - (A) a complaint was filed against a member of the Senate or House, respectively, but was returned for non-compliance with legislative rule; 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 JR6-2-104.
  - (b) If a complaint is returned for non-compliance with the requirements of this title, the complainants may file another complaint if the new complaint independently meets the requirements of JR6-3-101, including any requirements for timely filing.
- (3) If the chair determines that the complaint complies with the requirements of this rule, the chair shall:
  - (a) accept the complaint;
  - (b) notify the president of the Senate and the chair and vice-chair of the Senate Ethics Committee, if the legislator named in the complaint is a senator, or the speaker of the House of Representatives and the chair and vice-chair of the House Ethics Committee, if the legislator named in the complaint is a representative:
    - (i) that a complaint has been filed against a member of the Senate or House, respectively;
    - (ii) of the identity of the legislator who is the subject of the complaint and the identity of the person or persons filing the complaint;
    - (iii) of the nature of the allegations contained in the complaint; and
    - (iv) that the fact that a complaint was filed, the nature of the allegations raised in the complaint, and the identity of the legislator and the complainants shall be kept confidential until the commission publicly discloses the existence of the complaint via:
      - (A) a recommendation that an allegation in the complaint be heard by a legislative ethics committee; or
      - (B) submission of the commission's annual summary data report as required by JR6-2-104;

- (c) notify each member of the Independent Legislative Ethics Commission that the complaint has been filed and accepted and that the existence of and contents of the complaint and the identities of the parties shall be kept confidential; and
- (d) promptly forward the complaint to the legislator who is the subject of the ethics complaint via personal delivery or a delivery method that provides verification of receipt, together with:
  - (i) notice that the existence of and contents of the complaint, and the identities of the parties, are confidential and should not be publicly disclosed;
  - (ii) a copy of the applicable legislative rules; and
  - (iii) notice of the legislator's deadline for filing a response to the complaint.

**JR6-4-102 Meeting of the Independent Legislative Ethics Commission for review of complaint -- Procedures.**

By no later than 10 calendar days after the day on which the complaint is accepted under JR6-4-101, the commission chair shall:

- (1) schedule a commission meeting on a date no later than 60 calendar days after the date on which the committee chair and vice chair accept the complaint;
- (2) place the complaint on the agenda for consideration at that meeting;
- (3) provide notice of the date, time, and location of the meeting to:
  - (a) the members of the commission;
  - (b) the first complainant named in the complaint; and
  - (c) the respondent; and
- (4) provide a copy of the complaint to each member of the commission.

**JR6-4-103 Response to ethics complaint -- Filing -- Form.**

- (1) The legislator that is the subject of the complaint may file a response to the complaint no later than 30 days after the day on which the legislator receives delivery of the complaint.
- (2) The respondent shall file the response with the commission and 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 to be provided by one or more affidavits, each of which shall comply with the following format:
      - (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;
    - (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 following format:
        - (I) the name, address, and telephone number of the signer;

- (II) a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;
  - (III) the facts and circumstances testified to by the signer;
  - (IV) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and
  - (V) the signature of the signer;
- (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.

## **Part 2**

### **Review of Ethics Complaint by the Independent Legislative Ethics Commission**

#### **JR6-4-201 Review of ethics complaint by the Independent Legislative Ethics Commission.**

- (1) The scope of the Independent Legislative Ethics Commission's review is limited to the alleged violations stated in the complaint.
- (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 it pleads facts or circumstances against a legislator that have already been reviewed by the commission or an ethics committee as provided in JR6-2-201.
  - (b) Notwithstanding JR6-4-102, 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 title.

- (b) The chair shall make rulings on admissibility of evidence consistent with the provisions of JR6-2-302.
- (4)
  - (a) All meetings and hearings authorized in this part are closed to the public.
  - (b) 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) 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.
  - (c) The complainants, respondent, and their respective counsel 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 JR6-2-302; or
    - (ii) a majority vote of the commission.
  - (d) 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, 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.

**JR6-4-202 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 any 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) If the commission elects, by a majority vote, to release the commission's recommendation in a public meeting, the meeting may, upon a majority vote of the commission, be opened to cameras or other recording devices.
- (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 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 the recommendation prepared by the commission, which shall be either a private or public record as determined in JR6-4-204, any recording, testimony, evidence, or other record

of a meeting authorized by this part is a private record under Utah Code Section 63G-2-302 and may not be disclosed.

**JR6-4-203 Process for making a decision -- Deliberations.**

- (1) After each party has presented a closing argument, the commission shall, at the direction of the chair, begin its private 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 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) proven by a preponderance of the evidence; or
    - (ii) not proven.
  - (b) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.
- (4)
  - (a) A count is not considered to be proven unless four of the five members of the commission vote that the count is proven.
  - (b) A count that is not considered to be proven is dismissed.
  - (c)
    - (i) Before the commission issues its recommendation under JR6-4-204, 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 JR6-4-204.

**JR6-4-204 Recommendations of commission.**

- (1) If the commission determines that no allegations in the complaint were proved, 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 been proved;
  - (b) classify all recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings authorized by this part as private records under Utah Code 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 JR6-3-102 and other provisions of this title, a person who discloses the findings of the

- commission in violation of any provision of this chapter is in contempt of the Legislature and is subject to penalties for contempt.
- (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;
  - (b) prepare a written recommendation to the Senate Ethics Committee, if the respondent is a senator, or to the House Ethics Committee, if the respondent is a representative, 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 code of conduct 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, provided that the statement does not cite specific evidence, specific testimony, or specific witnesses; 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, provided that the statement does not cite specific evidence, specific testimony, or specific witnesses;
    - (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 ethics committee for review;
    - (vii) states the name of each member of the commission; and
    - (viii) is signed by each commission member;
  - (c) direct staff to publicly release the recommendation, the complaint, and the response, subject to the redaction of any allegations that were dismissed by the commission; and
  - (d) classify all other recordings, testimony, evidence, orders, findings, and other records directly relating to the meetings and hearings authorized by this part as private records under Utah Code Section 63G-2-302.
- (3) The commission shall ensure that a copy of the recommendation is made publicly available and promptly provided to:
- (a) the respondent, together with notice that the respondent may amend the respondent's witness list as provided in JR6-4-301;
  - (b) the first complainant named on the complaint, together with notice that the complainants may amend their witness list as provided in JR6-4-301; and
  - (c) the chair and vice chair of the Senate Ethics Committee, if the respondent is a senator, or the chair and vice chair of the House Ethics Committee, if the respondent is a representative.
- (4) The commission shall ensure that, within five business days of the date of issuance of the recommendation:
- (a) the complaint and the response are redacted to remove references to those allegations found not to have been proven by the commission, if one or more allegations were found not to have been proven; and

- (b) the following documents are made publicly available and are provided to the chair and vice chair of the Senate Ethics Committee, if the respondent is a senator, or the chair and vice chair of the House Ethics Committee, if the respondent is a representative:
  - (i) a cover letter referring the allegations contained in the edited complaint to the ethics committee for the committee's review;
  - (ii) a copy of the edited complaint;
  - (iii) a copy of the edited response; and
  - (iv) a copy of the recommendation.

### **Part 3**

#### **Review of Ethics Complaint by Ethics Committee**

##### **JR6-4-301 Receipt of recommendation from Independent Legislative Ethics Commission -- Scheduling of Ethics Committee hearing -- Amendments.**

- (1) Within five calendar days of the date that the chair of the Senate Ethics or House Ethics Committee receives the commission's recommendation as provided under JR6-4-204, the chair and vice chair of the committee shall:
  - (a) schedule a committee hearing to review the complaint on a date no later than 30 days after the day on which the committee receives the recommendation; and
  - (b) place the ethics complaint on the agenda for consideration at that hearing.
- (2)
  - (a) The complainants may not amend the complaint.
  - (b) The respondent may not amend the response.
  - (c) The complainant and respondent may file with the committee, within 10 days of the date of issuance of the commission's recommendations, an amended list of witnesses and evidence that they wish to have subpoenaed by the committee.

##### **JR6-4-302 Review of ethics complaint by Ethics Committee.**

- (1) The scope of the committee's review is limited to the alleged violations found to have been proven by the commission, as pled in the edited complaint and the edited response provided by the commission.
- (2)
  - (a) Before holding the hearing for review of the complaint as scheduled in JR6-4-301, the chair may schedule a separate meeting of the committee to:
    - (i) hear motions or arguments from the parties, including hearing motions or arguments relating to dismissal of a complaint, admission of evidence, or procedures; or
    - (ii) hold a vote of the committee, with or without the attendance of the parties, on procedural or committee business matters relating to a complaint.
  - (b) Notwithstanding JR6-4-301, the committee may, by a majority vote, change the date of the hearing scheduled in JR6-4-301 in order to accommodate:
    - (i) a meeting authorized under Subsection (2)(a); or
    - (ii) necessary scheduling requirements.
- (3)

- (a) The committee shall comply with the Utah Rules of Evidence, except where the committee determines, by majority vote, that a rule is not compatible with the requirements of this title.
  - (b) The chair shall make rulings on admissibility of evidence consistent with the provisions of JR6-4-202.
- (4)
- (a) A meeting or hearing held under this Chapter 4, Part 3, Review of Ethics Complaint by Ethics Committee:
    - (i) is subject to the requirements of Utah Code Title 52, Chapter 4, Open and Public Meetings Act; and
    - (ii) may be closed by a majority vote of the committee, held in the public portion of the meeting, for:
      - (A) any purpose permitted under Utah Code Section 52-4-205;
      - (B) the purpose of discussing legal, evidentiary, or procedural matters with the committee or staff; or
      - (C) deliberations, as provided in JR6-4-304.
  - (b) Only committee members, committee staff, and necessary security personnel may attend a closed meeting.
- (5) If a majority of the committee determines that a continuance of a meeting or hearing is necessary to obtain further evidence and testimony, to accommodate administrative needs, or to accommodate the attendance of committee members, witnesses, or a party, the chair or committee shall:
- (a) adjourn and continue the hearing or meeting to a future date and time; and
  - (b) establish that future date and time by majority vote.

**JR6-4-303 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 any meeting authorized by this part.
  - (b)
    - (i) The committee shall keep an audio or video recording of all portions of each meeting authorized by this part.
    - (ii) If the committee elects, by a majority vote, to release the committee's finding and order in a public meeting, that meeting may, upon a majority vote of the committee, be opened to cameras or other recording devices.
- (2) In addition to the recording required in Subsection (1), the chair shall ensure that a record of each hearing or meeting 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;
  - (c) copies of any documents, written orders, or written rulings issued by the chair or the committee; and
  - (d) any other information that a majority of the committee or the chair directs.
- (3)
- (a) Except as provided in Subsection (3)(b), all recordings, testimony, evidence, and other records of meetings and hearings authorized by this part are public records.
  - (b) All recordings, minutes, and other records produced during a closed meeting authorized under this part are classified as private records under Utah Code Section 63G-2-302.

**JR6-4-304 Process for making a decision -- Deliberations -- Voting in public meeting.**

- (1) After each party has presented a closing argument, the committee shall deliberate in a closed meeting:
  - (a) immediately after conclusion of the closing arguments; or
  - (b) at a future meeting of the committee, on a date and time determined by a majority of the members of the committee.
- (2) The chair of the committee shall conduct the deliberations.
- (3) During the deliberations, committee members may:
  - (a) discuss evidence and testimony;
  - (b) discuss and debate whether an allegation was proven or not proven;
  - (c) discuss and debate what actions should be taken or not taken against the respondent in relation to each allegation;
  - (d) discuss and debate any other matter related to the allegations in the complaint that is before the committee; and
  - (e) conduct, at the call of the chair or a majority of the members of the committee, a non-binding straw poll on any matter related to the complaint.
- (4)
  - (a) Notwithstanding JR6-2-306, and except as provided in Subsection (4)(b), from the time of completion of closing arguments through the time that the written finding and order are publicly issued, a committee member may not discuss any of the following matters with any other person outside of official committee deliberations:
    - (i) the substance or specifics of the allegations, testimony, or evidence of the complaint under review;
    - (ii) a committee member's intended vote;
    - (iii) a committee member's recommendation for actions to be taken or not taken against the respondent in relation to the complaint; or
    - (iv) any other non-administrative matter related to the complaint.
  - (b) During deliberations, committee members may privately consult with staff for the purpose of discussing legal, evidentiary, or procedural matters.
- (5) Deliberations shall continue until they are concluded or continued to another date and time:
  - (a) at the direction of the chair, subject to JR6-2-302; or
  - (b) upon a motion approved by a majority of the committee members.

**JR6-4-305 Vote on allegations and recommendations -- Public meeting -- Standards -- Reconsideration.**

- (1) After conclusion of the deliberations, the committee shall meet in public and, for each allegation reviewed by the committee, vote on whether the allegation is:
  - (a) proven by clear and convincing evidence; or
  - (b) not proven.
- (2) For any count that has been voted as proven, the committee shall, by a motion approved by a majority of the members of the committee, recommend one or more of the following actions:
  - (a) censure;
  - (b) expulsion;
  - (c) denial or limitation of any right, power, or privilege of the respondent, if, under the Utah Constitution, the Senate or House may impose that denial or limitation, and if the violation bears upon the exercise or holding of any right, power, or privilege; or

- (d) any other action that the committee determines is appropriate.
- (3) Votes shall be taken by verbal roll call and each member's vote shall be recorded.
- (4) A count is not considered to be proven unless a majority of the committee votes that the count is proven.
- (5) The committee, by a motion for reconsideration that is approved by a majority of the committee, may reconsider and hold a new vote provided that:
  - (a) a motion to reconsider a vote on whether an allegation was proven or not proven may only be made by a member of the committee who voted that the allegation was not proven; and
  - (b) a motion to reconsider a vote recommending an action against the respondent may only be made by a member of the committee who voted against the recommendation.
- (6) A count that is not voted as "proven" by a majority of the members of the committee is dismissed.
- (7) The committee may close the meeting for the purposes of further deliberations, subject to the requirements of JR6-4-304:
  - (a) at the direction of the chair, subject to override by the committee as provided in JR6-2-302; or
  - (b) upon a motion approved by a majority of the members of the committee.
- (8) After a final vote has been cast on each allegation and recommendation, the committee shall prepare the finding and order as provided in JR6-4-306.

**JR6-4-306 Finding and order.**

- (1)
  - (a) If the committee determines that no allegations in the complaint were proved, the committee shall prepare a finding and order that:
    - (i) lists the name of each complainant;
    - (ii) lists the name of the respondent;
    - (iii) states the date of the finding and order;
    - (iv) for each allegation contained in the complaint:
      - (A) provides a reference to the code of conduct or criminal provision alleged to have been violated; and
      - (B) states the number and names of committee members voting that the allegation was proved and the number and names of committee members voting that the allegation was not proved;
    - (v) order that the complaint is dismissed because no allegations in the complaint were found to have been proved;
    - (vi) provide any general statement that is adopted for inclusion in the recommendation by a majority of the committee members; and
    - (vii) states the name of each committee member.
  - (b) Each committee member shall sign the finding and order.
- (2)
  - (a) If the committee determines that one or more allegations in the complaint were proved, the committee shall issue a finding and order that:
    - (i) lists the name of each complainant;
    - (ii) lists the name of the respondent;
    - (iii) states the date of the finding and order;
    - (iv) for each allegation contained in the complaint:
      - (A) provides a reference to the code of conduct or criminal provision alleged to have been violated;

- (B) states the number and names of committee members voting that the allegation was proved and the number and names of committee members voting that the allegation was not proved;
- (C) if the allegation was not found to have been proven, orders that the allegation be dismissed; and
- (D) if the allegation was found to have been proven, contains:
  - (I) a description of any actions that the committee recommended be taken;
  - (II) the number and names of committee members voting in favor of each recommendation and the number and names of committee members voting against each recommendation;
  - (III) at the option of those members voting in favor of a recommendation, a statement by one or all of those members stating the reasons for making the recommendation; and
  - (IV) at the option of those members against a recommendation, a statement by one or all of those members stating the reasons for opposing the recommendation;
- (v) contains any general statement that is adopted for inclusion in the finding and order by a majority of the committee members;
- (vi) contains a statement directing that the finding be delivered to:
  - (A) for the Senate Ethics Committee, to the president of the Senate, the Senate majority leader, and the Senate minority leader; or
  - (B) for the House Ethics Committee, to the speaker of the House of Representatives, the House majority leader, and the House minority leader; and
- (vii) states the name of each committee member.
- (b) Each committee member shall sign the finding and order.
- (3) A copy of the finding and order shall be made publicly available.
- (4) A written copy of the finding and order shall be provided to:
  - (a) the respondent;
  - (b) the first complainant named on the complaint; and
  - (c) any individuals required to receive a copy as stated in the finding and order.