

1 **JOINT RULES RESOLUTION ON ETHICS COMMISSION**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Patrice M. Arent**

5 Senate Sponsor: Lyle W. Hillyard

7 **LONG TITLE**

8 **General Description:**

9 This rules resolution modifies provisions in the legislative rules governing ethics
10 complaints.

11 **Highlighted Provisions:**

12 This resolution:

- 13 ▶ changes expenditure thresholds for the Independent Legislative Ethics
14 Commission's hiring of contract staff;
- 15 ▶ permits all individuals, rather than only Utah registered voters, to file an ethics
16 complaint with certain restrictions;
- 17 ▶ limits complaints filed immediately before an election to allegations directly related
18 to a conviction of, or admission to, a crime of moral turpitude; and
- 19 ▶ modifies provisions related to unauthorized disclosures of complaints pending
20 before the Independent Legislative Ethics Commission.

21 **Special Clauses:**

22 None

23 **Legislative Rules Affected:**

24 AMENDS:

25 **JR6-2-104**

26 **JR6-3-101**

27 **JR6-3-102**



28 **JR6-4-101**



30 *Be it resolved by the Legislature of the state of Utah:*

31 Section 1. **JR6-2-104** is amended to read:

32 **JR6-2-104. Independent Legislative Ethics Commission -- Meetings -- Staff.**

33 (1) The Independent Legislative Ethics Commission shall meet for the purpose of
34 reviewing an ethics complaint when:

35 (a) except otherwise expressly provided in this title, called to meet at the discretion of
36 the chair; or

37 (b) called to meet by a majority vote of the commission.

38 (2) A majority of the commission is a quorum.

39 (3) (a) The commission shall prepare, on an annual basis, a summary data report that
40 contains:

41 (i) a general description of the activities of the commission during the past year;

42 (ii) the number of ethics complaints filed with the commission;

43 (iii) the number of ethics complaints reviewed by the commission;

44 (iv) the number of complaints filed against a member of the House of Representatives;

45 (v) the number of complaints filed against a member of the Senate;

46 (vi) a summary description of any ethics complaints that were recommended by the
47 commission for review by a Legislative ethics committee; and

48 (vii) an accounting of the commission's budget and expenditures.

49 (b) The summary data report shall be submitted to an appropriate committee of the
50 Legislature on an annual basis.

51 (c) The summary data report shall be a public record.

52 (4) The Senate and the House of Representatives shall employ staff for the commission
53 at a level that is reasonable to assist the commission in performing its duties as established in
54 this chapter.

55 (5) (a) The Legislative Management Committee shall:

56 (i) authorize each staff position for the commission; and

57 (ii) approve the employment of each staff member for the commission.

58 (b) Notwithstanding Subsection (5)(a), the commission may hire an individual without

59 authorization from the Legislative Management Committee if:

60 (i) the individual is hired by a majority vote of the commission, which authorization, in
61 order to preserve the confidentiality of the complaint, shall be discussed and voted upon in a
62 closed meeting of the commission;

63 (ii) the individual is hired for the purpose of assisting the commission with organizing,
64 reviewing, and marshaling facts and evidence raised in connection with a complaint filed with
65 the commission;

66 (iii) the individual is hired on a temporary, contractual basis; and

67 (iv) the total amount payable under the contract for services does not exceed \$5,000 or
68 a higher limit that is authorized by the Legislative Management Committee as permitted under
69 the law of this state.

70 (c) A contract issued under Subsection (5)(b) is a private record as provided in Utah
71 Code Section [63G-2-302](#).

72 (6) Staff for the commission shall work only for the commission and may not perform
73 services for the Senate, House of Representatives, or other legislative offices.

74 Section 2. **JR6-3-101** is amended to read:

75 **JR6-3-101. Ethics complaints -- Filing -- Form.**

76 (1) (a) The following individuals, who shall be referred to as the complainants, may
77 file a complaint against an individual legislator if the complaint meets the requirements of
78 [JR6-2-201](#) and Subsection (1)(b):

79 (i) two or more members of the House of Representatives, for a complaint against a
80 representative, provided that the complaint contains evidence or sworn testimony that:

81 (A) sets forth facts and circumstances supporting the alleged violation; and

82 (B) is evidence or sworn testimony of the type that would generally be admissible
83 under the Utah Rules of Evidence;

84 (ii) two or more members of the Senate, for a complaint against a senator, provided
85 that the complaint contains evidence or sworn testimony that:

86 (A) sets forth facts and circumstances supporting the alleged violation; and

87 (B) is evidence or sworn testimony of the type that would generally be admissible
88 under the Utah Rules of Evidence; or

89 (iii) two or more [~~registered voters currently residing within Utah,~~] individuals if, for

90 each alleged violation pled in the complaint, at least one of [~~those registered voters~~] the
91 individuals has actual knowledge of the facts and circumstances supporting [~~the~~] each alleged
92 violation.

93 (b) A complainant may file a complaint only against an individual who is serving as a
94 member of the Legislature on the date that the complaint is filed.

95 (2) (a) Complainants shall file a complaint with the chair of the Independent
96 Legislative Ethics Commission.

97 (b) Except as provided in Subsection (2)(c), an individual may not file a complaint
98 during the 60 calendar days immediately preceding:

99 (i) a regular primary election, if the accused legislator is a candidate in the primary
100 election; or

101 (ii) a regular general election in which the accused legislator is a candidate, unless the
102 accused legislator is unopposed in the election.

103 (c) Notwithstanding Subsection (2)(b), an individual may file a complaint within the
104 time frame provided in that subsection if:

105 (i) the complaint includes evidence that the subject of the complaint has been convicted
106 of, plead guilty to, entered a plea of no contest to, or entered a plea in abeyance to a crime of
107 moral turpitude; and

108 (ii) the crime of moral turpitude [~~is one of the allegations~~] and its directly related
109 circumstances are the sole allegations contained in the complaint.

110 (3) The complainants shall ensure that each complaint filed under this rule is in writing
111 and contains the following information:

112 (a) the name and position or title of the legislator alleged to be in violation, who shall
113 be referred to as the respondent;

114 (b) the name, address, and telephone number of each individual who is filing the
115 complaint;

116 (c) a description of each alleged violation, including for each alleged violation:

117 (i) a reference to:

118 (A) the section of the code of conduct alleged to have been violated; or

119 (B) the criminal provision violated and the docket number of the case involving the
120 legislator;

121 (ii) the name of the complainant or complainants who have actual knowledge of the
122 facts and circumstances supporting each allegation;

123 (iii) the facts and circumstances supporting each allegation, which shall be provided
124 by:

125 (A) copies of official records or documentary evidence; or

126 (B) one or more affidavits, each of which shall comply with the following format:

127 (I) the name, address, and telephone number of the signer;

128 (II) a statement that the signer has actual knowledge of the facts and circumstances
129 alleged in the affidavit;

130 (III) the facts and circumstances testified to by the signer;

131 (IV) a statement that the affidavit is believed to be true and correct and that false
132 statements are subject to penalties of perjury; and

133 (V) the signature of the signer;

134 (d) a list of the witnesses that the complainants wish to have called, including for each
135 witness:

136 (i) the name, address, and, if available, one or more telephone numbers of the witness;

137 (ii) a brief summary of the testimony to be provided by the witness; and

138 (iii) a specific description of any documents or evidence complainants desire the
139 witness to produce;

140 (e) a statement that each complainant:

141 (i) has reviewed the allegations contained in the complaint and the sworn statements
142 and documents attached to the complaint;

143 (ii) believes that the complaint is submitted in good faith and not for any improper
144 purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the
145 respondent's reputation, or causing unnecessary expenditure of public funds; and

146 (iii) believes the allegations contained in the complaint to be true and accurate; and

147 (f) the signature of each complainant.

148 Section 3. **JR6-3-102** is amended to read:

149 **JR6-3-102. Privacy of ethics complaints -- Contempt -- Enforcement of finding of**
150 **contempt -- Dismissal.**

151 [~~(1)(a) Except as provided in Subsection (1)(b) or (c), a person, including the~~

152 ~~complainants, the respondent, commission members, a committee chair or vice chair, or staff to~~
153 ~~the commission or a committee, may not disclose the existence of a complaint, a response, nor~~
154 ~~any information concerning any alleged violation that is the subject of a complaint.]~~

155 (1) (a) Except as provided in Subsection (1)(b), (c), or (d), and except as otherwise
156 provided by legislative rule, while a complaint is pending before the commission:

157 (i) a complainant, a respondent, a member of the commission, a member of
158 commission staff, or any person hired to assist the commission may not disclose the existence
159 of a complaint;

160 (ii) a member of the commission, a member of commission staff, or a person hired to
161 assist the commission may not disclose information gained as a result of their participation in
162 the commission proceedings;

163 (iii) a person who become aware of the existence of a complaint through interaction
164 with the commission, commission staff, or a person hired to assist the commission, including
165 any person informed about the filing of a complaint under JR6-4-101, may not disclose the
166 existence of a complaint;

167 (iv) a person who has appeared before the commission or who has been contacted or
168 interviewed by the commission, a member of commission staff, or a person hired to assist the
169 commission may not disclose the fact that they have been contacted by the commission or its
170 representatives, or that they have appeared before the commission; and

171 (v) no person may disclose any information gained as a result of that person's
172 interaction with a commission member, a member of commission staff, or a person hired to
173 assist the commission.

174 (b) The restrictions in Subsection (1)(a) do not apply to:

175 (i) a complaint or response that is publicly released by the commission and referred to
176 an ethics committee for review under the procedures and requirements of [JR6-4-204](#), and the
177 allegations contained in the publicly released complaint or response; or

178 (ii) the respondent's voluntary disclosure of a finding by the commission that no
179 allegations in a complaint were proved, after that finding is issued by the commission under the
180 procedures and requirements of [JR6-4-204](#).

181 (c) Nothing in this rule prevents [~~a person~~] a complainant from disclosing facts or
182 allegations about potential criminal violations to law enforcement authorities.

183 (d) Nothing in this rule prevents a commission member, a member of commission
 184 staff, or a person hired to assist the commission from making a disclosure that is otherwise
 185 prohibited under this section, including disclosing the existence of a complaint or information
 186 contained in the complaint, provided that the disclosure is reasonably necessary to:

- 187 (i) investigate the allegations of the complaint; or
 188 (ii) conduct proceedings before the commission.

189 (2) A person who violates ~~[the provisions of]~~ Subsection (1)(a)(ii) is in contempt of the
 190 Legislature and proceedings may be initiated to enforce the finding of contempt using the
 191 procedures provided in [JR6-2-304](#) and Utah Code Section [36-14-5](#).

192 ~~[(3) Except as provided in [JR6-4-101\(3\)](#), if the identity of the legislator who is the~~
 193 ~~subject of an ethics complaint or the identity of the filer of an ethics complaint is publicly~~
 194 ~~disclosed during]~~

195 (3) During the period that the ~~[Independent Legislative Ethics Commission]~~
 196 commission is reviewing ~~[the]~~ a complaint, the ~~[complaint]~~ commission shall ~~[be]~~ summarily
 197 ~~[dismissed]~~ dismiss the complaint without prejudice if it determines that the complainant
 198 discloses the existence of a complaint in violation of this rule.

199 Section 4. **JR6-4-101** is amended to read:

200 **JR6-4-101. Review of ethics complaint for compliance with form requirements --**
 201 **Independent requirements for complaint -- Notice.**

202 (1) Within five business days after receipt of a complaint, the staff of the Independent
 203 Legislative Ethics Commission, in consultation with the chair of the commission, shall
 204 examine the complaint to determine if it is in compliance with [JR6-2-201](#) or [JR6-3-101](#).

205 (2) (a) If the chair determines that the complaint does not comply with [JR6-2-201](#) or
 206 [JR6-3-101](#), the chair shall:

207 (i) return the complaint to the first complainant named on the complaint with:

208 (A) a statement detailing the reason for the non-compliance; and

209 (B) a copy of the applicable legislative rules; and

210 (ii) notify the president of the Senate and the chair and vice-chair of the Senate Ethics
 211 Committee, if the legislator named in the complaint is a senator, or the speaker of the House of
 212 Representatives and the chair and vice-chair of the House Ethics Committee, if the legislator
 213 named in the complaint is a representative, that:

214 (A) a complaint was filed against a member of the Senate or House, respectively, but
215 was returned for non-compliance with legislative rule; and

216 (B) the fact that a complaint was filed and returned shall be kept confidential until the
217 commission submits its annual summary data report as required by [JR6-2-104](#).

218 (b) If a complaint is returned for non-compliance with the requirements of this title, the
219 complainants may file another complaint if the new complaint independently meets the
220 requirements of [JR6-3-101](#), including any requirements for timely filing.

221 (3) If the chair determines that the complaint complies with the requirements of this
222 rule, the chair shall:

223 (a) accept the complaint;

224 (b) notify the president of the Senate and the chair and vice-chair of the Senate Ethics
225 Committee, if the legislator named in the complaint is a senator, or the speaker of the House of
226 Representatives and the chair and vice-chair of the House Ethics Committee, if the legislator
227 named in the complaint is a representative:

228 (i) that a complaint has been filed against a member of the Senate or House,
229 respectively;

230 (ii) of the identity of the legislator who is the subject of the complaint and the identity
231 of the person or persons filing the complaint;

232 (iii) of the nature of the allegations contained in the complaint; and

233 [~~(iv) that the fact that a complaint was filed, the nature of the allegations raised in the
234 complaint, and the identity of the legislator and the complainants shall be kept confidential
235 until the commission publicly discloses the existence of the complaint via:~~]

236 [~~(A) a recommendation that an allegation in the complaint be heard by a legislative
237 ethics committee; or]~~

238 [~~(B) submission of the commission's annual summary data report as required by
239 [JR6-2-104](#);~~]

240 (iv) that disclosure of information about the complaint is restricted under [JR6-3-102](#);

241 (c) notify each member of the Independent Legislative Ethics Commission that the
242 complaint has been filed and accepted [~~and that the existence of and contents of the complaint
243 and the identities of the parties shall be kept confidential~~], and that disclosure of information
244 about the complaint is restricted under [JR6-3-102](#); and

245 (d) promptly forward the complaint to the legislator who is the subject of the ethics
246 complaint via personal delivery or a delivery method that provides verification of receipt,
247 together with:

248 (i) notice that [~~the existence of and contents of the complaint, and the identities of the~~
249 ~~parties, are confidential and should not be publicly disclosed]~~ disclosure of information about
250 the complaint is restricted under [JR6-3-102](#);

251 (ii) a copy of the applicable legislative rules; and

252 (iii) notice of the legislator's deadline for filing a response to the complaint.

Legislative Review Note
Office of Legislative Research and General Counsel