

1 **JOINT RULES RESOLUTION REGARDING LEGISLATIVE**
2 **ETHICS**

3 2018 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: V. Lowry Snow

8 **LONG TITLE**

9 **General Description:**

10 This rules resolution modifies joint legislative rules relating to ethics.

11 **Highlighted Provisions:**

12 This resolution:

- 13 ▶ establishes a procedure to disqualify a member of the Independent Legislative
14 Ethics Commission for a conflict of interest in relation to a particular ethics
15 complaint;
- 16 ▶ requires a complainant to have personal knowledge of matters alleged in an ethics
17 complaint; and
- 18 ▶ amends provisions relating to when a person may disclose the existence of an ethics
19 complaint, a response, or information concerning any alleged ethics violation that is
20 the subject of a complaint.

21 **Special Clauses:**

22 None

23 **Legislative Rules Affected:**

24 AMENDS:

25 **JR6-2-103**

26 **JR6-3-101**

27 **JR6-3-102**



28 **JR6-4-103**

29 ENACTS:

30 **JR6-2-103.5**

31

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

33 Section 1. **JR6-2-103** is amended to read:

34 **JR6-2-103. Independent Legislative Ethics Commission -- Membership.**

35 (1) There is established an Independent Legislative Ethics Commission.

36 (2) The commission is composed of five persons, each of whom is registered to vote in
37 this state, appointed as follows:

38 (a) two members, who have served as judges of a court of record in this state, each of
39 whom shall be nominated by the mutual consent of the president of the Senate and the speaker
40 of the House, and appointed by a majority vote of the president of the Senate, speaker of the
41 House, Senate minority leader, and House minority leader;

42 (b) one member, who has served as a judge of a court of record in this state, nominated
43 by the mutual consent of the Senate minority leader and the House minority leader, and
44 appointed by a majority vote of the president of the Senate, speaker of the House, Senate
45 minority leader, and House minority leader;

46 (c) one member, who has served as a member of the Legislature in this state no more
47 recently than four years before the date of appointment, appointed by the mutual consent of the
48 president of the Senate and the speaker of the House of Representatives; and

49 (d) one member, who has served as a member of the Legislature in this state no more
50 recently than four years before the date of appointment, appointed by the mutual consent of the
51 Senate minority leader and House minority leader.

52 (3) A member of the commission may not, during the member's term of office on the
53 commission, act or serve as:

54 (a) an officeholder as defined in Utah Code Section [20A-11-101](#);

55 (b) an agency head as defined in Utah Code Section [67-16-3](#);

56 (c) a lobbyist as defined in Utah Code Section [36-11-102](#); or

57 (d) a principal as defined in Utah Code Section [36-11-102](#).

58 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each member of the commission

59 shall serve a four-year term.

60 (ii) When appointing the initial members upon formation of the commission, one
61 member nominated by the president of the Senate and the speaker of the House of
62 Representatives and one member nominated by the Senate minority leader and House minority
63 leader shall be appointed to a two-year term so that approximately half of the commission is
64 appointed every two years.

65 (b) (i) When a vacancy occurs in the commission's membership for any reason, a
66 replacement member shall be appointed for the unexpired term of the vacating member using
67 the procedures and requirements of Subsection (2).

68 (ii) For the purposes of this rule, an appointment for an unexpired term of a vacating
69 member is not considered a full term.

70 (c) A member may not be appointed to serve for more than two full terms, whether
71 those terms are two or four years.

72 (d) A member of the commission may resign from the commission by giving one
73 month's written notice of the resignation to the president of the Senate, speaker of the House,
74 Senate minority leader, and House minority leader.

75 (e) The chair of the Legislative Management Committee shall remove a member from
76 the commission if the member:

77 (i) is convicted of, or enters a plea of guilty to, a crime involving moral turpitude;

78 (ii) enters a plea of no contest or a plea in abeyance to a crime involving moral
79 turpitude; or

80 (iii) fails to meet the qualifications of office as provided in this rule.

81 (f) If a commission member is accused of wrongdoing in a complaint, or if a
82 commission member [~~determines that he or she has~~] is found, under [JR6-2-103.5](#), to have a
83 conflict of interest in relation to a complaint, a temporary commission member shall be
84 appointed to serve in that member's place for the purposes of reviewing that complaint using
85 the procedures and requirements of Subsection (2).

86 (5) (a) A member of the commission may not receive compensation or benefits for the
87 member's service, but may receive per diem and expenses incurred in the performance of the
88 member's official duties as allowed in:

89 (i) Utah Code Section [63A-3-106](#);

90 (ii) Utah Code Section [63A-3-107](#); and

91 (iii) rules made by the Division of Finance according to Utah Code Sections

92 [63A-3-106](#) and [63A-3-107](#).

93 (b) A member may decline to receive per diem and expenses for the member's service.

94 (6) (a) The commission members shall convene a meeting annually each January and
95 elect, by a majority vote, a commission chair from among the commission members.

96 (b) A person may not serve as chair for more than two consecutive years.

97 Section 2. **JR6-2-103.5** is enacted to read:

98 **JR6-2-103.5. Motion to disqualify Independent Legislative Ethics Commission**
99 **member for conflict of interest.**

100 (1) A complainant may file a motion to disqualify one or more members of the
101 Independent Legislative Ethics Commission from participating in proceedings relating to an
102 ethics complaint if the individual files the motion within 20 days after the later of:

103 (a) the day on which the individual files the ethics complaint; or

104 (b) the day on which the individual knew or should have known of the grounds upon
105 which the motion is based.

106 (2) A respondent may file a motion to disqualify one or more members of the
107 commission from participating in proceedings relating to an ethics complaint if the respondent
108 files the motion within 20 days after the later of:

109 (a) the day on which the respondent receives delivery of the ethics complaint; or

110 (b) the day on which the respondent knew or should have known of the grounds upon
111 which the motion is based.

112 (3) A motion filed under this section shall include:

113 (a) a statement that the members to whom the motion relates have a conflict of interest
114 that, under the circumstances, would lead a reasonable person to question the impartiality of
115 the members;

116 (b) a detailed description of the grounds supporting the statement described in
117 Subsection (3)(a); and

118 (c) a statement that the motion is filed in good faith, supported by an affidavit or
119 declaration under penalty of Section [78B-5-705](#) stating that the motion and all accompanying
120 statements and documents are true and correct to the best of the complainant's or respondent's

121 knowledge.

122 (4) A party may not file more than one motion to disqualify, unless the second or
123 subsequent motion:

124 (a) is based on grounds of which the party was not aware, and could not have been
125 aware, at the time of the earlier motion; and

126 (b) is accompanied by a statement, included in the affidavit or declaration described in
127 Subsection (3)(c), explaining how and when the party first became aware of the grounds
128 described in Subsection (4)(a).

129 (5) The commission shall dismiss a motion filed under this section, with prejudice, if
130 the motion:

131 (a) is not timely filed; or

132 (b) does not comply with the requirements of this section.

133 (6) A member of the commission may:

134 (a) on the member's own motion, disqualify the member from participating in
135 proceedings relating to an ethics complaint if the member believes that the member has a
136 conflict of interest that, under the circumstances, would lead a reasonable person to question
137 the impartiality of the member; or

138 (b) ask the commission to disqualify another member of the commission if the member
139 believes that the member has a conflict of interest that, under the circumstances, would lead a
140 reasonable person to question the impartiality of the member.

141 (7) (a) When a party files a motion under this section, or when a commission member
142 makes a request under Subsection (6)(b), the commission member for whom disqualification is
143 sought may make the initial determination regarding whether the commission member has a
144 conflict of interest.

145 (b) If a commission member described in Subsection (7)(a) determines that the
146 commission member has a conflict of interest, the commission member shall disqualify the
147 commission member from participating in the matter.

148 (c) If a commission member described in Subsection (7)(a) determines that the
149 commission member does not have a conflict of interest, or declines to make the determination,
150 the remainder of the commission shall, by majority vote, determine whether the commission
151 member has a conflict of interest.

152 (d) A vote of the commission, under Subsection (7)(c), constitutes a final decision on
153 the issue of a conflict of interest.

154 (8) In making a determination under Subsection (7)(c), the commission may:

155 (a) gather additional evidence;

156 (b) hear testimony; or

157 (c) request that the commission member who is the subject of the motion or request file
158 an affidavit or declaration responding to questions posed by commission.

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

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

161 (1) (a) The following individuals, who shall be referred to as the complainants, may
162 file a complaint against an individual legislator if the complaint meets the requirements of
163 **JR6-2-201** and Subsection (1)(b):

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

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

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

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

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

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

174 (iii) two or more registered voters currently residing within Utah, if, for each alleged
175 violation pled in the complaint, at least one of those registered voters has ~~[actual]~~ personal
176 knowledge of the facts and circumstances supporting the alleged violation.

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

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

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

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

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

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

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

192 (ii) the crime of moral turpitude is one of the allegations contained in the complaint.

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

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

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

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

200 (i) a reference to:

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

202 (B) the criminal provision violated and the docket number of the case involving the
203 legislator;

204 (ii) the name of the complainant or complainants who have [~~actual~~] personal
205 knowledge of the facts and circumstances supporting each allegation;

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

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

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

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

211 (II) a statement that the signer has [~~actual~~] personal knowledge of the facts and
212 circumstances alleged in the affidavit;

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

- 214 (IV) a statement that the affidavit is believed to be true and correct and that false
215 statements are subject to penalties of perjury; and
- 216 (V) the signature of the signer;
- 217 (d) a list of the witnesses that the complainants wish to have called, including for each
218 witness:
- 219 (i) the name, address, and, if available, one or more telephone numbers of the witness;
220 (ii) a brief summary of the testimony to be provided by the witness; and
221 (iii) a specific description of any documents or evidence complainants desire the
222 witness to produce;
- 223 (e) a statement that each complainant:
- 224 (i) has reviewed the allegations contained in the complaint and the sworn statements
225 and documents attached to the complaint;
- 226 (ii) believes that the complaint is submitted in good faith and not for any improper
227 purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the
228 respondent's reputation, or causing unnecessary expenditure of public funds; and
- 229 (iii) believes the allegations contained in the complaint to be true and accurate; and
230 (f) the signature of each complainant.

231 Section 4. **JR6-3-102** is amended to read:

232 **JR6-3-102. Privacy of ethics complaints -- Contempt -- Enforcement of finding of**
233 **contempt -- Dismissal.**

234 (1) (a) Except as provided in Subsection (1)(b) or (c), a person, including the
235 complainants, the respondent, commission members, a committee chair or vice chair, or staff to
236 the commission or a committee, may not disclose the existence of a complaint, a response, nor
237 any information concerning any alleged violation that is the subject of a complaint.

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

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

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

245 ~~[(c) Nothing in this rule prevents a person from]~~

246 (iii) disclosing facts or allegations about potential criminal violations to law
 247 enforcement authorities[-];

248 (iv) a disclosure by a respondent that is made solely for the purpose of, and only to the
 249 extent necessary for, retaining counsel or conducting an interview, seeking evidence, or taking
 250 other action to prepare to defend against a complaint;

251 (v) a communication between a commission or committee member and the
 252 commission's or committee's attorneys or staff; or

253 (vi) a disclosure to a person that is determined necessary, by a majority vote of the
 254 commission or committee, to conduct the duties of the commission or committee.

255 (2) When a person makes a disclosure under Subsection (1)(b)(iv) or (vi), the person
 256 making the disclosure shall inform the person to whom the disclosure is made of the
 257 nondisclosure requirements described in this section.

258 ~~[(2)]~~ (3) A person who violates the provisions of Subsection (1)(a) is in contempt of
 259 the Legislature and proceedings may be initiated to enforce the finding of contempt using the
 260 procedures provided in [JR6-2-304](#) and Utah Code Section [36-14-5](#).

261 ~~[(3)]~~ (4) Except as provided in [JR6-4-101\(3\)](#), if the identity of the legislator who is the
 262 subject of an ethics complaint or the identity of the filer of an ethics complaint is publicly
 263 disclosed during the period that the Independent Legislative Ethics Commission is reviewing
 264 the complaint, the complaint shall be summarily dismissed without prejudice.

265 Section 5. **JR6-4-103** is amended to read:

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

267 (1) The legislator that is the subject of the complaint may file a response to the
 268 complaint no later than 30 days after the day on which the legislator receives delivery of the
 269 complaint.

270 (2) The respondent shall file the response with the commission and shall ensure that
 271 the response is in writing and contains the following information:

272 (a) the name, address, and telephone number of the respondent;

273 (b) for each alleged violation in the complaint:

274 (i) each affirmative defense asserted in response to the allegation, including a general
 275 description of each affirmative defense and the facts and circumstances supporting the defense

276 to be provided by one or more affidavits, each of which shall comply with the following
277 format:

- 278 (A) the name, address, and telephone number of the signer;
- 279 (B) a statement that the signer has [~~actual~~] personal knowledge of the facts and
280 circumstances alleged in the affidavit;
- 281 (C) the facts and circumstances testified to by the signer;
- 282 (D) a statement that the affidavit is believed to be true and correct and that false
283 statements are subject to penalties of perjury; and

284 (E) the signature of the signer;
285 (ii) the facts and circumstances refuting the allegation, which shall be provided by:

- 286 (A) copies of official records or documentary evidence; or
- 287 (B) one or more affidavits, each of which shall comply with the following format:

- 288 (I) the name, address, and telephone number of the signer;
- 289 (II) a statement that the signer has [~~actual~~] personal knowledge of the facts and
290 circumstances alleged in the affidavit;

- 291 (III) the facts and circumstances testified to by the signer;
- 292 (IV) a statement that the affidavit is believed to be true and correct and that false
293 statements are subject to penalties of perjury; and

294 (V) the signature of the signer;
295 (c) a list of the witnesses that the respondent wishes to have called, including for each
296 witness:

- 297 (i) the name, address, and, if available, telephone number of the witness;
- 298 (ii) a brief summary of the testimony to be provided by the witness; and
- 299 (iii) a specific description of any documents or evidence the respondent desires the
300 witness to produce;

301 (d) a statement that the respondent:

- 302 (i) has reviewed the allegations contained in the complaint and the sworn statements
303 and documents attached to the response; and

- 304 (ii) believes the contents of the response to be true and accurate; and
- 305 (e) the signature of the respondent.

306 (3) Promptly after receiving the response, the commission shall provide copies of the

307 response to:

308 (a) each member of the commission; and

309 (b) the first named complainant on the complaint.

Legislative Review Note
Office of Legislative Research and General Counsel