



Independent Legislative Ethics Commission

2015 Summary Data Report to the Utah Legislature

Independent Legislative Ethics Commission
Commission Chair: Judge Judith M. Billings
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2015 Summary Data Report to the Utah Legislature

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Purpose of the Report

The Summary Data Report to the Utah Legislature was prepared in accordance with JR6-2-104. This rule requires the Independent Legislative Ethics Commission to prepare an annual report of the Commission's activities, including the following:

- A general description of the activities of the Commission during the past year
- Statistical information for ethical complaints
- An accounting of the Commission's budget and expenditures

General Description of Activities

The Commission held its annual meeting in January for the purpose of swearing in two new commissioners. Judge Hans Q. Chamberlain was sworn in to replace outgoing Commissioner Judge Russell Bench. Ms. LaWanna "Lou" Shurtliff was sworn in to replace outgoing Commissioner Joanne Milner. The Commission wants to express its appreciation to both Judge Bench and Ms. Milner for their dedicated and important service to the Commission.

The 2015 Commission membership is as follows:

Judge Lynn Payne, Chair

Judge Judith Billings

Mr. Doyle Mortimer

Judge Hans Chamberlain

Ms. LaWanna "Lou" Shurtliff

During the January meeting, several concerns were raised regarding Joint Rule 6, which governs the Independent Legislative Ethics Commission. These concerns were compiled into a letter to Senator Lyle Hillyard to be addressed in legislation. That letter is attached to this report.

In response to the Commission's letter, Senator Hillyard agreed to sponsor SJR 16 during the 2015 legislative session to address the Commission's concerns. SJR 16 successfully passed the legislature and made changes to Joint Rule 6. SJR 16 is attached to this report.

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The Commission met again in June to address lingering concerns and inconsistencies in Joint Rule 6. These concerns were compiled into Research and Recommendations for Changes to Joint Rule 6 and sent to the Legislative Management Committee. That document is attached to this report.

Representative Patrice Arent has agreed to sponsor legislation to address the Commission's concerns in the 2016 legislative session.

Statistical Information for Ethical Complaints

During 2015, the number of ethical complaints filed with the commission is as follows:

- The number of ethics complaints filed with the commission: 0
- The number of complaints filed against a member of the House of Representatives: 0
- The number of complaints filed against a member of the Senate: 0

In 2015, the Ethics Commission did not recommend review of any complaints by the Legislative Ethics Committees.

Accounting of Commission's Budget and Expenditures

In 2015, the following expenditures were paid out of the Legislative Ethics Commission's budget:

\$4000 – Executive Director Salary

\$58.14 – Commission Meeting Lunch

Total expenditures for 2015 - \$4058.14

INDEPENDENT LEGISLATIVE ETHICS COMMISSION

Kim J. Bouck, Executive Director
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January 26, 2015

Senator Lyle W. Hillyard
State Capitol Complex
Salt Lake City, UT 84114

Dear Senator Hillyard,

The Independent Legislative Ethics Commission respectfully requests your assistance with legislation addressing the following matters in Joint Rule 6:

- 1) JR6-1-201(1), (2) and (3) all reference §76-8-109 of the Utah Code. In 2013, that section of the code was renumbered and can now be found in UCA §20A-11-1604. A simple clerical change to the correct section of the code can remedy this problem.
- 2) Circumstances may arise from a complaint which would require additional support staff. JR6-2-104(4) states that the Commission cannot hire staff without the public authorization and approval of the Legislative Management Committee. However, JR6-3-102 states that commission members and staff may not disclose the existence of a complaint without triggering the dismissal of that complaint and being in contempt of the Legislature. We would appreciate a mechanism whereby we may hire and pay staff without first obtaining public authorization and approval.
- 3) UCA §52-4-204(1)(b) states that the commission may conduct closed meetings, but must provide public meeting notice of those meetings with the agenda stating “conducting business relating to the receipt or review of ethics complaints.” However, as was mentioned in 2 above, JR6-3-102(3) indicates that a public disclosure of the existence of a complaint requires dismissal of the complaint. We suggest a clarification or revision of these confidentiality provisions so that they are not in direct contradiction with the code.
- 4) JR6-3-102(1)(a) explicitly prohibits the disclosure of the existence of a complaint by staff or commission members. However, in JR6-4-101(3)(b) the commission chair is required, upon acceptance of a complaint, to notify the President of the Senate, Speaker of the House and chair

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and vice-chair of the respondent's respective Ethics Committee of the existence of a complaint. Clarification and definitions of the nature of prohibited disclosure would be helpful.

- 5) Further we are concerned that a legislator may take advantage of JR6-3-102(3) and disclose the existence of a complaint against them simply to force a dismissal. Perhaps the rule could impose an alternative to dismissal in the event a legislator discloses information about a complaint.
- 6) JR6-3-101(1)(iii) requires that an ethics complaint be filed by two or more registered voters currently residing in Utah. These qualifications for eligibility to file a complaint potentially violate the Equal Protection Clause of the 14th Amendment. We recommend that access to the Legislative Ethics Commission be open to all people.
- 7) Finally, JR6-3-101(2)(b) establishes a 60 day window preceding a contested election whereby complaints cannot be filed. We are concerned that if a conviction, plea of guilty, or plea in abeyance to a crime involving moral turpitude occurred during that 60 day window, the commission would be unable to act to make a recommendation to the Ethics Committees. Perhaps the Rule could provide a mechanism whereby the Ethics Committees could take action on a complaint providing evidence of a conviction, plea of guilty or plea in abeyance of a crime involving moral turpitude could still be filed during the 60 day window.

We appreciate your assistance in these matters. Please let us know if we can help in any way.

Sincerely,

Kim J. Bouck
Executive Director

**JOINT RULES RESOLUTION ON INDEPENDENT
LEGISLATIVE ETHICS COMMISSION
HIRING MODIFICATIONS**

2015 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Stephen G. Handy

9 **LONG TITLE**

10 **General Description:**

11 This rules resolution modifies procedures related to the filing and review of complaints
12 filed with the Independent Legislative Ethics Commission and the commission's
13 procedural requirements.

14 **Highlighted Provisions:**

15 This resolution:

- 16 ▶ updates cross references;
- 17 ▶ permits, in limited circumstances, the hiring of an individual to assist the
18 Independent Legislative Ethics Commission in reviewing and processing
19 confidential ethics complaints;
- 20 ▶ permits an ethics complaint to be filed within 60 days of an election if the complaint
21 is due to a conviction, guilty plea, plea of no contest, or plea in abeyance of a crime
22 of moral turpitude;
- 23 ▶ clarifies that a required dismissal for disclosure of an ethics complaint is for
24 disclosure of the name of a party to the complaint, not merely the existence of the
25 complaint;
- 26 ▶ removes the requirement for the commission to notify the Senate and House Ethics
27 Committee chairs of the existence of a complaint;
- 28 ▶ provides that the commission shall notify the president of the Senate or speaker of
29 the House of Representatives of the parties to and the nature of the allegations of

30 each complaint, not merely the existence of a complaint; and

- 31 ▶ adds language to emphasize that individuals informed about an ethics complaint
32 during the confidential review period are required to keep the confidentiality of the
33 complaint until the commission makes a recommendation on the complaint.

34 **Special Clauses:**

35 None

36 **Legislative Rules Affected:**

37 AMENDS:

38 [JR6-1-201](#)

39 [JR6-2-104](#)

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40 [JR6-3-101](#)

41 [JR6-3-102](#)

42 [JR6-4-101](#)

43

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

45 Section 1. **JR6-1-201** is amended to read:

46 **JR6-1-201. Declaring and recording conflicts of interest -- Financial disclosure**
47 **form.**

48 (1) As used in this section, "conflict of interest" ~~[is as]~~ means the same as that term is
49 defined in Utah Code Section ~~[20A-11-1603]~~ [20A-11-1602](#).

50 (2) A legislator shall file a financial disclosure form in compliance with Utah Code
51 Section [20A-11-1603](#) and according to the requirements of this section:

52 (a) on the first day of each general session of the Legislature; and

53 (b) each time the legislator changes employment.

54 (3) The financial disclosure form shall include the disclosures required by Utah Code
55 ~~[Section 20A-11-1603]~~ [Title 20A, Chapter 11, Part 16, Financial Disclosures](#).

56 (4) (a) The financial disclosure form shall be filed with:

57 (i) the secretary of the Senate, for a legislator that is a senator; or

58 (ii) the chief clerk of the House of Representatives, for a legislator that is a
59 representative.

60 (b) The secretary of the Senate and the chief clerk of the House of Representatives
61 shall ensure that:

62 (i) blank financial disclosure forms are made available on the Internet and at the offices
63 of the Senate and the House of Representatives; and

64 (ii) financial disclosure forms filed under this rule are made available to the public on
65 the Internet and at the offices of the Senate or the House of Representatives.

66 (5) (a) Before or during any vote on legislation or any legislative matter in which a
67 legislator has actual knowledge that the legislator has a conflict of interest which is not stated
68 on the financial disclosure form, that legislator shall orally declare to the committee or body
69 before which the matter is pending:

70 (i) that the legislator may have a conflict of interest; and

71 (ii) what that conflict is.

72 (b) The secretary of the Senate or the chief clerk of the House of Representatives shall:

73 (i) direct committee secretaries to note the declaration of conflict of interest in the

74 minutes of any committee meeting; and

75 (ii) ensure that each declaration of conflict declared on the floor is noted in the Senate
76 Journal or House Journal.

77 (6) This requirement of disclosure of any conflict of interest does not prohibit a
78 legislator from voting on any legislation or legislative matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 96 (vii) an accounting of the commission's budget and expenditures.
- 97 (b) The summary data report shall be submitted to an appropriate committee of the
98 Legislature on an annual basis.
- 99 (c) The summary data report shall be a public record.
- 100 (4) ~~[(a)]~~ The Senate and the House of Representatives shall employ staff for the
101 commission at a level that is reasonable to assist the commission in performing its duties as
102 established in this chapter.
- 103 ~~[(b)]~~ (5) (a) The Legislative Management Committee shall:
- 104 (i) authorize each staff position for the commission; and
- 105 (ii) approve the employment of each staff member for the commission.
- 106 (b) Notwithstanding Subsection (5)(a), the commission may hire an individual without
107 authorization from the Legislative Management Committee if:
- 108 (i) the individual is hired by a majority vote of the commission, which authorization, in
109 order to preserve the confidentiality of the complaint, shall be discussed and voted upon in a
110 closed meeting of the commission;
- 111 (ii) the individual is hired for the purpose of assisting the commission with organizing,
112 reviewing, and marshaling facts and evidence raised in connection with a complaint filed with
113 the commission;
- 114 (iii) the individual is hired on a temporary, contractual basis; and
- 115 (iv) the total amount payable under the contract for services does not exceed \$5,000.
- 116 (c) A contract issued under Subsection (5)(b) is a private record as provided in Utah
117 Code Section 63G-2-302.
- 118 ~~[(e)]~~ (6) Staff for the commission shall work only for the commission and may not
119 perform services for the Senate, House of Representatives, or other legislative offices.
- 120 Section 3. **JR6-3-101** is amended to read:
- 121 **JR6-3-101. Ethics complaints -- Filing -- Form.**
- 122 (1) (a) The following individuals, who shall be referred to as the complainants, may
123 file a complaint against an individual legislator if the complaint meets the requirements of
124 [JR6-2-201](#) and Subsection (1)(b):
- 125 (i) two or more members of the House of Representatives, for a complaint against a
126 representative, provided that the complaint contains evidence or sworn testimony that:
- 127 (A) sets forth facts and circumstances supporting the alleged violation; and
- 128 (B) is evidence or sworn testimony of the type that would generally be admissible
129 under the Utah Rules of Evidence;
- 130 (ii) two or more members of the Senate, for a complaint against a senator, provided
131 that the complaint contains evidence or sworn testimony that:
- 132 (A) sets forth facts and circumstances supporting the alleged violation; and
- 133 (B) is evidence or sworn testimony of the type that would generally be admissible
134 under the Utah Rules of Evidence; or
- 135 (iii) two or more registered voters currently residing within Utah, if, for each alleged
136 violation pled in the complaint, at least one of those registered voters has actual knowledge of
137 the facts and circumstances supporting the alleged violation.
- 138 (b) A complainant may file a complaint only against an individual who is serving as a
139 member of the Legislature on the date that the complaint is filed.
- 140 (2) (a) Complainants shall file a complaint with the chair of the Independent
141 Legislative Ethics Commission.
- 142 (b) ~~[(a)]~~ Except as provided in Subsection (2)(c), an individual may not file a
143 complaint during the 60 calendar days immediately preceding:
- 144 (i) a regular primary election, if the accused legislator is a candidate in the primary
145 election; or
- 146 (ii) a regular general election in which the accused legislator is a candidate, unless the
147 accused legislator is unopposed in the election.
- 148 (c) Notwithstanding Subsection (2)(b), an individual may file a complaint within the
149 time frame provided in that subsection if:
- 150 (i) the complaint includes evidence that the subject of the complaint has been convicted
151 of, plead guilty to, entered a plea of no contest to, or entered a plea in abeyance to a crime of

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152 moral turpitude; and
153 (ii) the crime of moral turpitude is one of the allegations contained in the complaint.
154 (3) The complainants shall ensure that each complaint filed under this rule is in writing
155 and contains the following information:
156 (a) the name and position or title of the legislator alleged to be in violation, who shall
157 be referred to as the respondent;
158 (b) the name, address, and telephone number of each individual who is filing the
159 complaint;
160 (c) a description of each alleged violation, including for each alleged violation:
161 (i) a reference to:
162 (A) the section of the code of conduct alleged to have been violated; or
163 (B) the criminal provision violated and the docket number of the case involving the
164 legislator;
165 (ii) the name of the complainant or complainants who have actual knowledge of the
166 facts and circumstances supporting each allegation;
167 (iii) the facts and circumstances supporting each allegation, which shall be provided
168 by:
169 (A) copies of official records or documentary evidence; or
170 (B) one or more affidavits, each of which shall comply with the following format:
171 (I) the name, address, and telephone number of the signer;
172 (II) a statement that the signer has actual knowledge of the facts and circumstances
173 alleged in the affidavit;
174 (III) the facts and circumstances testified to by the signer;
175 (IV) a statement that the affidavit is believed to be true and correct and that false
176 statements are subject to penalties of perjury; and
177 (V) the signature of the signer;
178 (d) a list of the witnesses that the complainants wish to have called, including for each
179 witness:
180 (i) the name, address, and, if available, one or more telephone numbers of the witness;
181 (ii) a brief summary of the testimony to be provided by the witness; and
182 (iii) a specific description of any documents or evidence complainants desire the
183 witness to produce;
184 (e) a statement that each complainant:
185 (i) has reviewed the allegations contained in the complaint and the sworn statements
186 and documents attached to the complaint;
187 (ii) believes that the complaint is submitted in good faith and not for any improper
188 purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the
189 respondent's reputation, or causing unnecessary expenditure of public funds; and
190 (iii) believes the allegations contained in the complaint to be true and accurate; and
191 (f) the signature of each complainant.
192 Section 4. **JR6-3-102** is amended to read:
193 **JR6-3-102. Privacy of ethics complaints -- Contempt -- Enforcement of finding of**
194 **contempt -- Dismissal.**
195 (1) (a) Except as provided in Subsection (1)(b) or (c), a person, including the
196 complainants, the respondent, commission members, a committee chair or vice chair, or staff to
197 the commission or a committee, may not disclose the existence of a complaint, a response, nor
198 any information concerning any alleged violation that is the subject of a complaint.
199 (b) The restrictions in Subsection (1)(a) do not apply to:
200 (i) a complaint or response that is publicly released by the commission and referred to
201 an ethics committee for review under the procedures and requirements of [JR6-4-204](#), and the
202 allegations contained in the publicly released complaint or response; or
203 (ii) the respondent's voluntary disclosure of a finding by the commission that no
204 allegations in a complaint were proved, after that finding is issued by the commission under the
205 procedures and requirements of [JR6-4-204](#).
206 (c) Nothing in this rule prevents a person from disclosing facts or allegations about
207 potential criminal violations to law enforcement authorities.

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

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

216 Section 5. **JR6-4-101** is amended to read:

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

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

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

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

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

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

227 (ii) notify the president of the Senate and the chair and vice-chair of the Senate Ethics
228 Committee, if the legislator named in the complaint is a senator, or the speaker of the House of
229 Representatives and the chair and vice-chair of the House Ethics Committee, if the legislator
230 named in the complaint is a representative, that:

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

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

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

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

240 (a) accept the complaint;

241 (b) notify the president of the Senate and the chair and vice-chair of the Senate Ethics
242 Committee, if the legislator named in the complaint is a senator, or the speaker of the House of
243 Representatives and the chair and vice-chair of the House Ethics Committee, if the legislator
244 named in the complaint is a representative~~[-, that]~~:

245 (i) ~~that~~ a complaint has been filed against ~~[an unidentified]~~ a member of the Senate or
246 House, respectively;

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

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

250 ~~[(ii) the identity of the legislator and the allegations raised in the complaint are~~
251 ~~confidential pending the commission's review of the complaint; and]~~

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

255 (A) a recommendation that an allegation in the complaint be heard by a legislative
256 ethics committee; or

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

259 (c) notify each member of the Independent Legislative Ethics Commission that the
260 complaint has been filed and accepted and that the existence of and contents of the complaint
261 and the identities of the parties shall be kept confidential; and

262 (d) promptly forward the complaint to the legislator who is the subject of the ethics
263 complaint via personal delivery or a delivery method that provides verification of receipt,

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- 264 together with;
- 265 (i) notice that the existence of and contents of the complaint, and the identities of the
- 266 parties, are confidential and should not be publicly disclosed;
- 267 (ii) a copy of the applicable legislative rules; and
- 268 (iii) notice of the legislator's deadline for filing a response to the complaint.



Independent Legislative Ethics Commission

Research and Recommendations for changes to
Legislative Joint Rule Title 6

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Independent Legislative Ethics Commission
Commission Chair: Judge Lynn Payne
Executive Director: Kim J. Bouck
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Overview

During discussions and debate on SJR 16 during the 2015 General Legislative Session, questions were raised regarding Legislative Joint Rule Title 6: Legislative Ethics and Adjudication of Ethics Complaints. Legislative ethics was placed on the interim study list and the Independent Legislative Ethics Commission was asked to provide research and recommendations in the following eight areas:

- 1) Residency or voter registration requirements for complainants
- 2) Equal Protection concerns raised by voter registration and residency requirements
- 3) First Amendment concerns with confidentiality provisions
- 4) Amendments to 60 day pre-election black out period
- 5) Penalties for violating complaint confidentiality provisions
- 6) Penalties for frivolous filings
- 7) Impact of removal or resignation for ethics violation on a legislator's pension and retirement
- 8) Analysis of Utah Procurement Code regarding contract for investigative work

Residency or Voter Registration Requirements for Complainants

According to data provided by the National Conference of State Legislatures (“NCSL”), Utah is the only state to impose a residency or voter registration requirement for complainants. Other states with ethics commissions permit “any person” or “any citizen” to file a complaint with the appropriate ethics commission.

Commission Recommendation: The Commission is comfortable with a residency requirement as it would prevent special interest groups or lobbyists from filing politically-motivated complaints. However, the Commission is concerned that Utahns currently serving in the military and residing out of state may be excluded from the complaint process. The Commission recommends maintaining a residency requirement so long as members of the military residing out of state are expressly excluded.

Equal Protection Concerns Raised by Voter Registration and Residency Requirements

JR6-3-101 (1) (a) reads: “ the following individuals, who shall be referred to as the complainants, may file a complaint ... (iii) Two or more registered voters currently residing within Utah, if, for each alleged violation pled in the complaint, at least one of those registered voters has actual knowledge of facts and circumstances supporting the alleged violation”.

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Therefore, even if the allegations of the complaint are true, the Commission must return a complaint filed by a person who is not registered to vote.¹

In 2010, Utah voters passed a Constitutional Amendment creating the Commission based on a belief that unethical conduct by legislators undermines public confidence in the legislative process.² People who engage in unethical conduct do not usually do so in public; most often unethical conduct is committed in private. Therefore, the pool of complainants who have “actual knowledge” is small. Disqualification of citizens who have knowledge, but are not registered voters, further reduces this small pool.

When a complaint is returned because it is not filed by a registered voter, the Commission can not act to determine whether the named legislator acted unethically. Therefore, in certain circumstances, JR6 may allow unethical conduct to go unpunished.

The 14th Amendment guarantees that the state cannot “deny to any person within its jurisdiction the equal protection of the laws.” The equal protection clause is implicated in this case because JR6 grants citizens who are registered voters a right (to file a complaint), which is denied to similarly situated unregistered citizens.

Commission Recommendation: The Commission would recommend the deletion of any voter registration requirement for complainants so as to ensure that all meritorious ethical complaints are heard and so as to not violate the Equal Protection Clause of the U.S. Constitution.

First Amendment Concerns With Confidentiality Provisions

- a. The First Amendment prohibits states from making any law “abridging the freedom of speech”. Speech concerning the qualification of an office holder to hold public office is classified a political speech. Any restriction on political speech is subject to “strict scrutiny”. The government bears the highest burden of proving a restriction on pure political speech is “narrowly tailored” in terms of both “duration and scope”.
- b. JR6-3-102 (1) (a) states: “Except as provided in Subsection (1) (b) or (c) a person including the complainant ... may not disclose the existence of a complaint, ... nor any information concerning any alleged violation that is the subject of the complaint.” Subpart (2) states: “A person who violates the provisions of Subsection (1) (a) is in contempt of the Legislature and proceedings may be initiated to enforce the finding of contempt...”
JR6-3-102 (1) prohibits complainants from disclosing the existence of a complaint as well as any information relating to the allegations of a complaint while the Commission is reviewing that complaint. Complainants who make a public disclosure during that time period are in contempt of the legislature and are subject to punishment.
- c. Proceedings before the Commission are not opened to the public. Cases which have examined limitations on individuals from disclosing information relating to confidential

¹ Certain citizens (i.e. persons under the age of 18, persons who have not lived in Utah for 30 days, and incarcerated felons) do not qualify to register as voters. These people can not file a complaint during the period that these citizens do not qualify to register.

² JR6-1-101 (4) “It is recognized that public confidence in the Legislature should be promoted...”

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hearings fall into three categories.³ First, disclosure of an individual's own observations or the substance of the individual's testimony before the Commission. Second, disclosure of the fact that a complaint has been filed with the Commission. Third, disclosure of information the individual learned through interaction with the Committee.⁴

JR6-3-102 (1) (a) prohibits complainants from disclosing the fact that a complaint has been filed until a complaint is publicly released by the Commission. Courts have upheld limitations which prohibit disclosure of the fact that a complaint has been filed with a Commission. However, this limitation is only justified while the complaint is pending before the Commission. No limitation can be justified after the complaint has been fully adjudicated before the Commission.

Courts have also upheld limitations on disclosing information which the individual learns through interaction with the Commission.

Courts have not upheld prohibitions which penalize individuals for disclosing information obtained through the individual's own observations or their testimony before the Commission.⁵ The prohibition from disclosing the contents of the complaint does have the positive effect of protecting innocent legislators from the embarrassment and harm to reputation which follows public disclosure of untrue allegations. However, the First Amendment is intended to promote vigorous public discussion and debate; even at the risk that the debate will harm innocent citizens.

Commission Recommendation: The Commission would recommend amending the rule to allow a complainant to publicly disclose the substance and subject of a complaint while not revealing that the information was filed as a complaint with the Commission.

Amendment to 60 Day Pre-Election Black Out Period

During the 2015 legislative session, JR6-3-101 was amended to allow the Commission to consider a complaint during the 60 day pre-election black out period provided the complaint included evidence of a conviction or plea to a crime of moral turpitude. However, the new language states “. . . an individual may file a complaint within the time frame provided in that subsection if: (i) the complaint includes evidence that the subject of the complaint has been convicted of, plead guilty to, entered a plea of no contest to, or entered a plea in abeyance to a crime of moral turpitude; and (ii) the crime of moral turpitude is one of the allegations contained in the complaint.”

³ This discussion relates to disclosure by complainants. The Legislature can prohibit and punish disclosure by Commission members and staff.

⁴ See *Cox v. McLean* United States District Court D. Montana Missoula Division September 30, 2014 and *Kamasinski v. Judicial Review Council* 44 F.3d 106 (1994) as examples of how courts have treated restraints on disclosure of judicial complaints.

⁵ While a complainant may disclose the substance of the complaint, he may not reveal that the information was included in a complaint filed with the Commission (i.e. the complainant may disclose that he paid a bribe to the legislator – he can not disclose that a complaint has been filed with the Commission which alleges that he paid the legislator a bribe).

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The Commission is concerned that this language unintentionally allows multiple allegations to be considered so long as one of those allegations contains evidence of a conviction or plea to a crime of moral turpitude.

Commission Recommendation: The Commission would recommend a reworking of the language to clarify that the only permissible allegation that can be addressed during the 60 day pre-election black out period is that the subject of the complaint has been convicted or plead to a crime of moral turpitude.

Penalties for Violating Complaint Confidentiality Provisions

Legislative ethics commissions throughout the country vary on their provisions regarding complaint confidentiality. While many maintain confidentiality until a complaint has been deemed not frivolous, at least 17 commissions, including Utah, do not disclose the details of a complaint until final decisions are made, an individual has been charged or final action is taken. These commissions include Alabama, Arkansas, Illinois, Kentucky, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Utah and Wisconsin.

Of those 17 commissions, six impose monetary penalties or criminal charges ranging from a fine of up to \$1000 to class A misdemeanor to imprisonment for up to a year. Currently no states distinguish between the breach of confidentiality by a complainant and the accused.

In Utah, the rule currently states, “A person who violates the [confidentiality] provisions is in contempt of the Legislature and proceedings may be initiated to enforce the finding of contempt using the procedures provided in JR6-2-304 and Section 36-14-5.” JR6-2-304 specifies who may authorize an enforcement action against a person in contempt of the legislature and references the procedure found in Section 36-14-5. However, the Commission is concerned that Section 36-14-5 would not authorize the court to impose the penalties found in Title 78B, Chapter 6, Part 3, against an individual for violating confidentiality provisions with regards to ethics complaints as it specifically addresses legislative subpoenas.

Additionally, JR6-3-102 states that “. . . a person, including the complainants, the respondent, commission members, a committee chair or vice chair, or staff to the commission or a committee, may not disclose the existence of a complaint, a response, nor any information concerning any alleged violation that is the subject of a complaint.” This provision hinders any investigation or fact gathering by staff or an investigator as any questions they might ask pertaining to the conduct of a legislator or a potential ethical violation would disclose the existence and subject of a complaint.

Commission Recommendation: The Commission recommends amending the code to specifically identify penalties for confidentiality violations. We also would recommend either excluding staff or investigators from the disclosure provisions or defining disclosure in a way that would allow investigation of complaints.

Penalties for Frivolous Filings

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Most ethics commissions have the authority to dismiss a complaint if it is determined to be “frivolous.” The definition of “frivolous” varies by commission, but often is described as lacking a basis in fact or law.

At least eight commissions require anyone who has filed a frivolous, groundless, or falsely filed complaint to pay the costs and attorneys fees of the accused. These include commissions in Connecticut, Georgia, Hawaii, Missouri, Pennsylvania, Rhode Island, West Virginia and Wisconsin.

Two states impose criminal penalties on complainants filing frivolous complaints. Hawaii charges one who files a false complaint with perjury, while Kentucky makes filing a false complaint a class A misdemeanor.

Utah currently has no penalties other than dismissal for frivolous filings.

Commission Recommendation: The Commission would advise against adding any penalties for frivolous filings. The Commission currently has the ability to dismiss complaints that are non-meritorious and anything more would have a chilling effect on citizen’s desire to come forward with known ethical violations.

Impact of Removal or Resignation for Ethics Violation on a Legislator’s Pension and Retirement

During the 2015 General Legislative Session, Representative McCay sponsored HB 416 which provided that an elected official would forfeit state retirement benefits after being convicted of certain employment related offenses. HB 416 passed the House with 73 yes votes. However, the bill failed to pass the Senate, most likely because it arrived in the Senate very late in the session. Thus, as the law currently stands, a legislator who is removed or resigns for an ethics violation is still entitled to full state retirement and pension benefits.

Commission’s Recommendation: The Commission feels that a legislator’s pension and retirement is within the legislative scope of responsibility and therefore takes no position on the impact of an ethics violation on pension and retirement benefits.

Analysis of Utah Procurement Code Regarding Contract for Investigative Work

In the 2015 General Legislative Session, SJR 16 changed the rule to allow the Commission to confidentially hire a temporary contract employee for the purpose of investigating a complaint so long as the total amount paid does not exceed \$5000. With previous ethics investigations in the state costing upward of \$3 million, \$5000 for an initial investigation seems inadequate.

According to Utah Procurement Code §63G-6a-408(2), the Legislative Management Committee, as the applicable rulemaking authority, has the ability to set annual and individual procurement thresholds for the Commission.

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Commission Recommendation: The Commission feels that \$5000 is an inadequate sum for investigative or administrative support during a complaint. We would ask the Legislative Management Committee, as the applicable rulemaking authority, to set an annual procurement threshold of not more than \$50,000 for hiring additional support for a complaint investigation or hearing.

Conclusion

The Independent Legislative Ethics Commission appreciates the opportunity to provide research and recommendations to the Legislative Management Committee. The Commission looks forward to assisting in legislation to address these issues in the 2016 legislative session.