

Independent Legislative Ethics Commission

2016 Summary Data Report to

the Utah Legislature

Independent Legislative Ethics Commission

Commission Chair: Judge Judith M. Billings

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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. At that meeting, Judge Judith M. Billings was elected as chair of the Commission for the following year. Judge Hans Q. Chamberlain was elected as Chair Pro Tempore.

The 2016 Commission membership is as follows:

Judge Judith Billings, Chair

Judge Lynn Payne

Mr. Doyle Mortimer

Judge Hans Chamberlain

Ms. LaWanna “Lou” Shurtliff

In response to the Commission’s Research and Recommendations for Changes to Legislative Joint Rule Title 6, Representative Patrice Arent sponsored HJR 6 during the 2016 legislative session. A copy of that legislation is attached to this report.

On February 5, 2106, HJR 6 was heard in the House Rules Committee. Committee members expressed several concerns regarding the provision eliminating the residency and voter registration requirements for complainants and ultimately failed to pass the bill out of committee.

Statistical Information for Ethical Complaints

During 2016, 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 2016, the Ethics Commission did not recommend review of any complaints by the Legislative Ethics Committees.

Accounting of Commission’s Budget and Expenditures

In 2016, the following expenditures were paid out of the Legislative Ethics Commission’s budget:

 $4000 – Executive Director Salary

 $39.96 – Commission Meeting Lunch

Total expenditures for 2016 - $4039.96

**JOINT RULES RESOLUTION ON ETHICS COMMISSION**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Patrice M. Arent**

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**

29

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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=63g-2-302&session=2016GS).

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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-2-201&session=2016GS) 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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-4-204&session=2016GS), 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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-4-204&session=2016GS).

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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-2-304&session=2016GS) and Utah Code Section [36-14-5](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=36-14-5&session=2016GS).

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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-2-201&session=2016GS) or [JR6-3-101](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-3-101&session=2016GS).

205          (2) (a) If the chair determines that the complaint does not comply with [JR6-2-201](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-2-201&session=2016GS) or

206     [JR6-3-101](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-3-101&session=2016GS), 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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-2-104&session=2016GS).

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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-3-101&session=2016GS), 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~~](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-2-104&session=2016GS)~~;~~]

240          (iv) that disclosure of information about the complaint is restricted under [JR6-3-102](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-3-102&session=2016GS);

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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-3-102&session=2016GS); 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](http://le.utah.gov/UtahCode/SectionLookup.jsp?section=jr6-3-102&session=2016GS);

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.