

2014 Summary Data Report to the Utah Legislature



Independent Legislative Ethics Commission

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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 to finalize its 2013 Summary Data Report. Two new Commissioners were appointed in 2014. Judge Hans Chamberlain was appointed to fill a vacancy left by Judge Russell Bench who had completed his term. Ms. LaWanna "Lou" Shurtliff was appointed to fill a vacancy left by Ms. Joanne Milner who had completed her term.

The Commission is very grateful for the service of our past members including Chief Justice Michael Zimmerman, Judge Jon Memmott, Lt. Governor Gayle McKeachnie, David Gladwell, Judge Russell Bench and Joanne Milner

The 2015 Commission membership is as follows:

Judge Lynn Payne, Chair

Judge Judith Billings

Doyle Mortimer

Judge Hans Chamberlain

LaWanna "Lou" Shurtliff

The Commission met in April to discuss the breadth and scope of the Commission's powers. The Commission also approved materials to aide citizens and legislators in filing and responding to complaints and to prepare for a hearing before the Commission. These materials are attached to this report and also available on our website www.ethics.utah.gov.

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Statistical Information for Ethical Complaints

During 2014, 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 2014, the Ethics Commission did not recommend review of any complaints by the Legislative Ethics Committees.

Accounting of Commission's Budget and Expenditures

In 2014, the following expenditures were paid out of the Legislative Ethics Commission's budget:

\$4000 – Executive Director Salary

\$3000 – Executive Director One-Time Bonus approved by President Niederhauser and Speaker Lockhart for work required in the setup of Ethics Commissions and the launch of the website, www.ethics.utah.gov.

\$46.50 – Commission Meeting Lunch

Total expenditures for 2014 - \$7046.50

Citizen's Check List for Filing a Legislative Ethical Complaint

- 1) The complaint must be against a sitting legislator.**
- 2) The complaint cannot be filed during the 60 calendar days preceding a primary or general election if the accused legislator is a candidate and is opposed by another candidate in either of those elections.**
- 3) The alleged ethical violation generally must have occurred within the past two years.**
- 4) The alleged ethical violation must fall into one of the following categories:**
 - a. Legislator engaged in activity that destroyed or impaired independence of judgment
 - b. Legislator was paid to further a legislative matter
 - c. Legislator exercised undue influence on a government entity
 - d. Legislator abused official position or violated trust
 - e. Legislator used non-public information to gain a business advantage with the state or a political subdivision
 - f. Legislator disclosed confidential information gained through official position
 - g. Legislator used official position to secure privileges for self or others
 - h. Legislator failed to disclose a conflict of interest during the session
 - i. Legislator received a gift or award that influenced the legislator's official duties
 - j. Legislator had an unfair advantage in business or professional activities due to the legislator's official position
 - k. Legislator failed to follow Utah Procurement Code in obtaining a state contract
 - l. Legislator, household member, or client benefited from a state contract arising from legislation sponsored by legislator without following Utah Procurement Code
 - m. Legislator has been convicted or pled guilty to a crime involving moral turpitude
 - n. Legislator has entered a plea of no contest or a plea in abeyance to a crime involving moral turpitude
- 5) The complaint may be filed for two or more registered voters currently residing in Utah.**
- 6) The complaint must contain evidence or sworn testimony that sets forth facts and circumstances supporting the alleged violation that would be of a type generally admissible under the Utah Rules of Evidence.**

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- 7) **At least one of the citizen complainants must have actual knowledge of the facts and circumstances supporting the alleged violation. Actual knowledge is typically defined as “direct understanding of a circumstance or fact, resulting in information that would lead a reasonable, prudent person to investigate further.”**
- 8) **The complaint must contain all of the following information;**
 - a. the name and position or title of the legislator
 - b. the name, address, and telephone number of each individual who is filing the complaint;
 - c. a description of each alleged violation, including a reference to the section of the code of conduct alleged to have been violated or the criminal provision violated and the docket number of the case involving the legislator.
 - d. the name of the complainant or complainants who have actual knowledge of the facts and circumstances supporting each allegation.
 - e. the facts and circumstances supporting each allegation, including copies of official records or documentary evidence or one or more affidavits.
 - f. a list of the witnesses whom the complainants wish to have called, including each witness’s name, address, and one or more of the witness’s telephone numbers, if available.
 - g. a brief summary of the testimony to be provided by the witness; and a specific description of any documents or evidence complainants desire the witness to produce;
 - h. a statement that each complainant has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint, believes them to be true, and is filing the complaint in good faith.
 - i. the signature of each complainant.

For actual language of the rules themselves, see Legislative Joint Rule Title 6, Legislative Ethics and Adjudication of Ethics Complaints at www.ethics.utah.gov.

Legislator's Check List to Responding to an Ethics Complaint

- 1. Within five days of receiving a complaint, the Independent Legislative Ethics Commission will determine if the complaint complies with the requirements of the rule and accept the complaint. (JR6-4-101(3)(a))**
- 2. After acceptance of a complaint, the Independent Legislative Ethics Commission will promptly forward the complaint to the legislator named in the complaint for response. (JR6-4-101(3)(d))**
- 3. The legislator has 30 days from receipt of the complaint to file a written response. This response must contain the following information: (JR6-4-103(2))**
 - a. Name, address and telephone number of the respondent
 - b. An affirmative defense to each allegation including supporting facts provided by affidavit.
 - c. Copies of official records or documentary evidence
 - d. A list of witnesses that the respondent wishes to have called
 - e. A brief summary of the testimony to be provided by each witness
 - f. A specific description of any document or evidence to be produced
 - g. A statement that the respondent has reviewed the response and believes the contents to be true and accurate
- 4. The affidavits accompanying the response must contain the following information: (JR6-4-103(2)(i))**
 - a. The name, address and telephone number of the signer
 - b. A statement that the signer has actual knowledge of the facts in the affidavit
 - c. The facts testified to by the signer
 - d. A statement that the affidavit is true and correct and that false statements are subject to perjury
 - e. The signature of the signer
- 5. Should the respondent want the Independent Ethics Commission to subpoena a witness for testimony, a list of those witnesses, their addresses and telephone numbers should be provided to the Commission no later than 15 days after the respondent receives the complaint.**

This guide is for reference only. For actual language and requirements of the rules themselves, see Legislative Joint Rule Title 6, Legislative Ethics and Adjudication of Ethics Complaints at www.ethics.utah.gov.

How to prepare for a hearing before the Independent Legislative Ethics Commission

Do I need a lawyer?

You do not need to hire an attorney to present your case at a hearing before the Legislative Ethics Commission. You may consult or hire counsel if you desire.

Should I bring witnesses?

Yes, you should have any witnesses listed in your complaint or response available to testify before the Commission. If the witnesses are one of the first three complainants listed on the complaint, they will be allowed to attend the hearing. Otherwise, they will be asked to wait outside until the Commission is ready to hear their testimony.

Give your witnesses as much advance notice as possible of the hearing date. The Commission has the power to subpoena witnesses who are unwilling to come to the hearing voluntarily. A subpoena allows the Commission to require a witness's attendance.

Because the purpose of the Fifth Amendment privilege not to incriminate oneself is to prevent prosecution for criminal action, a witness will not be allowed to invoke the Fifth Amendment privilege if the witness cannot be prosecuted for a crime to which the witness's testimony relates.

As a complainant, how do I know what witnesses the legislator will bring?

After the Commission has determined that a complaint meets the criteria for review, they will ask the respondent legislator to provide a written response to the complaint. This response will be forwarded to the complainant after the Commission receives it. This response will outline any witnesses or evidence that the respondent legislator plans to present at the hearing.

As a respondent legislator, how do I know what witnesses the complainant will bring?

The respondent legislator will be provided a copy of the original complaint. This complaint will include a list of all witnesses and a brief summary of what each witness will testify to.

Will we be able to cross examine witnesses?

Unlike a court case, you or your counsel will not have the opportunity to directly question or cross examine the witnesses. Each side is simply there to provide information to the Commission and respond to the Commission's questions.

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What should I bring to the hearing?

Exhibits or Evidence – if you have any physical evidence or exhibits to support your complaint or response, bring the originals and six copies of each document/paper/picture you want the Commission to consider. One copy will be provided to the other side and one copy will be provided to each of the five Commissioners.

How should I handle myself during the hearing?

Attending a hearing and presenting evidence can be stressful. Do your best to stay calm. The Commission can only hear answers and review evidence that is directly related to the elements of the complaint or response. Please contain your statements to the issues that are relevant to the complaint or response.

Be to the hearing location at least fifteen minutes before the hearing is to start. Ensure that your witnesses are ready to testify when the hearing starts. Even if they may not be able to sit in the hearing, make sure your witnesses stay close by during the hearing so they will be ready when the Commission calls them to testify.

Do not interrupt or speak to the other party, even if they interrupt or speak to you. You will have a chance to address the Commission or clarify any information that you feel is incorrect.

The Commission will ask you questions. If you do not understand the question, say so. Do not answer until you fully understand the question. Take your time when answering questions. Give the question as much thought as you need to understand it and come up with your answer. Explain your answer if needed.

After the hearing, the Commission will ask everyone to leave while they deliberate. They will not announce their findings publicly after their deliberation. If the Commission determines no allegations were proved, the Commission will issue an order that the complaint be dismissed and will classify all recordings, testimony, evidence and other records presented at the hearing.

If the Commission finds that allegations in the complaint were proven, they will publicly release their recommendation, the complaint, and the response. They will also provide notice of those findings in writing to the complainants and the respondent as well as the Ethics Committee of the respective house of which the respondent is a member.

Within 30 days of receiving a recommendation from the Commission, the Ethics Committee of that body will then hold a public hearing to review the complaint.