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COLORADO INDEPENDENT ETHICS COMMISSION

FY 2016 STRATEGIC PLAN AND BUDGET REQUEST



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Independent Ethics Commission Strategic Plan and Budget Request FY 2014

I. Mission Statement

The mission of the Colorado Independent Ethics Commission is to encourage and enforce ethical conduct by public officials and employees, and to maintain and improve the public's confidence in the integrity of Colorado governments.

II. Agency Overview:

The Colorado Independent Ethics Commission ("Commission" or "IEC") was created in 2006 pursuant to a voter-initiated amendment to the Colorado Constitution. See, Article XXIX. The General Assembly thereafter passed enabling legislation, C.R.S. §24-18.5-101 *et seq.* The Commission held its first meeting in December, 2007, promulgated procedural rules in July 2008, and issued its first opinion in October 2008. The Commission revised its rules in April 2011.

Pursuant to the Constitution and the enabling statute, the IEC is tasked to "hear complaints, issue findings and assess penalties, and also to issue advisory opinions on ethics issues arising under article XXIX and other standards of conduct and reporting requirements as provided by law." Article XXIX, section 5(1). The Commission also issues letter rulings, which are provided for in C.R.S. §24-18.5-101(4)(a) and (b). In addition, the IEC "shall conduct an investigation, hold a public hearing, and render findings on each non frivolous complaint pursuant to written rules adopted by the Commission." Article XXIX, section 5(c).

The Commission consists of five members appointed as follows, one each by the Governor, the Speaker of the House, the President of the Senate, the Chief Justice of the Supreme Court, and one selected by the other four Commissioners. The fifth member must be a local government employee or official. No more than two members of the Commission may be from the same political party. The current members of the Commission are: Rosemary Marshall, chair; Matt Smith, vice-chair, Bob Bacon, William Leone, and Bill Pinkham.

The Commission has jurisdiction over all state legislative branch employees and elected officials, all state executive branch elected officials and employees, as well as employees and elected officials of all counties and municipalities in the state, unless they are employed by a home-rule county or municipality which has promulgated an ethics code or ordinance.

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The Commission is an independent agency within the Judicial Department. The Supreme Court Administrator's Office ("SCAO) provides administrative functions, including payroll and employment services, budget assistance, accounting services, and computer support at no cost to the Commission. The Commission's offices are located on the second floor of the Ralph Carr Justice Center ("Carr Building") with the Office of Attorney Regulation, the Commission on Judicial Performance and the Commission on Judicial Discipline. The Commission's lease for space is appropriated through SCAO.

The IEC has two employees: the Executive Director and the Assistant to the Director, who provide staff support to the all-volunteer Commission. The Commission filled the Assistant to the Director position in February 2014 and filled the Executive Director position during September 2014.

III. Evaluation of Performance

In almost seven years the Commission has issued 85 opinions, processed 73 complaints (held 11 public hearings on complaints) and twice promulgated and revised its Procedural Rules. The Commission has also searched for, and appointed a local government representative (the "Fifth Commissioner") on two occasions. It has responded to 71 requests under the Colorado Open Records Act, C.R.S. §24-72-101 *et seq.* ("CORA).

While the the Commission continues to timely respond to matters that are complete and presented for resolution, the work load of the Commission has grown substantially through 2013 and the beginning of 2014 requiring an increase in meetings by this volunteer Commission. Most notably, the number of Complaints, including high profile ethical issues filed against statewide elected officials, have dominated the meeting schedule of the Commission and have required increased legal assistance to the Commission.

A chart summarizing the Commission activities since 2008 is attached as Appendix A.

IV. Other Activities:

The Commission remains committed to an outreach and training program for all employees and officials under its jurisdiction. The Commission issued a Handbook available for all government employees and officials in 2011; and substantially revised that document in 2013. The revised Handbook has been provided to all of the members of the General Assembly, employees of state agencies, and county and municipal employees and officials through Colorado Counties, Inc. and the Colorado Municipal League. The Handbook is also available on the Commission's web site.

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The Commission believes that training of covered individuals remains the most efficient and cost-effective way to ensure that public officials and employees understand and appreciate the ethical obligations required by their service.

V. Five Year Strategic Plan

The Commission's overall goal is to timely perform its duties under the Constitution and other standards of conduct as swiftly and as judiciously as possible. The Commission's five-year objectives are as follows:

- Continue to respond to advisory opinions in a timely manner and when possible issue general guidance to covered individuals through position statements.
- Continue to process frivolous and non-frivolous complaints in a timely manner.
- Re-establish and expand outreach and education so that all covered individuals receive ethics training soon after their initial employment and on a regular basis; and thereafter, to foster an ethical culture in government that reduces the work load of the Commission.
- Reduce the burden on citizens who pursue complaints and/or respond to complaints without the assistance of counsel.

These issues are described more fully below:

A. Respond to Requests for Advisory Opinions in a Timely Manner and Provide Guidance to Covered Individuals in Position Statements:

The Commission has streamlined its process for issuing advisory opinions. Most requests are resolved in 30 to 60 days. Delays do occur, but this generally happens either when the request submitted does not contain sufficient information to answer the request, or because the request concerns complex or novel issues. The Commission will continue to respond to requests in a timely manner. The Commission also would like to be proactive in issuing position statements that may assist answering common issues of general application which affect public employees and officials, whenever possible.

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B. Process Frivolous and Non-Frivolous Complaints in a Timely Manner:

While the Commission timely addresses most frivolous complaints, the processing of complaints once determined to be "non-frivolous" may require extensive investigation and numerous meetings to provide the parties a fair opportunity to present the ethical issues to the Commission. The number of Complaints and the engagement of counsel by parties to represent their interests in these proceedings have increased substantially in recent years. The Commission requires additional legal services to guide the Commission in conducting the hearings and administering motions filed in connection with the more litigious cases. The Commission may explore the use of electronic equipment or software to facilitate the participation of parties and witnesses. The Commission will require better electronic recording equipment to facilitate maintaining its recordings of meetings which may result in appeal.

C. Outreach and Education

The Commission believes that outreach and education are essential to its core mission. If public officials are to abide by ethical standards, they should be given a fair opportunity to know and understand the ethical standards to be applied in the performance of their duties. Once the IEC staff positions are filled, the Commission intends to return to a more rigorous ethics training schedule. The Commission plans to resume training of newly hired state employees and to work on developing electronic web-based ethics media. Other state ethics commissions offer training. Training is helpful to new employees, and may aid employees with several years of service. The Commission believes that training will result in a greater understanding of the rules, so that ultimately, the workload of the Commission may be reduced.

The Commission would like to provide either telephonic or web-based public access to its public meetings. The Commission desires to begin moving toward the use of tablets or laptops to facilitate the participation of Commission members, rather than preparing and disposing of notebook binders for each of its meetings. Initially, the Commission would like to begin by purchasing tablets or laptops for two commission members each year and replacing outdated devices on a two to three year cycle.

D. Complaints without the Assistance of Counsel:

The Commission is aware that the filing and prosecution of a complaint or defense against a complaint without the assistance of an attorney may prove challenging. The Commission intends to seek guidance from the Judicial Department and others involved

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in the "Pro Se Project" to gain insight on how an individual may participate in the Commission complaint process without the assistance of an attorney.

V. Commission's Goals:

Goal 1: Respond to requests for opinions in a timely manner.

In calendar 2013, the Commission resolved 80% of its advisory requests within 60 days of the request being complete. A request is considered complete when no additional information is required. In the first six months of 2014, all but one of its requests was issued within that time frame. One advisory opinion request was pending in 2013 for several months because the requestor did not timely provide information necessary to complete the request and this request was subsequently withdrawn. Another request from 2013 may be addressed more generally by the Commission as a position statement.

With respect to advisory opinions, some requests concern issues which the Commission has considered before, and the issuance of opinions is fairly quickly accomplished. Other requests concern novel issues and require the Commission staff to perform extensive factual research and/or counsel to provide legal research.

The Commission will continue to issue position statements on issues which affect a large number of public officials and employees. The Commission's ability to meet this goal over the past year was difficult due to the prospect that the request might impact numerous local governments with many separate and independent ethics codes.

Goal 3: Response to complaints in a timely manner.

In calendar 2013, and through the first six months of 2014, the Commission processed 100% of its complaints within 12 months, except for Complaints which were stayed under the procedural rules or at the request of the Complainant. This includes the complaints which were found to be non-frivolous.

The Commission remains focused on trying to act on complaints as timely as possible, while preserving the rights of parties involved in the complaint process. The Commission may look to mechanical or electronic means to assist the participation of parties and witnesses. In response to the increased number of cases in which counsel have been engaged to represent the parties, the Commission needs to upgrade hand held recording devices to devices that can preserve these recordings for potential appeal.

Goal 3: Increasing awareness of ethical behavior through increased and improved outreach and education.

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The Commission was not able to provide much training from 2012 through mid-2014 due to the IEC's heavy workload and staffing. Several requests for training could not be accommodated. Now that the Commission is fully staffed, it hopes to resume and expand its training programs.

The Commission has updated its website with the assistance of the Statewide Internet Portal Authority and its contractor, Colorado Interactive, Inc. The Commission is hopeful that low-cost web-based training opportunities may be made available. Additionally, the Commission would like to respond to public requests to make its meetings public either through low-cost telephonic or web-based programs.

Goal 4: Revise the complaint process.

The Commission is aware that the filing and prosecution of a complaint or defense against a complaint without the assistance of an attorney may prove challenging. The Commission intends to seek guidance from the Judicial Department and others involved in the "Pro Se Project" to gain insight on how an individual may participate in the Commission complaint process without the assistance of an attorney. The report from this "Pro-Se project" is scheduled to be released August 1, 2014. The Commission will look for guidance on assisting pro-se parties, which may be implemented at little or no cost to the Commission's operational budget.

The lessons potentially learned from the "Pro Se Project" may have direct or indirect application to individuals participating in complaints before the Commission. The Commission hopes to first gain insight from the project, before attempting to modify its complaint process. The Commission hopes that lessons learned in review of the "Pro Se Project" may offer the Commission cost-effective alternatives to better serve the pro-se parties that appear before the Commission.

VI. Additional Issues:

A. Adjustments to Budget:

In FY 2014, the IEC went over its budgetary appropriations in its legal services and operating expenses. The budget over runs especially for legal services substantially exceeded the over runs for FY2013. The IEC was able to move funds from its personal services line to cover most of these expenditures. However, the Commission used \$4272 from a Judicial transfer to cover over-expenditures to complete FY2013.

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The Commission exceeded its legal services budget by \$38,697 due largely in part to an appeal and other matters filed relating to high profile cases involving state-wide elected officials. The bulk of this over run was covered by funds from the personnel service line while the Executive Director and the Assistant to the Director positions were being filled. The balance of the over-expenditure was covered by the transfer from Judicial.

At this time, one of the Commission's decisions is currently on appeal from the Denver District Court to the Colorado Court of Appeals and the time for appealing another high profile case has not yet expired and the Commission has been notified that it may be challenged in District Court on other matters. The Commission anticipates that litigation may continue for these matters through FY 2015 and into FY 2016. The Commission seeks an increase in its legal service budget from 1080 hours per year to 1620 hours (.9 FTE total) for FY 2016 because of the continuing need for legal services and the extensive litigation anticipated to enforce its prior determinations.

B. Operating Budget - Travel and Equipment upgrades:

In FY 2014 the IEC exceeded its travel operating budget by \$238. It is anticipated that the bulk of this over run was caused by additional meetings and related costs. The Commission increased its in-person meetings to meet a heavy work load. The Commission recognized this trend and adjusted the FY 2015 budget accordingly. However, based upon actual costs experienced in FY 2014, the costs for these meetings need to be increased by \$1500 to \$8550 for FY 2016 to cover travel and meeting cost increases. .

Additionally, the Commission is requesting \$1200 per year for two tablets or laptops, including software, to be used by Commission members for FY2016. An additional request for two tablets or laptops in FY2017 is anticipated to cycle more modern devices and provide such devices to the Commission on an ongoing basis. It is anticipated that the acquisition of these devices will be off-set by the printing and paper costs saved by their use and will have no overall impact to the IEC Budget.

The IEC requests the addition of \$500 to acquire electronic equipment to improve the quality of recordings made during its meetings. Due to the increased litigation possibilities that the IEC has experienced over the past two years, the acquisition of improved recording equipment is now necessary.

C. Salary Adjustments (?)

The Commission also asks that its personal services line be adjusted by the same salary survey and pay for performance adjustments as requested by the Judicial Branch. As of October 2014, that anticipated rate is ???% for salary survey and ???% for pay for performance increases.

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V. Conclusion:

For FY 2016, the Commission seeks an increase in its legal services budget from 1080 hours to 1620 hours or an additional \$53,460 at the current legal services blended rate. The Commission seeks an increase of \$1,500 for travel and attendance at meetings and \$500 for improved recording devices in its operating budget.

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APPENDIX A - Independent Ethics Commission Yearly Activities Report

Year	Mtg. s.	Opinions				Complaints	Complaint Hearings	CORA Requests	Trainings	Informal advice calls
		AO	LR	PS	Total Opinions					
2008	27			3	3	4	0	4	2	57
2009	22	9	5	7	21	14	1	8	6	@175
2010	20	16	2	1	19	9	3	12	7	@150
2011	17	12		1	13	12	1	9	34	82
2012	16	9	1	2	12	7	2	13	14	75
2013	22	10			10	14	3	27	4	232
2014 (to 6/30/14)	12	7			7	13	1	11#	3	68#
Total	136	63	8	11	85*	73	11	71	70	839

LEGEND:

AO = Advisory Opinion

LR = Letter Ruling

PS = Position Statement

*Total Opinions do not reflect opinions withdrawn by the requestor (1 in 2012 and 1 in 2013 and 4 in 2014)
One Opinion Request filed in 2013 is being considered as a potential Position Statement

Meetings include all in person meetings and telephonic meetings

@ = estimated calls - official records not maintained

= CORA Requests and Guidance Calls between March and June 2014

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ITEMS	ACTUAL FY 2013		ACTUAL FY 2014		APPROP FY 2015		ESTIMATE FY 2015		REQUEST FY2016	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
2231 - IT Hardware Maint/Repair Svcs			4						0	
2510 - In-State Travel	66				300				300	
2511 - In-State Common Carrier Fares										
2513 - In-State Pers Vehicle Reimbursemer	199				500				500	
2520 - In-State Travel/Non-Employee	1,033		1,509		1,500				1,750	
2522 - IS/Non-Employee - Pers Per Diem										
2523 - IS/Non-Employee Vehicle Reimburse	4,087		3,072		4,450				6,100	
2530 - Out-of-State Travel	590				650				750	
2531 - OS Common Carrier Fares	339				550				200	
2532 - OS Personal Travel Per Diem	222				250				250	
2550 - Out-of-Country Travel										
2551 - OC Common Carrier Fares	628		673							
2610 - Advertising	150		175		150				150	
2680 - Printing and Reproduction Services	1,741		516		1,800				750	
2681 - Photocopy Reimbursement	103		9		100				100	
2820 - Other Purchased Services			675							
3110 - Other Supplies & Materials	2,764		9		3,627				3,000	
3115 - Data Processing Supplies			27							
3116 - Noncap IT - Purchased PC SW			331							
3118 - Food and Food Service Supplies	1,091		685		1,700				1,700	
3121 - Office Supplies			193		150				200	
3123 - Postage	142		48						100	
3124 - Printing/Copy Supplies			695						700	
3128 - Noncapitalized Equipment	150		232							
3132 - Noncap Office Furn/Office Systems	148									
3140 - Noncapitalized IT - PCs			1,521							
3143 - Noncapitalized IT - Other			261							
4100 - Other Operating Expenses	87				100				100	
4140 - Dues and Memberships	963		533		1,000				445	
4151 - Interest - Late Payments			1							
4220 - Registration Fees	530		550		530				550	
Sub-Total Operating Detail	15,033		15,601		16,757			0	18,345	