

COLORADO INDEPENDENT ETHICS
COMMISSION
FY 2013 STRATEGIC PLAN AND BUDGET
REQUEST



Dan Grossman, Chair
Sally H. Hopper, Vice Chair

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Independent Ethics Commission Strategic Plan and Budget Request 2013

Background:

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, and issued its first opinion in October 2008.

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.” The Commission also issues letter rulings, which are provided for in C.R.S. §24-18.5-101(4)(a) and (b). The Commission also “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 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: Dan Grossman, chair; Sally H. Hopper, vice-chair, Dorothy B. Butcher, Bill Pinkham, and Matt Smith.

The Commission has jurisdiction over all state legislative branch employees and elected officials, and 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 work for a home-rule county or municipality which has promulgated an ethics code or ordinance.

The work of the Commission on its constitutionally-mandated mission to hear complaints and issue advisory opinions is summarized below. In addition, Commission staff responds to open records requests pursuant to the Colorado Open Records Act (“CORA”), C.R.S. § 24-72-10, conducts trainings of state and local employees and officials, and answers informal questions from covered individuals, the press and public.

<u>Year</u>	<u># of Mtgs.</u>	<u>Opinions Issued</u>	<u>Complaints Received</u>	<u>Hearings</u>	<u>CORA Requests</u>	<u>Trainings</u>	<u>Informal advice calls</u>
2008	24	3(all position statements)	4	0	4	2	57
2009	25	21(7 position statements, 5 letter rulings, 9 advisory opinions)	14	1	8	6	@175
2010	20	19 (1 position statement, 2 letter rulings, 16 advisory opinions)	9	1 (2 settled before hearing)	12	7	@ 150
2011 to 10/31/11	13	12 (1 position statement, 11 advisory opinions, 1 advisory opinion pending)	11	3 pending	9	34	@ 40
Total since 2008	82	55	38	2 (3 pending)	33	49	422

Other Activities:

1. The Commission issued its initial procedural rules in 2008, and substantially revised its rules in 2011. Both times, the promulgation and revision of the Rules took up portions of numerous meetings and countless hours of staff and legal services time. The revised Rules were effective April 14, 2011.

2. The Commission remains committed to a training program for all employees and officials under its jurisdiction. The Commission broadened its training program during FY 2011, and conducted over thirty trainings of state executive branch agencies, Public Trustees, the Offices of the Governor and Lieutenant Governor, members of the General Assembly and several organizations including the Colorado Municipal League,

the Colorado State Managers Association, the Colorado Fiscal Managers Association, and the Colorado Municipal Clerks Association. All of the trainings were evaluated by the participants and received an average score of 4.80 on a scale of 1-5, with 5 being outstanding.

The Commission believes that training of covered individuals remains the most effective and efficient way to ensure that public officials and employees operate within the constitution.

Evaluation of Performance

In less than four years, the Commission has issued 55 opinions, (including 12 position statements, 7 letter rulings, and 36 advisory opinions), processed 38 complaints and promulgated and revised its Procedural Rules. The Commission has also searched for, and appointed two Commissioners. It has responded to 33 requests under the Colorado Open Records Act, C.R.S. §24-72-101 *et seq.* (“CORA”) and conducted two public hearings, with another three either scheduled or anticipated.

Five Year Strategic Plan

The Commission’s overall goal is to improve the ethical practices of individuals within its jurisdiction through robust education and training, issuing advisory opinions, letter rulings and position statements, investigating complaints and conducting hearings on ethical matters. Our five-year objectives are as follows:

- Revise the complaint process to reduce the burden on citizens who pursue complaints.
- Expand the education and training program so that all covered individuals will receive training soon after their initial employment and on a regular basis thereafter, to create a an ethical culture in government and perhaps to thereby reduce the work load of the Commission.
- Continue the practice of responding to advisory opinions in a timely manner and be more proactive in issuing guidance on issues to covered individuals.
- Speed up the process for resolving non frivolous complaints so that all complaints are resolved in a timely manner.
- Schedule one or two meetings per year outside the Denver metropolitan area.

These Issues are described more fully below:

Complaint Process:

Currently persons who file a complaint with the Commission are required to pursue the complaint on his or her own. The IEC believes that this may create an undue burden on a person with knowledge of a potential ethical violation. IEC staff has received numerous calls from people who wish to file a complaint, but who do not have the expertise or the resources to follow up on a complaint. Several individuals have spoken with staff about issues, but have not followed up on complaints because they live in a smaller community and do not want it known that they are the person who filed the complaint. The Commission does not permit the filing of an anonymous complaint. Some potential complainants live far away from Denver and are unable to travel for the hearings and other proceedings. Therefore in the future, the Commission wants to make it possible for the investigation and prosecution function to be performed by a staff member. The Commission is also considering having this function would be performed by an Assistant Attorney General. The Commission has not yet decided on the preferred course.

Investigation of complaints which are not frivolous and which fall within the Commission's jurisdiction sometimes take almost 12 months from date of filing to the hearing date. The Commission would like to reduce that time within 5 years.

Training:

The Commission believes that training is an essential part of its core mission. Section 1 of Article XXIX Purposes and findings states that "[t]he conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people." IEC staff has learned from the trainings it has done that many state and local employees did not know that Article XXIX is in force (many think that it was declared unconstitutional) and/or they do not realize they are covered individuals. Most do not understand the proscriptions contained in the Article. Unless there is systematic training of public employees and officials, the public will not have the confidence that these rules are followed, and employees and officials will inadvertently break the rules possibly resulting in a complaint being filed. The Commission also believes that training will result in a greater understanding of the rules, so that ultimately, the workload of the Commission may be reduced.

Of the 41 states with ethics commissions, all but one offers training. In 27 states this training is mandatory for all new employees, and several states also require refresher

courses every 2 or 3 years. The Commission plans to continue its state employee training program and hopes to expand its training to local government employees under its jurisdiction in the future. So far, the Commission has been able to fulfill training requests within the Denver metropolitan area. IEC staff is exploring technologies such as video conferencing and webinars to enable staff to conduct trainings for officials and employees in other parts of the State. The Commission hopes that in the future there will be a formal training program required for all state and local employees and officials within its jurisdiction, so that everyone covered by Article XXIX is knowledgeable about the rules and processes of the Commission.

More Proactive:

The Commission has streamlined its process for obtaining advisory opinions. When the Commission was first formed, requestors waited months for a response. Of the 12 opinions issued in 2011, only one was pending for more than 30 days and that was because of its complexity and the necessity of discussing the issues at multiple meetings. The Commission will continue to respond in a timely manner. Because of the workload of the Commission, the IEC has been reactive to questions posed by covered individuals. The Commission would like to be more proactive in issuing position statements and anticipating common issues which affect public employees and officials.

Meetings throughout the State:

All of the meetings of the Commission to date have been in Denver. The Commission would like to conduct meetings once or twice a year in other parts of the state, as other state boards and commissions do. The Commission believes that this would emphasize important parts of the State. This would offer Coloradoans outside the metro area the opportunity to observe the Commission. Because of the IEC's very limited operating budget, this has not been possible.

Conclusion:

In order to accomplish its goals, and become more effective, the Commission needs to expand both its staff and its operating budget. The IEC currently has only one staff member and an operating budget of \$15,807 (Total budget minus personal and legal services). Because three of the five Commissioners live outside the Denver metropolitan area, reimbursement for travel and incidental expenses account for more than two-thirds of the operating budget. That leaves very little money for staff in-state travel or other expenses. The sole staff member, the Executive Director, is responsible for the overall management of the Commission, including development and monitoring of the budget. She is the main point of contact for state and local public officials and

employees at all levels of government. She also responds to oral requests for information made by the general public, as well as those pursuant to the CORA. She performs legal and factual research relating to complaints and advisory opinions. She drafts all opinions for Commission review. She is responsible for the maintenance of the Commission's web site, www.colorado.gov/ethicscommission. Additional staff would allow the IEC to fulfill its goals and operate more effectively. Because of the current budget situation, the Commission has decided not to ask for a decision item for FY 2013.