

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202	
Plaintiff: MICHAEL COFFMAN  v.  Defendant: INDEPENDENT ETHICS COMMISSION	▲ COURT USE ONLY ▲  Case Number:2009CV1650  Division: 19 Courtroom:
Attorneys for Proposed Intervenor Defendant Colorado Ethics Watch: Chantell Taylor, # 33059 Luis Toro, #22093 Colorado Ethics Watch 1630 Welton Street, Suite 415 Denver, Colorado 80202 Telephone: (303) 626-2100 Fax: (303) 626-2101 E-mail:ctaylor@coloradoforethics.org; <a href="mailto:ltoro@coloradoforethics.org">ltoro@coloradoforethics.org</a>	
<b>MOTION TO INTERVENE</b>	

Colorado Ethics Watch (“Ethics Watch”), by its undersigned counsel, hereby moves the Court for an order permitting it to intervene as a defendant in this action pursuant to Rules 24(a) and 57(j) of the Colorado Rules of Civil Procedure. In accordance with Rule 24(c), Ethics Watch contemporaneously submits its Answer to the Complaint. In support of this Motion, Ethics Watch states as follows:

**CERTIFICATE OF COMPLIANCE WITH C.R.C.P. 121, § 1-15**

1. Pursuant to C.R.C.P. 121, § 1-15, undersigned counsel certifies that she has conferred with counsel for the parties and is authorized to state that Defendant Independent Ethics Commission (“IEC”) does not oppose this motion. Plaintiff Michael Coffman’s counsel has no position on Ethics Watch’s motion.

**BACKGROUND**

2. Ethics Watch is a nonprofit organization with a stated mission of using legal actions to hold public officials and organizations accountable for unethical activities that undermine the integrity of state and local government.

3. This action for a declaratory judgment arises out of a complaint filed by Ethics Watch on February 13, 2008, with the IEC, pursuant to Colo. Const. art. XXIX, § 5, asking whether Plaintiff Michael Coffman committed ethical violations while serving as Colorado Secretary of State. On March 12, 2008, the IEC advised Ethics Watch that it would hold the complaint in abeyance until it completed its rulemaking process. This effectively stayed proceedings on the complaint until September 2008, when the IEC's Rules of Procedure went into effect.

4. On February 12, 2009, Coffman filed a Motion for Stay, which among other things argued that the Court "must dismiss [Ethics Watch's] complaint." Motion for Stay at p. 17. And yet, Coffman has failed to join as a defendant the very complaining party whose complaint he is asking the Court to dismiss.

5. In October, the IEC determined pursuant to Colo. Const. art. XXIX, § 5(3) that the complaint was not frivolous and therefore must proceed to a hearing. Mr. Coffman responded to the complaint on November 13, 2008, and filed a motion to dismiss the complaint on December 17, 2008. Mr. Coffman's motion to dismiss asserted the same basis for dismissal as asserted in this case. The IEC rejected Mr. Coffman's motion to dismiss on February 5, 2009.

6. The hearing is currently set for March 6, 2009. The IEC has made it clear that it considers Ethics Watch, as complaining party, to be responsible for presenting a case against Coffman on that date. Because Ethics Watch is a party to the suit Coffman seeks to enjoin, it has an interest in the subject matter of Coffman's declaratory judgment action and should have been named as an additional party defendant pursuant to C.R.C.P. 57(j).

## ARGUMENT

7. A party is entitled to intervene as of right in a pending action when the applicant claims an interest relating to the transaction that is the subject of the action, the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede his or her ability to protect that interest, and the applicant's interest is not or may not be adequately represented by existing parties. C.R.C.P. 24(a)(2); *Feigin v. Securities America, Inc.*, 992 P.2d 675, 678 (Colo.App. 1999).

8. In a declaratory judgment case, "all persons shall be made parties who have or claim any interest which would be affected by the declaration." C.R.C.P. 57(j). A court "should insist that jurisdiction be obtained of all parties whose rights would be adversely affected either personally or in an appropriate class action." *Bancroft-Clover Water & Sanitation Dist. v. Metropolitan Denver Sewage Disposal Dist. No. 1*, 670 P.2d 428, 430 (Colo. App. 1983) (internal brackets, ellipsis and quotation omitted). Ethics Watch is the complaining party and is exercising the right bestowed by the Colorado Constitution upon "any person" to file a complaint asking the IEC to determine whether ethical misconduct has occurred and to have that complaint proceed to a hearing when, as here, it is found not to be frivolous. Colo. Const. art. XXIX, § 5(3). Because Coffman

seeks declaratory relief regarding the proceeding initiated by Ethics Watch, Ethics Watch should have been joined as a party under Rule 57(j) and should be permitted to intervene as a matter of right. If the Court rules in favor of Mr. Coffman and determines that the IEC lacks jurisdiction to hear the underlying case then Ethics Watch's ability to prosecute its complaint with the IEC, and fulfill its organizational mission, would be impaired and impeded, contrary to Rule 57(j)'s command that "no declaration shall prejudice the rights of persons not parties to the proceeding."

9. Moreover, the IEC considers Ethics Watch to be just one of two parties before it and must maintain a position of neutrality as between the complaining party and the respondent. The IEC cannot reasonably be asked or expected to adequately represent Ethics Watch's interests in seeing the case go forward. Nor can the IEC be expected to represent Ethics Watch's interest in responding to the mischaracterizations of Ethics Watch's ethics complaint that are contained in Coffman's complaint herein. This an additional ground, independent from the Rule 57(j) analysis, upon which the Court should find that Ethics Watch is entitled to intervene pursuant to Rule 24(a)(2).

**WHEREFORE,** Colorado Ethics Watch respectfully requests that the Court grant it leave to intervene as defendants-in-intervention in the above captioned case pursuant Rules 24(a) and 57(j) of the Colorado Rules of Civil Procedure, and accept its Answer filed contemporaneously herewith.

DATED: February 17, 2009.

COLORADO ETHICS WATCH

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Chantell Taylor, # 33059  
Luis Toro, # 22093

## CERTIFICATE OF SERVICE

I certify that on February 17, 2009, I placed a true copy of the above and foregoing in the United States mail, postage prepaid and addressed as follows:

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Chantell Taylor