

COLORADO INDEPENDENT ETHICS COMMISSION RULES OF PROCEDURE

1. STATEMENT OF INTENT/AUTHORITY

- A. These rules shall be referred to as the Independent Ethics Commission Rules of Procedure (IEC Rules).
- B. The intent of the IEC Rules is to implement the requirements of Article XXIX of the Colorado Constitution and § 24-18.5-101, C.R.S., and to establish procedures that are timely and that are fair to officers, officials, employees of state and local government, and also to members of the public.
- C. The IEC Rules are promulgated pursuant to the authority granted in Article XXIX of the Colorado Constitution and § 24-18.5-101, C.R.S.
- D. The IEC Rules apply to the conduct of all matters before the IEC except

2. INDEPENDENT ETHICS COMMISSION (IEC)

- A. The IEC is composed of five members appointed in accordance with the provisions of Article XXIX and § 24-18.5-101, C.R.S.
- B. The purpose of the IEC shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, letter rulings and position statements, on ethics issues arising under Article XXIX, § 24-18.5-101, C.R.S. and under any other standards of conduct and reporting requirements as provided by law.

3. DEFINITIONS AND RULES OF CONSTRUCTION

- A. Definitions
 - 1. "Advisory opinion" means an opinion by the IEC addressing ethics issues as requested by a public officer, member of the General Assembly, local government official, or government employee.
 - 2. "Article XXIX" means Article XXIX of the Colorado Constitution.
 - 3. "Commission" or "IEC" means the Colorado Independent Ethics Commission as established by Article XXIX of the Colorado Constitution and § 24-18.5-101, C.R.S.
 - 4. "Complaint" means a written document filed with the IEC setting forth facts alleging that a public officer, member of the general

assembly, local government official, or government employee has violated the provisions of Article XXIX, § 24-18.5-101, C.R.S. or any other standards of conduct and reporting requirements as provided by law.

5. “Frivolous” – A complaint is frivolous if the proponent of the complaint can present no rational argument based on the evidence or law in support of the complaint or the complaint is groundless or brought for the purpose of harassment. A complaint filed under Article XXIX is also frivolous if it fails to allege that a public officer, member of the General Assembly, local government official, or government employee has accepted or received any gift or other thing of value for private gain or personal financial gain.
6. “Government employee” means any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a member of the General Assembly or a public officer.
7. “Letter ruling” means a ruling by the IEC addressing ethics issues as requested by a member of the public who is not a public officer, member of the General Assembly, local government official, or government employee.
8. “Local government” means any county or municipality.
9. “Local government official” means an elected or appointed official of a local government but does not include an employee of a local government.
10. “Majority” means more than fifty percent of the members present at a meeting or hearing.
11. “Member” means any of the five members of the IEC.
12. “Official act” or “official action” means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
13. “Party” or “parties” means the person or persons filing a request for an advisory opinion, a request for a letter ruling, a complaint, and the person or persons against whom a complaint is filed.

14. "Person" means any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.
15. "Position Statement" means a written statement regarding ethical issues made by the IEC which is educational in nature and provides guidelines for public officers, members of the General Assembly, local government officials, government employees and members of the public.
16. "Private gain" or "personal financial gain" means any money, forbearance, forgiveness of indebtedness, gift, or other thing of value given or offered by a person seeking to influence an official act that is performed in the course and scope of the public duties of a public officer, member of the general assembly, local government official, or government employee.
17. "Professional lobbyist" means an individual who engages himself or herself or is engaged by another person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.
18. "Public officer" means any elected officer, including all statewide elected officeholders, the head of any department of the executive branch, and elected and appointed members of state boards and commissions. "Public officer" does not include a member of the General Assembly, a member of the judiciary, any local government official, or any member of a board, commission, council or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.
19. "Quorum" means a majority of the number of members of the IEC as fixed by statute.

B. Rules of construction

1. Words in the singular shall include the plural and words in the plural shall include the singular
2. The IEC Rules shall be liberally construed to secure the just, speedy and inexpensive determination of all matters before the IEC.

4. MEETINGS

- A. A notice and agenda of an IEC meeting shall be posted for all IEC meetings in accordance with Colorado law.
- B. Participation by members of the public at IEC meetings will be at the discretion of the IEC.

5. REQUESTS FOR ADVISORY OPINIONS AND LETTER RULINGS

- A. Any public officer, member of the General Assembly, local government official, or government employee can submit a request for an advisory opinion to the IEC.
- B. Any person who is not a public officer, member of the General Assembly, local government official, or government employee may submit a request for a letter ruling to the IEC.
- C. A request for an advisory opinion or a letter ruling from the IEC must be submitted in writing, signed by the person making the request, and filed with the IEC at the offices of the IEC. A request for an advisory opinion or a letter ruling can be hand delivered to the IEC or sent to the IEC offices via US Mail or by facsimile. Requests for advisory opinions and requests for letter rulings shall not be sent to individual members of the IEC.
- D. The IEC has the authority to request information and documents from a person submitting a request for an advisory opinion or letter ruling. The IEC may also seek information and documents from third parties regarding any request for advisory opinion or letter ruling.
- E. The IEC will issue an advisory opinion within twenty (20) business days of receipt of a completed request. A request for an advisory opinion is complete when the IEC has determined that no additional information is necessary to issue the advisory opinion.
- F. The IEC will issue all letter rulings as soon as practicable after receipt of a completed request. A request for a letter ruling is complete when the IEC has determined that no additional information is necessary to issue the letter ruling.
- G. The IEC will publish advisory opinions and letter rulings on the IEC website.

6. COMPLAINTS

- A. Any person may file a written complaint with the IEC asking whether a public officer, member of the General Assembly, local government official, or government employee has failed to comply with the provisions of Article XXIX or any other standards of conduct or reporting requirements as provided by law.
- B. All complaints must be submitted in writing and filed with the IEC at the offices of the IEC. A complaint can be hand delivered to the IEC or sent to the IEC offices via US Mail or by facsimile. Complaints shall not be sent to individual members of the IEC.
- C. All complaints filed with the IEC must contain the address and telephone number of the person filing the complaint. The complaint must contain a statement of the facts underlying the complaint and a statement that, to the best of the person's knowledge, information and belief, the facts and any allegations set out in the complaint are true. The complaint must be signed by the person filing the complaint.
- C. **(Optional language to replace the above paragraph) All complaints filed with the IEC shall be signed by the person filing the complaint and notarized and contain the following:**
 - 1. **The name and address of the public officer, member of the General Assembly, local government official, or government employee who has allegedly violated the provisions of Article XXIX or any other standards of conduct or reporting requirements as provided by law;**
 - 2. **A concise statement of the facts alleged, including the date of the conduct alleged and the specific facts the complaining party relies on to establish a violation of the provisions of Article XXIX or any other standards of conduct or reporting requirements as provided by law;**
 - 3. **A statement of the specific provision(s) of Article XXIX or any other standards of conduct or reporting requirements alleged to have been violated; and**
 - 4. **The name, address, and telephone number of the complaining party as well as the name, address, and telephone number of the complaining party's representative, if any, which shall be the**

address for service purposes during the course of the proceeding.

5. A statement that, to the best of the person's knowledge, information and belief, the facts and any allegations set out in the complaint is true and accurate.

D. A complaint may be dismissed by the IEC on one or more of the following grounds:

1. The IEC has no jurisdiction; or
2. The alleged violation, if true, would not constitute a violation of Article XXIX of the Colorado Constitution, Section 24-18.5-101, C.R.S., or any other standards of conduct or reporting requirements as provided by law; or
3. The complaint is frivolous, groundless, or brought for the purposes of harassment; or
4. The person who is the subject of the complaint had obtained an advisory opinion from the IEC condoning the conduct; or
5. The subject of the complaint has already been investigated and sanctioned by another authority and the IEC believes the action of the other authority was appropriate; or
6. The IEC, within its discretion, determines that dismissal is warranted.

E. The nature and scope of any investigation of a complaint filed with the IEC shall be determined by the IEC.

F. Complaints filed with the IEC shall remain confidential and not be made available to the public until such time as a public hearing is set.

G. Response to Complaint

1. A public officer, member of the General Assembly, local government official, or government employee who is named in a complaint filed with the IEC and against whom allegations are made may file a response to the complaint. Any response must be in writing, signed by the person submitting the response, and should explain, rebut, or provide information, including documentation, concerning the facts and any allegations in the complaint. The response must include a statement that, to the best of the person's knowledge, information and belief, the facts and

any allegations set out in the response are true. The response must be filed with the IEC within thirty days (30) days of the date on the letter from the IEC advising the public officer, member of the General Assembly, local government official, or government employee of the right to file a response. A public officer, member of the General Assembly, local government official, or government employee may, for good cause, request an extension of time to respond to a complaint. Any response or request for extension of time shall be filed at the offices of the IEC.

7. HEARINGS

- A. The IEC shall hold a public hearing on all complaints within the jurisdiction of the IEC which have not been dismissed as frivolous or dismissed on other grounds.
- B. Hearings may be held before the IEC or the IEC, at its discretion, may delegate hearings to be held before an administrative law judge or hearing officer. If a hearing is held before an administrative law judge or hearing officer, the provisions of § 24-4-105 (14) and § 24-4-105 (15) shall apply.
- C. Setting hearings
 - 1. Hearings on complaints will be set as soon as practicable. A hearing date can only be continued at the discretion of the IEC or upon a showing of good cause as determined by the IEC.
- D. Motions, Discovery and Disclosures
 - 1. Motions – No motions will be permitted except with the written approval of the IEC.
 - 2. Discovery - Discovery is permitted only at the discretion of the IEC
 - 3. Disclosures – Within thirty (30) days after the IEC sends out a notice of hearing, each party shall provide the following disclosures to all other parties:
 - a. A list identifying all persons who have information or knowledge relevant to the complaint or inquiry or who may be called as a witness at the hearing including each person's name, address and telephone number, to the extent known, and a short statement regarding the facts or opinions about which they have information or knowledge;

- b. A list identifying all documents and other tangible items that may be relevant to the complaint or inquiry or that a party may wish to use as an exhibit at the hearing. A description of the type of document or other tangible item and the content of the document or other tangible item must be included; and
- c. Copies of all documents or other tangible items identified in a party's disclosures shall be provided to all other parties and copies must be filed with the IEC;
- d. A party has an ongoing duty to supplement disclosures as new, different or additional information on witnesses and tangible items becomes available.

E. Prehearing Matters

- 1. Prehearing Statement – In all matters set for a hearing, a prehearing statement must be filed with the IEC and served on all other parties no later than twenty (20) days prior to the hearing. The prehearing statement must contain:
 - a. A statement of the claims, allegations and issues that should be addressed at the hearing and all relevant facts and circumstances addressing the claims, allegations and issues
 - b. A list of all witnesses a party intends to have testify at the hearing including the full name, address and telephone number, to the extent known, for each witness along with a short statement regarding the subject of their testimony; and
 - c. A list of all documents or other tangible items that a party intends to use as exhibits or to support their position at the hearing. Copies of all documents and other tangible items identified as potential exhibits in the prehearing statement must be filed with the IEC and copies provided to other parties at the time the prehearing statement is filed with the IEC
- 2. Prehearing Conference – A prehearing conference may be scheduled at the discretion of the IEC.

F. Rules of Evidence – The Colorado Rules of Evidence shall provide guidance for all hearings, but may not be strictly enforced. The IEC, at its

discretion, may receive any evidence at a hearing that it deems relevant or helpful to the inquiry at hand, including hearsay.

G. Presentation of evidence – Evidence at a hearing will be presented through the testimony of witnesses and by the submission of documents or other tangible items. Testimony by affidavit or by telephone may be permitted at the discretion of the IEC if a witness is unavailable to testify in person. Persons may be allowed to present statements or arguments. The IEC, at its discretion, may exclude evidence that is not relevant, cumulative or for such other reasons as determined by the IEC.

H. IEC Decision

1. A copy of the IEC decision concerning any complaint that proceeds to hearing shall be sent to all parties of record in each matter at the earliest practicable time.
2. A copy of the IEC decision concerning any complaint will be published on the IEC website at the earliest practicable time.

8. PENALTIES

A. The IEC has the authority to impose penalties as provided by law.

9. REVIEW OF IEC FINAL ACTION ON COMPLAINT

A. Any final action of the IEC concerning a complaint shall be subject to judicial review in Denver District Court.

10. POSITION STATEMENTS

A. The IEC may, at its discretion, issue written statements regarding ethical issues which are educational in nature and intended to provide guidelines for public officers, members of the General Assembly, local government officials, government employees and members of the public. The IEC will publish position statements on the IEC website.

11. GENERAL

A. Ex-parte communications - Ex-parte communications with any Member concerning any matter filed with or before the IEC are strictly prohibited.

B. Confidentiality - The IEC will treat as confidential all matters filed with the IEC until such time as the IEC determines to make said matters public in accordance with Colorado law.

- C. Authority of Executive Director - The IEC may, at its discretion, delegate functions and responsibilities to its Executive Director.
- D. Computation of time - In computing any period of time described in these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period of time shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period of time runs until the next day which is not a Saturday, Sunday, or legal holiday. The IEC may at its own discretion or upon the request of a party enlarge any period of time set forth in these rules so long as any request to enlarge any period of time is made before the expiration of the period of time originally prescribed herein.
- E. Service of process - Service of documents and other tangible things shall be done by either hand delivery or by mailing the pleadings, other documents and tangible things to a person at his or her last known address on file with the IEC, first class mail, postage prepaid or to the party's counsel of record on file with the IEC.