

COLORADO INDEPENDENT ETHICS
COMMISSION
FY 2014 STRATEGIC PLAN AND BUDGET
REQUEST



Dan Grossman, Chair
Sally H. Hopper, Vice Chair
Bill Pinkham, Commissioner
Matt Smith, Commissioner

Jane T. Feldman, Executive Director

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 monitor 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, 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." 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 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, Bill Pinkham, and Matt Smith. The Commissioner appointed by the Speaker of the House of Representatives is currently vacant due to the resignation of Former Rep. Dorothy Butcher in December 2011.

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, such as Denver or Colorado Springs, among others.

The Commission is an independent agency within the Judicial Department, and is currently housed within the Supreme Court Administrator's Office. ("SCAO"). SCAO provides all "back-office function" including payroll, leave keeping, budget assistance, accounting services, computer support and reception at no cost to the Commission. As of January 2013, the Commission will be located on the second floor of the Ralph Carr Justice Center ("Carr Building") with the Office of Attorney Regulation, the Office of Child Representative, and the Judicial Performance and Judicial Discipline Commissions. SCAO will continue to provide these services to the Commission, without charge, but it is unclear how this will work, given that SCAO will be on the 11th and 12th floors.

The IEC has one employee, the Executive Director, who provides all staff support to the all-volunteer Commission. The Commission previously had an additional staff member, the Communication Director; that position was eliminated by the Joint Budget Committee for FY2011. After that position was eliminated, the Commission spent \$19,061 on a termination payout for that individual. The Commission also spent \$3500 in unemployment compensation, and \$12, 834.67 on legal services for the personnel action which was filed as a result of the layoff. Because of these expenses, and the uncertainty of the situation, the Commission did not adjust the salary of the Executive Director until April, 2012. The Commission has also spent \$5000 this fiscal year (FY2013) on unemployment compensation, however, no further expenses relating to this person are expected.

III. Commission workload:

The Commission's activities since 2008 are summarized below:

<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	9	1 (2	12	7	@ 150

		position statement, 2 letter rulings, 16 advisory opinions)		settled before hearing)			
2011	13	12 (1 position statement, 12 advisory opinions	12	1, 2 pending	9	34	82
2012 (through October)	16	12 (1 position statement, 1 letter ruling, 9 advisory opinions, one was withdrawn)	7	2	12	13	65
Total since 2008	98	55	46	6	45	62	529

IV. IEC's Five Year Strategic Plan

Goal 1: Response to Complaints in a Timely Manner

- a. The Commission will resolve 80% of all complaints within 6 months of receipt.
- b. The Commission will resolve of 75% of all non frivolous complaints within 12 months of filing.

Year	Number of Complaints	Number of Complaints summarily dismissed as frivolous or on jurisdictional grounds	Percentage of total complaints resolved within 6 months	Number of Complaints proceeding to formal resolution	Percentage of non frivolous complaints resolved within 12 months
2011	11	8	72%	3	67%
¹ 2012	7	5	100%		

¹ Seven complaints were filed as of October 31; one is awaiting a frivolous/non frivolous determination, and the other is under staff investigation.

Goal 2: Respond to requests for opinions in a timely manner

The Commission will resolve 85% of requests for advisory opinions and/or letter rulings within 60 days of receipt.

Year	Number of Requests	Number of requests resolved within 60 days	Percentage meeting goal
2011	12	11	91%
² 2012	11	9	81%

Both of these goals are somewhat outside the Commission's control. Scheduling of cases for hearing within 12 months is dependent not only on the schedules of the Commissioners, but also on the schedules of the litigants. In 2011, for example, one case was delayed two months because the attorney for the respondent was in trial on another matter. In another case, the Attorney General's Office was recused from a case, requiring the IEC to retain alternative counsel. This and other legal issues delayed the hearing. This is an all volunteer Commission and scheduling of additional meetings for hearings is often difficult.

Goal 3: Increasing awareness of the Commission's opinions through increased and improved training

The Commission will conduct 15 trainings per year, at least 3 of which will be outside the Denver metropolitan area in 2013.

Year	Number of In-person Trainings	Number of Webinars and Remote Trainings	Number of Trainings Outside the Metro Area
2010	7	0	1
2011	36	0	1
³ 2012	13	2	3

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

² Through October 31, 2012

³ Through October 31, 2012

trainings, and especially the number of trainings outside of the metro area. The Commission is grateful to Colorado Counties, Inc. ("CCI") and the Colorado Municipal League ("CML") for providing opportunities to reach out to covered individuals outside the metro area. The Commission has learned that many covered individuals are not aware of the rules and proscriptions contained in Article XXIX. The Commission's ability to do significant outreach has been curtailed by budget and personnel constraints.

The Commission is in the process of updating its website with the assistance of the Statewide Internet Portal Authority and its contractor, Colorado Interactive, Inc. The improved website will have an interactive test and other features which will improve the Commission's ability to do long distance training. The new website should be operational during the summer of 2013. In addition, after IEC staff moves to the Ralph Carr Justice Center, the Commission will have the ability to sponsor its own webinars.

Goal 4: Be more proactive in anticipating issues:

The Commission hopes to issue more position statements over the next year to resolve outstanding issues. The IEC is unable to assign a numeric goal for this activity, given the uncertainty of the number and complexity of advisory opinions and letter rulings which take up both Commission and staff time.

Goal 5: Review/Revise the complaint process to make it less burdensome on complainants

The Commission continues to be troubled by its current model of requiring complainants to pursue their own allegations. The IEC has anecdotal evidence that this system discourages the filing of valid complaints by members of the public, especially those without a legal background. The Commission is exploring several options, including referring cases to the Attorney General's Office for investigation and prosecution, (the model followed by many state agencies), hiring independent counsel (the model followed by the Commission on Judicial Discipline), or handling investigations and prosecutions by Commission staff (the model of the Office of Attorney Regulation and other agencies). All of these models would require changes in the IEC's Rules of Procedure and may require additional funding. This goal is also not suitable for assignment of a numeric value. The Commission anticipates selecting one of these options on a trial basis, and absorbing the costs through the legal services budget on a temporary basis.

V. Additional Issues:

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 two of the four Commissioners (there is a vacancy) 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 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.

The Commission has had discussions with the State Court Administrators Office ("SCAO") regarding contracting for clerical assistance. The Commission anticipates needing an average of 5 hours per week of clerical time. The SCAO believes it has the capacity to handle that amount within existing resources, and the Commission and SCAO will contract for those services at \$40/hour (the rate of a mid-range administrative assistant). The total cost would therefore be approximately \$10,400. As noted previously, the Commission will be moving to the Carr Building in December. How this move will affect these services provided to the Commission is still unclear. As discussed in previous budget requests, the Commission plans on adjusting the salary of the Executive Director based on the analysis of comparable positions in the Judicial Department which was completed in 2010. At this point, the Commission has not agreed on a specific number, but it will be at least the 3% guideline contemplated by the Executive and Judicial branches. The Commission has therefore used that number. The Commission believes that the appropriate raise and the clerical assistance can be achieved within the existing personal services budget.

VI. Conclusion:

The Commission does not have a decision item for FY2014, but will absorb personal services and operational changes on a trial basis using current resources.

