

## **COLORADO INDEPENDENT ETHICS COMMISSION**

Minutes of the March 10, 2014 Meeting  
1300 Broadway Second Floor, Room 1F, 12:00 p.m.  
Denver, Colorado

Present: Matt Smith; Chair, Rosemary Marshall; Vice-Chair, Bob Bacon, William Leone (arriving at 12:10 p.m.) and Bill Pinkham.

Also Present: Maureen Toomey, Assistant Director, IEC, and Kyle Dumler of the Colorado Attorney General's Office.

### **I. GENERAL BUSINESS**

1. Commissioner Smith called the meeting to order at 12:00 p.m.
2. It was moved, seconded and passed 4 to 0 to approve the minutes of the February 25, 2014 as corrected. (Commissioner Leone not participating).
3. Public comment:
  - a. Mr. Mike Davis, an attorney representing Secretary of State Scott Gessler, asked permission to file an amicus brief in favor of the Respondent's Motion to Dismiss filed in Complaint 13-11. Discussion of the request was deferred to the Prehearing Conference on Complaint 13-11.
  - b. Ms. Staiert from the Secretary of State's Office made comments about the similarities and differences between Complaint 12-07 and Complaint 13-11.
4. Staff Report:
  - a. Ms. Toomey reported on transition issues. She has learned the logistics of meetings and conferences, has forwarded emails and phone calls to her office, and changed contact information on the website. Ms. Toomey has also updated meeting dates and times, Advisory Opinions, Complaints, Minutes and Agendas on the website. She has learned to process invoices and reimbursements. Ms. Toomey prepared opposing arguments for an advisory opinion request and has summarized four complaints. There was a discussion about how to organize materials in the office from previous cases, and how to organize matters in the future.

- b. Ms. Toomey reported on Commission business that has occurred since the last meeting. She explained issues that the Commission may need to address on advisory opinion requests and she reported that she responded to two CORA requests.

5. There was a discussion of the change in the proposed attendee for Advisory Opinion 14-03 (Travel Paid for by Third Party). It was moved, seconded and passed unanimously to revise Advisory Opinion 14-03 to include the addition of “qualified designee” where the previous attendee had been identified.

6. At 12:45 p.m., it was moved, seconded and passed unanimously to enter into Executive Session pursuant to C.R.S. §24-6-402(3)(a)(II) and §13-90-107(b) for the purpose of seeking legal advice specifically on a motion for a request in open session to file an amicus brief in Complaint 13-11 pending before the Commission.

## **II. EXECUTIVE SESSION BUSINESS**

The Commission met in Executive Session from 12:45 p.m. to 1:01 p.m. pursuant to C.R.S. §24-6-402(3)(a)(II) and §13-90-107(b) for the purpose of seeking legal advice specifically on a motion for a request to file an amicus brief in Complaint 13-11 pending before the Commission.

## **III. GENERAL BUSINESS**

7. The Commission returned to open session at 1:01 p.m.

8. At 1:02 p.m., it was moved, seconded and passed unanimously to enter into Executive Session pursuant to C.R.S. §24-6-402(3)(a)(II) and §13-90-107(b) for the purpose of seeking legal advice specifically related to Complaint 13-11.

## **IV. EXECUTIVE SESSION BUSINESS**

The Commission met in Executive Session from 1:02 p.m. to 1:40 p.m. pursuant to C.R.S. §24-6-402(3)(a)(II) and §13-90-107(b) for the purpose of seeking legal advice specifically related to Complaint 13-11.

## **V. GENERAL BUSINESS**

9. The Commission returned to open session at 1:40 p.m.

10. Commissioner Leone conducted the Pre-Hearing Conference on Complaint 13-11. Mr. Blue and Mr. Hornaday represented Complainants and Mr. Spector represented the Respondent. Mr. Finlaw joined Mr. Spector to represent the Respondent later in the hearing.

- a. Commissioner Leone noted the filing of Respondent's Motion to Dismiss and Reconsideration of the Non-Frivolous Determination and Complainant's Motion for Time Extension for Discovery. Complainants were granted to March 14, 2014, to file a reply to Respondent's Motion to Dismiss and Reconsideration of the Non-Frivolous Determination.
- b. Commissioner Leone noted that the Pre-hearing Conference of February 25, 2014, where a motion to refer the case to an Administrative Law Judge was argued and denied, was not recorded. Commissioner Leone invited both the Complainant and the Respondent to submit information to supplement the record on this matter before March 31, 2014, if they so desired.
- c. There was a discussion on discovery issues.
  - i. Complainant wants to know the amount of money the DGA raised at the conference in 2013 and the use of the money raised at the Conference as well as persons who donated or were sponsors, a listing of attendees and their connection to DGA, and briefing notes made by Respondent and Respondent's staff to determine what the Respondent talked about. Complainant will draft a motion clarifying its request.
  - ii. The Respondent is claiming executive privilege for preparation and staff's preparation of the conference. Respondent and Complainant stated that they will work this out between them. Respondent will assist the discovery request by preparing a list of attendees.
  - iii. Commissioner Leone did not formally grant the motion for additional discovery time allowing the parties an opportunity to resolve the discovery dispute which appears limited to attendees, contributors and Respondent's activities at the conference.
- d. There was a discussion on the amicus brief requested by Mr. Davis.
  - i. Mr. Davis clarified that the amicus brief would be for the purpose of supporting the Respondent's Motion for dismissal of Complaint 13-11.
  - ii. Ms. Perl of Ethics Watch, who was in attendance, was asked to address whether Ethics Watch desired to file an amicus brief. Ethics Watch reserved the right to file or object to the filing of an amicus brief until after talking to her client.
  - iii. The parties, Secretary Gessler and Ethics Watch, were asked to file motions with briefs concerning the filing of amicus briefs well in advance of the March 31, 2014 IEC meeting.

- e. The next IEC meeting is on March 31, 2014 and will address dispositive motions and preparation for the hearing, including a list of witnesses. The parties were asked to have prehearing statements filed with the Commission, with an understanding that they reserve the right to modify their prehearing statements in response to the investigation conducted in this matter. The hearing is now scheduled for April 14, 2014 with the possibly of extending to April 15, 2014, if necessary.
- f. There was a discussion of how the Commission would investigate the complaint, specifically regarding attendees and political fundraising and the activities of the Respondent and the Respondent's staff in connection with the DGA Conference.
- g. At 3:08 p.m., it was moved, seconded and passed unanimously to enter into Executive Session pursuant to C.R.S. §24-6-402(3)(a)(II) and §13-90-107(b) for the purpose of seeking legal advice specifically related to the investigation of Complaint 13-11.

## **VI. EXECUTIVE SESSION BUSINESS**

The Commission met in Executive Session from 3:08 p.m. to 3:18 p.m. pursuant to C.R.S. §24-6-402(3)(a)(II) and §13-90-107(b) for the purpose of seeking legal advice specifically related to the investigation of Complaint 13-11.

## **VII. GENERAL BUSINESS**

- 11. The Commission returned to open session at 3:24 p.m.
- 12. There was a discussion with Mr. McBean on the parameters of his investigation for the Commission on Complaint 13-11. Mr. McBean will speak to approximately ten people concerning the DGA Conference (identified with input from the Complainant and Respondent) to investigate attendees, fundraising, and the activities of Respondent and Respondent's staff in connection with the DGA Conference. The Commission suggested that Mr. Mc Bean talk to out-of-town contacts by telephone. It was estimated that the investigation would require approximately 40 hours of time. Mr. McBean will report to the Commission at the March 31, 2014 meeting.
- 13. Upon motion and second, the Commission authorized Commissioner Leone to act upon discovery matters, procedural matters and the issuance of subpoenas to witnesses that may arise outside of the Commission meetings. The Commission may schedule a telephonic meeting to affirm the issuances of subpoenas.
- 14. There was a discussion of Advisory Opinion 14-01 (Acceptance of Gift). The Commission asked Ms. Toomey to redraft the opinion disapproving the request in accordance with the Commission's discussion.

15. At 4:07 p.m., it was moved, seconded and passed unanimously to enter into Executive Session to discuss complaints 14-04 and 14-05 which are required to be kept confidential pursuant to Article XXIX, section 5(3)(b) of the Colorado Constitution.

### **VIII. EXECUTIVE SESSION BUSINESS**

The Commission met in Executive Session from 4:07 p.m. 4:22 p.m. to discuss Complaints 14-04 and 14-05 which are required to be kept confidential pursuant to Article XXIX, section 5(3)(b) of the Colorado Constitution.

### **IX. GENERAL BUSINESS**

16. The Commission returned to open session at 4:22 p.m.

17. It was moved, seconded and passed unanimously to dismiss complaint 14-04 for lack of jurisdiction pursuant to IEC Rule 7.G.2.

18. It was moved, seconded and passed unanimously to dismiss complaint 14-05 for lack of jurisdiction pursuant to IEC Rule 7.G.2.

19. Chairman Smith discussed transition issues with the Commission. He also gave an update on the status of the budget expenditures to date and projected through the fiscal year end. It may be possible to utilize savings from personnel costs to cover most of the increased legal costs for the year. Commissioner Smith will continue to work with the Judicial Department regarding potential cost over runs through the fiscal year. Ms. Toomey was asked to analyze the activities, tasks and staffing needs of the Commission over the next couple months.

The Commission adjourned at approximately 4:55 p.m. The next meeting is scheduled for March 31, 2014 at 9 a.m. in Room 1C.

Respectfully Submitted,

Maureen Toomey  
IEC Assistant Director