

**BEFORE THE INDEPENDENT ETHICS COMMISSION  
STATE OF COLORADO**

**CASE NO. 08-01**

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**In the Matter of**

**MICHAEL COFFMAN, Colorado Secretary of State**

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**ORDER REGARDING MOTION TO DETERMINE EVIDENTIARY STANDARD**

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The Independent Ethics Commission (the "IEC"), based on its discussion and review of Mr. Coffman's ("Coffman") MOTION FOR DETERMINATION OF EVIDENTIARY STANDARD (the "Motion") and Colorado Ethics Watch's ("CEW") RESPONSE TO MOTION FOR DETERMINATION OF EVIDENTIARY STANDARD (the "Response"), hereby finds as follows:

1. Pursuant to Colo. Const. art. XXIX § 5(3) (e), the findings of the IEC shall be based on a preponderance of the evidence unless the IEC determines that the circumstances warrant a heightened standard.
  2. Coffman has contended that a heightened evidentiary standard is warranted because the allegations set forth in the Complaint constitute criminal allegations, among other arguments.
  3. The IEC takes notice that the Complaint does contain claims under Title 18 of the criminal code of the Colorado Revised Statutes.
  4. The mere allegation that Mr. Coffman violated Title 18 does not convert the Complaint to a criminal matter.
  5. The purpose of the IEC is to deal with ethics issues. The IEC agrees that it does not have jurisdiction to determine if conduct is a violation of Title 18. Likewise, it cannot enforce penalties that are in Title 18.
  6. However, the IEC is aware that there are tribunals in Colorado that apply a clear and convincing evidentiary standard of proof in some administrative proceedings. *See, Colorado Rules of Procedure Regarding Attorney Discipline and Disability, Rule 251.12(e)(1) and Rule 251.18 (d).*
  7. The IEC will apply a clear and convincing standard in cases where the standard of conduct being complained of is derived from a criminal statute in Title 18.
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This higher evidentiary standard is appropriate because the standard of conduct derives from a Title 18 criminal statute. Beyond a reasonable doubt evidentiary standard will not be employed because the IEC is not a criminal tribunal.

8. For complaints alleging violations outside of Title 18, the IEC will apply the preponderance of the evidence standard, unless it determines that a heightened standard of proof is appropriate in accordance with Colo. Const. art. XXIX. (5)(3)(e)

THEREFORE, the IEC orders that the for the conduct alleged in Complaint 08-01 that is derived from Title 18 the evidentiary standard shall be clear and convincing; for all other conduct the IEC shall apply the preponderance of the evidence standard.

Ordered this 5<sup>th</sup> day of February 2009.

  
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Commissioner

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **ORDER REGARDING MOTION TO DETERMINE EVIDENTIARY STANDARD** was transmitted via E-Mail this 5<sup>th</sup> day of February, 2009, addressed to each of the following:

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/s/ Terri Gonzales \_\_\_\_\_