

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. The IEC Rules are promulgated pursuant to the authority granted in Article XXIX and § 24-18.5-101, C.R.S. and shall apply to the conduct of all matters before the IEC.

2. INDEPENDENT ETHICS COMMISSION (IEC)

- A. The IEC is composed of five members appointed in accordance with the provisions of Article XXIX.
- B. The purpose of the IEC shall be to give advice and guidance on ethics issues arising under Article XXIX and any other standards of conduct or reporting requirements as provided by law, and to hear complaints, issue findings and assess penalties and sanctions where appropriate.

3. DEFINITIONS AND RULES OF CONSTRUCTION

A. Definitions

- 1. "Advisory opinion" means an opinion by the IEC addressing ethics issues in response to a written request 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 asking whether a public officer, member of the General Assembly, local government official, or government employee has violated the provisions of Article XXIX or any other standards of conduct or reporting requirements as provided by law.
5. "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.
6. "Letter ruling" means an opinion by the IEC addressing ethics issues in response to a written request by a person who is not a public officer, member of the General Assembly, local government official, or government employee.
7. "Local government" means any county or municipality.
8. "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.
9. "Majority" means more than fifty percent of the members present at a meeting or hearing.
10. "Member" means any of the five members of the IEC.
11. "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

12. "Party" or "parties" means the person or persons filing a request for an advisory opinion, a request for a letter ruling, or a complaint, and the person or persons against whom a complaint is filed.
13. "Person" means any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.
14. "Position Statement" means an IEC-initiated written statement addressing ethics issues, which provides guidance for public officers, members of the General Assembly, local government officials, government employees, and members of the public.
15. "Professional lobbyist" means any individual who engages himself or herself or is engaged by any other 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.
16. "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.
17. "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, fair, speedy, and inexpensive determination of all matters before the IEC.

4. MEETINGS

- A. A notice and agenda shall be posted for all IEC meetings in accordance with Colorado law. A notice shall be posted for all hearings held before the IEC in accordance with Colorado law.
- B. Participation by members of the public at IEC meetings is at the discretion of the IEC.
- C. All IEC meetings are open to the public except that part of any meeting where the IEC is in executive session in accordance with Colorado law.

5. REQUESTS FOR ADVISORY OPINIONS AND LETTER RULINGS

- A. Any public officer, member of the General Assembly, local government official, or government employee may submit a request for an advisory opinion to the IEC as to whether any particular action by that person would constitute a violation of Article XXIX or any other standards of conduct or reporting requirements as provided by law.
- 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 as to whether any potential conduct of the person making the request would constitute a violation of Article XXIX or any other standards of conduct or reporting requirements as provided by law.
- C. A request for an advisory opinion or letter ruling from the IEC must be submitted in writing, signed by the person making the request, be fact-specific and narrowly framed, and filed with the IEC at the offices of the IEC. A request for an advisory opinion or letter ruling may be hand delivered to the IEC or sent to the IEC offices via first class mail or by facsimile.
- D. The IEC may request information and documents from a person submitting a request for an advisory opinion or letter ruling.

- E. A request for an advisory opinion or letter ruling is complete when the IEC has determined that no additional information is necessary to issue the advisory opinion or letter ruling.
- F. The IEC shall publish advisory opinions and letter rulings on the IEC website with appropriate redactions of identifying information.
- G. In the event of disagreement by any Member in any advisory opinion or letter ruling, that Member may, at that Member's discretion, include a dissenting opinion in the issued document.

6. POSITION STATEMENTS

- A. The IEC may, at its discretion and initiative, issue position statements. Position statements shall be published on the IEC website.

7. 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. Complaints must be submitted in writing and filed with the IEC at the offices of the IEC. A complaint may be hand delivered to the IEC or sent to the IEC offices via first class mail or by facsimile.
- C. All complaints filed with the IEC must contain the address and telephone number of the person filing the complaint. The complainant shall set forth a statement of the facts underlying the complaint with specificity. The complaint must contain a statement that, to the best of the complainant's knowledge, information and belief, the facts and any allegations set out in the complaint are true, and be signed by the complainant.
- D. A complaint shall be dismissed by the IEC on one or more of the following grounds:

1. The IEC has no jurisdiction; or
 2. The complaint is frivolous; or
 3. The alleged violation, if true, would not constitute a violation of Article XXIX, or any other standards of conduct or reporting requirements under the jurisdiction of the IEC; or
 4. The complaint fails to allege that the conduct complained of occurred within the preceding twelve months.
- E. A complaint may be dismissed by the IEC on one or more of the following grounds:
1. The complaint is groundless, or brought for purposes of harassment as determined by the IEC; or
 2. Another body has already taken action on the subject of the complaint and the IEC believes the action of the other body was appropriate; or
 3. The complainant fails to comply with IEC rules of procedure regarding complaints.
- F. A complaint may be stayed by the IEC on one or more of the following grounds:
1. An action on the same subject of the complaint is pending before another body with concurrent jurisdiction; or,
 2. The alleged violation is a criminal matter or a criminal investigation is pending.
- G. The nature and scope of any investigation of a complaint filed with the IEC shall be determined by the IEC.

H. 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.

I. Response to complaint

1. The IEC shall advise, in writing, the party who is the subject of a complaint that a complaint has been filed, his or her right to file a response to the complaint and his or her right to be represented by counsel of his or her choice. The IEC shall provide a copy of the complaint to the party who is the subject of the complaint.

2. 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 shall be in writing, signed by the person submitting the response, and may explain, rebut, or provide information, including documentation, concerning the facts and any allegations in the complaint. The response shall include a statement that, to the best of the person's knowledge, information and belief, any statements set out in the response are true. The response shall be filed with the IEC within thirty (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, submit a written request for 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.

8. HEARINGS

A. The IEC shall hold a public hearing on all complaints within the jurisdiction of the IEC that 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 a particular hearing to be held before an administrative law judge or hearing officer.

C. Setting hearings

1. Hearings on complaints will be set as soon as practicable. A hearing date can be continued only at the discretion of the IEC or upon a showing of good cause as determined by the IEC.

2. The IEC shall send all parties a notice of the hearing date via first class mail to the last known address of the parties on file with the IEC. Such notice of hearing shall be posted in accordance with Colorado law.
3. Parties may request inspection of IEC documents pertaining to the complaint to which they are a party, with reasonable notice to the IEC. The IEC shall provide such requested non-confidential, non-privileged documents during regular business hours.

D. Prehearing matters

1. Motions – No motions will be permitted except with the prior written approval of the IEC.
2. Discovery - Discovery by a party 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 and to the IEC:
 - a. A list identifying all persons who have information or knowledge relevant to the complaint 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 relevant 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 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.

- d. Each party has an ongoing duty to supplement disclosures as new, different or additional information on witnesses and tangible items becomes available.
 - 4. Prehearing statement – In all matters set for a hearing, each party shall file with the IEC and serve on all parties a prehearing statement no later than twenty (20) days prior to the hearing. The prehearing statement shall contain:
 - a. A statement of the claims, allegations and issues before the IEC 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 his or her testimony; and
 - c. A list of all documents or other tangible items that a party intends to use as exhibits or to support his or her position at the hearing. Copies of all documents and other tangible items identified as potential exhibits in the prehearing statement shall be filed with the IEC and copies provided to other parties at the time the prehearing statement is filed with the IEC.
 - 5. Prehearing conference – A prehearing conference may be scheduled at the discretion of the IEC.
- E. 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 as allowed under Colorado law.
- F. 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 at the discretion of the IEC. The IEC may exclude evidence that is not relevant, cumulative or for such other reasons as determined by the IEC.

G. IEC decision

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

9. PENALTIES AND SANCTIONS

- A. The IEC may impose penalties and sanctions as provided by law.

10. GENERAL

- A. Ex-parte communications with any Member concerning any matter before the IEC are strictly prohibited.
- B. Requests for advisory opinions or letter rulings, and complaints may not be filed with individual Members.
- C. 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.
- D. Authority of Executive Director - The IEC may, at its discretion, delegate functions and responsibilities to its Executive Director and staff.
- E. 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.

- F. 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.