

COLORADO INDEPENDENT ETHICS COMMISSION

Minutes of the December 21, 2017, Meeting
1300 Broadway, Room 1C, 9:00 a.m.
Denver, Colorado

Present: Chairman Matt Smith; Vice-Chairwoman April Jones; Commissioner William Leone; and Commissioner Gary Reiff.

Excused: Commissioner Jo Ann Sorensen.

Also Present: Dino Ioannides, IEC Executive Director; and Kyle Dumler, Gina Cannan, and Gina Simonson of the Colorado Attorney General's Office.

I. GENERAL BUSINESS

1. Chairman Smith called the meeting to order at 9:21 a.m.
2. The Commission invited public comment and received none.
3. Upon motion duly seconded, the Commission unanimously (Commissioners Jones and Sorensen not participating) approved the minutes of the November 29, 2017, meeting.
4. Commissioner Jones joined the meeting.
5. Mr. Ioannides provided the staff report.
6. The Commission considered Letter Ruling 17-02. Upon motion duly seconded, Letter Ruling 17-02 was unanimously adopted as amended.
7. The Commission considered its draft written decision in Complaint 16-20.
8. At 10:03 a.m., upon motion duly seconded, the Commission voted unanimously to enter Executive Session pursuant to C.R.S. § 24-6-402(3)(a)(II) and §13-90-107(1)(b) concerning Complaint 16-20, for purposes of receiving legal advice on specific legal questions.

II. EXECUTIVE SESSION BUSINESS

9. The Commission met in Executive Session from 10:03 a.m. to 10:17 a.m. concerning Complaint 16-20.

III. GENERAL BUSINESS

10. The Commission returned to open session at 10:17 a.m.

11. The Commission recessed until 10:19 a.m.
12. Upon motion duly seconded, the Commission adopted (Commissioner Reiff abstaining and Commissioner Sorensen not participating) the modified findings of fact and conclusions of law in Complaint 16-20. Commissioner Reiff indicated he will file a concurring opinion. Commissioner Sorensen will be given the opportunity to do likewise if she wishes.
13. The Commission took up Complaint 17-13. Mr. Ioannides recused himself. Commission counsel having authorized an extension of time for the respondent to file his answer, the Commission upon motion duly seconded unanimously ratified the extension of time to January 11, 2018.
14. The Commission called Complaint 17-28, Chairman Smith presiding in place of Commissioner Sorensen.
15. At 10:31 a.m., upon motion duly seconded, the Commission voted unanimously to enter Executive Session pursuant to C.R.S. § 24-6-402(3)(a)(II) and §13-90-107(1)(b) concerning Complaint 17-28, for purposes of receiving legal advice on specific legal questions.
16. Commissioner Reiff disclosed that the firm of counsel for respondent does work for Commissioner Reiff's company. Commissioner Reiff indicated that he does not work with counsel for respondent.
17. Commissioner Leone recused himself.

IV. EXECUTIVE SESSION BUSINESS

18. The Commission met in Executive Session from 10:31 a.m. to 10:41 a.m. concerning Complaint 17-28.

V. GENERAL BUSINESS

19. The Commission returned to open session at 10:41 a.m.
20. Upon concerns raised by the complainant, Commissioner Reiff and respondent's counsel indicated for the record that they had not had any discussions between them concerning Complaint 17-28. Respondent's counsel was instructed to erect the necessary conflicts barriers within his firm.
21. The Commission heard oral arguments on the briefs filed in Complaint 17-28 from the complainant and the respondent's counsel. Those who filed amicus briefs were offered the opportunity to provide oral argument, but did not do so.
22. By unanimous consent, the Commission took the matter under advisement.
23. Commissioner Leone rejoined the meeting.

24. At 11:10 a.m., upon motion duly seconded, the Commission voted unanimously to enter Executive Session pursuant to C.R.S. § 24-6-402(3)(a)(II) and §13-90-107(1)(b) concerning legal updates from the Office of the Attorney General, for purposes of receiving legal advice on specific legal questions.

VI. EXECUTIVE SESSION BUSINESS

25. The Commission met in Executive Session from 11:10 a.m. to 11:46 a.m. concerning legal updates from the Office of the Attorney General.
26. The Commission recessed from 11:46 a.m. to 11:52 a.m.
27. The Commission resumed executive session from 11:52 a.m. to 12:20 p.m.

VII. GENERAL BUSINESS

28. The Commission returned to open session at 12:20 p.m.
29. The Commission recessed from 12:20 p.m. to 12:30 p.m.
30. The Commission called Complaint 17-18, Commissioner Jones presiding. Respondent's counsel entered her appearance; the respondent and the complainant participated by phone.
31. At 12:31 p.m., upon motion duly seconded, the Commission voted unanimously to enter Executive Session pursuant to C.R.S. § 24-6-402(3)(a)(II) and §13-90-107(1)(b) concerning Complaint 17-18, for purposes of receiving legal advice on specific legal questions.

VIII. EXECUTIVE SESSION BUSINESS

32. The Commission met in Executive Session from 12:31 p.m. to 12:50 p.m. concerning Complaint 17-18.

IX. GENERAL BUSINESS

33. The Commission returned to open session at 12:50 p.m.
34. The Commission recessed from 12:50 p.m. to 12:57 p.m.
35. Upon motion duly seconded, the Commission in its discretion, and not for the reasons given in the respondent's motion, unanimously (Commissioner Sorensen not participating) limited the hearing in Complaint 17-18 to the issues alleged in the complaint, striking the public trust violation listed in the Notice of Issues for Hearing.
36. By unanimous consent, the Commission denied the complainant's motion for testimony by written affidavit. The Commission indicated its willingness to consider telephonic testimony.

37. As pertaining to the respondent's motion to dismiss, the Commission ruled by unanimous consent that, with respect to whether the Commission has jurisdiction over public trust violations, the issue is moot due to the Commission's striking of the public trust violation as an issue for hearing.
38. Upon motion duly seconded, the Commission unanimously (Commissioner Sorensen not participating) denied the respondent's motions to dismiss for failure to state a claim and for summary judgment.
39. Upon motion duly seconded, the Commission unanimously (Commissioner Sorensen not participating) denied the respondent's motion to reconsider the Commission's frivolous determination.
40. By motion duly seconded, the Commission unanimously (Commissioner Sorensen not participating) ordered the issuance of subpoenas to testify for Mr. Brian Cain and Ms. Sheryl Fernandez.
41. By unanimous consent, the Commission encouraged the parties in Complaint 17-18 to stipulate to as many facts as possible.
42. The Commission considered the draft Access to Records Policy. Upon motion duly seconded, the Commission ordered publication of the draft policy for written public comments to be received by January 31, 2018.
43. At 2:00 p.m., upon motion duly seconded, the Commission voted unanimously to enter Executive Session pursuant to C.R.S. § 24-6-402(3)(a)(III) to discuss Complaint 17-27, filed with the Commission, which is required to be kept confidential pursuant to Article XXIX, § 5(3)(b) of the Colorado Constitution.

X. EXECUTIVE SESSION BUSINESS

44. The Commission met in Executive Session from 2:00 p.m. to 2:08 p.m. concerning Complaint 17-27.

XI. GENERAL BUSINESS

45. The Commission returned to open session at 2:08 p.m.
46. At 2:09 p.m., upon motion duly seconded, the Commission voted unanimously to enter Executive Session pursuant to C.R.S. § 24-6-402(3)(a)(III) to discuss Complaint 17-48, filed with the Commission, which is required to be kept confidential pursuant to Article XXIX, § 5(3)(b) of the Colorado Constitution.

XII. EXECUTIVE SESSION BUSINESS

47. The Commission met in Executive Session from 2:09 p.m. to 2:12 p.m. concerning Complaint 17-48.

XIII. GENERAL BUSINESS

48. The Commission returned to open session at 2:12 p.m.
49. At 2:13 p.m., upon motion duly seconded, the Commission voted unanimously to enter Executive Session pursuant to C.R.S. § 24-6-402(3)(a)(III) to discuss Complaint 17-49, filed with the Commission, which is required to be kept confidential pursuant to Article XXIX, § 5(3)(b) of the Colorado Constitution.

XIV. EXECUTIVE SESSION BUSINESS

50. The Commission met in Executive Session from 2:13 p.m. to 2:15 p.m. concerning Complaint 17-49.

XV. GENERAL BUSINESS

51. The Commission returned to open session at 2:15 p.m.
52. Upon motion duly seconded, the Commission unanimously (Commissioner Sorensen not participating) dismissed Complaint 17-27 as frivolous and for lack of jurisdiction under IEC Rules 7.G.1. and 7.G.2.
53. Upon motion duly seconded, the Commission unanimously (Commissioner Sorensen not participating) dismissed Complaint 17-49 as frivolous and for lack of jurisdiction under IEC Rules 7.G.1. and 7.G.2.
54. Having no further business, the Commission adjourned at 2:21 p.m. The next regular meeting is scheduled for January 8, 2017, at 9:00 a.m., 1300 Broadway, Denver, Colorado.

Respectfully Submitted,

Dino Ioannides
Executive Director
Colorado Independent Ethics Commission