

COLORADO INDEPENDENT ETHICS COMMISSION

Minutes of the March 4, 2013 Meeting
1300 Broadway First Floor 9 a.m.
Denver, Colorado

Present: Dan Grossman, Chair, Sally H. Hopper; Vice-Chair, Rosemary Marshall, Bill Pinkham, Matt Smith.

Also Present: Jane T. Feldman, Executive Director, IEC and Lisa Brenner Freimann of the Colorado Attorney General's Office.

I. GENERAL BUSINESS

1. The meeting commenced at 9:15 a.m.
2. There was no public comment.
3. Commissioner Smith suggested changes to the draft minutes of February 4, 2013. It was moved, seconded and passed unanimously to approve the minutes of February 4 as amended. It was moved, seconded and passed unanimously to approve the minutes of February 15, 2013.
4. Executive Director's Report:
 - a. Ms. Feldman reported on recent trainings and distribution of the Handbook to several state and local agencies.
 - b. Ms. Feldman informed the Commissioners that they were being invited to reception with Supreme Court Justice Sonia Sotomayor in May.
 - c. Ms. Feldman reported that she had paid the Commission's COGEL dues in the amount of \$445. It was moved, seconded, and passed unanimously to approve that payment.
 - d. Ms. Feldman reported that there are three vacancies on the Denver Board of Ethics and that if anyone knows someone who might be interested, let them know.
 - e. Ms. Feldman discussed the IEC's current workload and budget. She reported that the JBC analyst has said that the IEC may amend its budget request until March 8. The discussion was tabled.
 - f. Ms. Feldman discussed delays with respect to the new IEC website. Commissioners Grossman and Marshall stated that the new website should have the ability to live stream the meetings.

5. There was a discussion of Advisory Opinion 13-05 (Conflict of Interest). Both the requestor and his supervisors were present. They will attempt to reach a resolution and report back to the Commission at a later date.
6. At 10:05 it was moved, seconded and passed unanimously to enter into Executive Session to receive legal advice pursuant to C.R.S. §24-6-402(3)(a)(II) and §13-90-107(b) concerning disputes that are the subject of pending or imminent court action and/or for the purpose of receiving legal advice on specific legal questions regarding litigation entitled Scott Gessler v. Independent Ethics Commission filed in Denver District Court and on legal issues concerning Complaint 12-07.

II. EXECUTIVE SESSION BUSINESS

The Commission met in Executive Session from 10:05 a.m. until 11:45 a.m. pursuant to C.R.S. §24-6-402(3)(a)(II) and §13-90-107(b) concerning disputes that are the subject of pending or imminent court action and/or for the purpose of receiving legal advice on specific legal questions regarding litigation entitled Scott Gessler v. Independent Ethics Commission filed in Denver District Court and on legal issues concerning Complaint 12-07.

III. GENERAL BUSINESS.

7. The Commission took a lunch break at 11:45 and returned to open session at 12:30 p.m.
8. Peg Perl of Colorado Ethics Watch made an oral statement opposing the motions to recuse Commissioners Grossman and Marshall from Complaint 12-07.
9. There was a discussion of the Respondent's Motion to Recuse Commissioners Grossman and Marshall. Ms. Freimann discussed the legal standards for a recusal. Commissioner Marshall stated that she could be fair and impartial in deciding Complaint 12-07 and other matters related to Secretary of State Gessler. Commissioner Grossman stated that he could be fair and impartial and that the fact that he had made political contributions to personal friends and legislative colleagues did not show bias. Commissioner Smith stated that he knows Commissioner Marshall reviewed all of the material prior to ruling on motions in Complaint 12-07, and that having known the Commissioners and worked with them, he has no doubt that they can be fair and impartial. Commissioners Hopper and Pinkham concurred with Commissioner Smith. It was moved, seconded and passed unanimously to deny the motions to recuse Commissioners Marshall and Grossman.

10. There was a discussion of the Motion to Recuse the Executive Director. Commissioner Grossman said there is no legal basis to recuse a staff member. Commissioner Smith stated that none of the allegations purporting to show bias show actual bias. In addition, Commissioner Smith noted that the Executive Director is not acting as an attorney in this case and that open records act requests must be directed to the custodian of records. It was moved, seconded and passed unanimously to dismiss the Motion to Recuse the Executive Director from Complaint 12-07.
11. There was a discussion of the Motion to Retain an Outside Investigator. Commissioner Grossman stated that he viewed the retention as unnecessary, but in an over abundance of caution and to avoid an appearance of impropriety, he supported the idea. It was moved, seconded and passed 4-1 (Commissioner Hopper dissenting) to retain an outside investigator to review the documents collected by the Executive Director.
12. There was a discussion of the Motion to Refer Complaint 12-07 to an Administrative Law Judge. This Motion was deferred until the completion of the investigative report.
13. There was a discussion of Advisory Opinion 13-01 (Legal Defense Funds). Common Cause submitted a letter regarding the application of C.R.S. § 24-6-203(3.5)(a). The Commission will retain conflicts counsel to advise them on this question.
14. There was a discussion of Advisory Opinion 13-03 (Acceptance of Travel Expenses). The Commission asked Ms. Feldman to draft an opinion regarding the three requests at which the Secretary of State has been asked to speak, and the expenses are to be paid by third parties. An opinion on the remaining trips will be deferred until after the resolution of Complaint 12-07.
15. There was a discussion of Advisory Opinion 13-04. Ms. Feldman stated that most of the questions asked in the request were covered by the State Fiscal Rules. The Commission expressed concern that the request was aimed at resolving questions pertaining to Complaint 12-07 and deferred consideration until the resolution of that case.
16. At 3:11 p.m. it was moved, seconded and passed unanimously to enter into Executive Session to discuss Complaints 13-01, 13-02 and 13-03 which are required to be kept confidential pursuant to Article XXIX of the Colorado Constitution, and C.R.S sections 24-6-402(3)(a)(III) and the Commission's Rules of Procedure.

II. EXECUTIVE SESSION BUSINESS

The Commission met in Executive Session from 3:11 to 3:37 p.m. to discuss

Complaints 13-01, 13-02, 13-03 which are required to be kept confidential pursuant to Article XXIX of the Colorado Constitution, and C.R.S sections 24-6-402(3)(a)(III) and the Commission's Rules of Procedure.

III. GENERAL BUSINESS

The Commission returned to open session at 3:37 p.m.

17. It was moved, seconded, and passed unanimously (4-0, Commissioner Smith not participating), to find Complaint 13-03 as not frivolous and to notify the respondent and ask staff to commence an investigation.

18. It was moved, seconded and passed unanimously to dismiss Complaint 13-02 as frivolous.

19. The Commission adjourned at 3:45 p.m. Next meeting is April 8, 2013 at 9 a.m.

Respectfully submitted,

Jane T. Feldman
Executive Director