

COLORADO INDEPENDENT ETHICS COMMISSION

Minutes of the April 14, 2014 Meeting
1300 Broadway, Room 1F, 9:00 am
Denver, Colorado

Present: Matt Smith; Chair, Rosemary Marshall; Vice-Chair, Bob Bacon, William Leone and Bill Pinkham (arriving at 9:18 a.m.).

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

I. GENERAL BUSINESS

1. Commissioner Smith called the meeting to order at 9:07 a.m.
2. There was no public comment.
3. It was moved, seconded and passed unanimously to approve the minutes of the March 31, 2014 meeting as corrected. It was moved, seconded and passed unanimously to approve the minutes of the April 8, 2014 telephonic meeting. (Commissioner Pinkham not participating).
4. Staff Report
 - a. Ms. Toomey reported on the number of advisory requests. Some requestors do not complete the information required for the Commission to adequately deliberate and other requestors do not submit their request by the deadline.
 - b. Ms. Toomey reported that she has been conducting some research for the Commission. She will supplement this data and begin organizing the history of advisory opinion rulings for easier access, on paper and/or electronically by type of request.
 - c. Ms. Toomey reported one CORA request.
 - d. Ms. Toomey reported on that she is receiving about four phone calls a day.
5. At 9:21 a.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.

II. EXECUTIVE SESSION BUSINESS

The Commission met in Executive Session from 9:25 a.m. to 10:27 a.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.

III. GENERAL BUSINESS

6. The Commission returned to open session at 10:27 a.m.

7. Commissioner Leone conducted the Pre-Hearing Conference on Complaint 13-11. Mr. Blue and Mr. Hornaday represented Complainants and Mr. Spector and Mr. Finlaw represented the Respondent.

- a. Complainants presented the Motion for Leave to File a Motion to Supplement the Record (“Motion to Supplement”). Respondent addressed the Motion to Supplement. The parties discussed the status of documents not yet provided to the Commission under the common law executive or deliberative process privilege and documents not produced under the work product privilege.
- b. Complainants agreed they had received all the non-privileged documents they had sought and therefore that part of the Motion to Supplement was moot.
- c. Following a brief recess by the parties to confer, the Respondent submitted to the Commission a package of “briefing documents” previously withheld under a confidentiality agreement between the parties and requested that the Commission provide protection from public disclosure to the extent that may be allowed. Commissioner Leone stated that the briefing documents would become a public document upon being presented to the Commission and upon public discussion of the documents by the Commission.
- d. Respondent was provided an opportunity to address the Commission to identify remaining issues of material fact that may exist including issues identified in the briefing documents.
- e. Commissioner Leone determined that there were two issues to be decided by the Commission: (1) whether the Commission will hear the complaint under the Fair Campaign Practice Act as an “other standard of conduct” found in Article XXIX and (2) whether the Respondent violated the gift ban of Article XXIX.
- f. The Commission deliberated on the Motion for Summary Judgment. It was moved, seconded and passed on a vote of 4 to1 to grant the Motion for Summary Judgment. (Commissioner Smith dissenting.) A written opinion and order will be issued by the Commission at its April 28, 2014 meeting. Commissioner Leone

will work on a draft of the opinion for the majority and Commissioner Smith will work on the dissent.

8. Mr. Mike Davis presented a Motion to Reconsider, Vacate, Apply the Same Standard and Dismiss in Complaint 12-07. The Commission was advised by counsel that a Notice of Appeal has been filed following the ruling of the District Court. The Commission declined to hear the Motion because it does not have jurisdiction.
9. The Commission discussed Advisory Opinion Request 14-08 (Acceptance of Gift). Mike Dixon, the Senior Director for the Department of Motor Vehicles, was present and answered questions. The Commission deferred a decision on Advisory Opinion 14-08 until after a review of the relevant statutes mentioned by the Requestor.
10. The Commission considered Advisory Opinion 14-01. Upon discussion and review of the request, it was moved, seconded and passed unanimously to approve Advisory Opinion 14-01 as revised.
11. The Commission discussed Advisory Opinion 14-09 (Travel) filed with the Commission. Barbara Brohl, the Director of the Department of Revenue, was present to answer questions. It was moved, seconded and passed unanimously to approve Advisory Opinion 14-09 in a form recently approved by the Commission in a similar request. The Commission instructed Ms. Toomey to prepare the advisory opinion as directed.
12. Commissioner Smith updated the Commission on budget expenditures through April 2014.
13. At 3:35 p.m., it was moved, seconded and passed unanimously to enter into Executive Session to discuss Complaints 14-07 and 14-08 which are required to be kept confidential pursuant to Article XXIX, section 5(3)(b) of the Colorado Constitution.

IV. EXECUTIVE SESSION BUSINESS

The Commission met in Executive Session from 3:35 p.m. to 4:22 p.m. to discuss Complaints 14-07 and 14-08 which are required to be kept confidential pursuant to Article XXIX, section 5(3)(b) of the Colorado Constitution.

V. GENERAL BUSINESS

14. The Commission returned to open session at 4:22 p.m.
15. At 4:23 p.m., it was moved, seconded and passed unanimously to stay Complaint 14-07 pursuant to IEC Rule 7.H.1.

16. At 4:25 p.m., it was moved, seconded and passed unanimously to dismiss Complaint 14-08 for lack of jurisdiction pursuant to IEC Rule 7.G.2 and as frivolous pursuant to IEC Rule 7.G.1.

17. Commissioner Smith explained the historical practices of the Commission for holding elections during the April meeting each year. It was moved, seconded and passed unanimously to elect Commissioner Marshall as Chair and Commissioner Smith as Vice-Chair.

18. At 5:17 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.

VI. EXECUTIVE SESSION BUSINESS

The Commission met in Executive Session from 5:17 p.m. to 5:20 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.

VII. GENERAL BUSINESS

19. The Commission returned to open session at 5:20 p.m.

The Commission adjourned at approximately 5:21 p.m. The Commission determined that it would not be necessary for the Commission to recess and meet again tomorrow morning. The next meeting is scheduled for April 28, 2014.

Respectfully Submitted,

Maureen Toomey
IEC Assistant Director