

## COLORADO INDEPENDENT ETHICS COMMISSION

Minutes of the May 6, 2013 Meeting  
1300 Broadway First Floor 9 a.m.  
Denver, Colorado

Present: Matt Smith, Chair, Rosemary Marshall; Vice-Chair, Dan Grossman (until 3 p.m.), Sally H. Hopper, Bill Pinkham

Also Present: Jane T. Feldman, Executive Director, IEC; Lisa Brenner Freimann and Billy L. Seiber of the Colorado Attorney General's Office, and Stephen M. Brown, IEC conflicts counsel .

### I. GENERAL BUSINESS

1. The meeting commenced at 9:00 a.m.
2. There was no public comment.
3. There was a discussion of the minutes of the April 8 meeting. It was moved, seconded and passed unanimously to approve the minutes of the April 8 meeting as amended.
4. There was a discussion of the minutes of the April 30 meeting. It was moved, seconded and passed unanimously to approve the minutes of the April 30 meeting as amended.
5. Ms. Feldman stated that the minutes of the March 4, 2013 meeting did not reflect that a motion to refer Complaint 12-07 to an administrative law judge was deferred until after completion of the investigative report. It was moved, seconded and passed unanimously to amend minutes of the March 4, 2013 meeting to reflect that the motion had been discussed.
6. Executive Director's Report:
  - a. Ms. Feldman reported on the reception at the Carr Justice Center for Supreme Court Justice Sonia Sotomayor.
  - b. Ms. Feldman reported that Senator John Morse, the President of the Senate, will make his appointment to the Commission shortly, and that the Governor also has individuals in mind for his appointment.
  - c. Ms. Feldman reported on the status of the Commission's budget and hiring processes. These matters were deferred to later in the meeting.
  - d. Ms. Feldman reminded the Commissioners that all of their expenses for FY

2013 must be submitted no later than July 8, 2013 in order to receive reimbursement.

7. There was a discussion of draft Advisory Opinion 13-01 (Criminal Legal Defense Funds). Stephen M. Brown, conflicts counsel for the Commission, advised the Commission on legal issues he had been asked to research on the applicability of C.R.S. 24-6-203(3.5)(a) to the request. Ms. Freimann and Mr. Seiber were recused from this discussion, and did not participate.

Ms. Feldman reported on her research on the commencement of a legal action under Colorado criminal law.

Commissioner Smith reminded the Secretary of State's Office that he had requested information from them regarding policies to shield the Secretary from manipulation of data in the reporting system, which had not been provided.

Commissioner Hopper withdrew her dissenting opinion. Commissioner Grossman made changes to his dissent. It was moved, seconded and passed 3-2 (Commissioners Grossman and Marshall dissenting) to approve Advisory Opinion 13-01 as amended.

8. There was a discussion of Draft Advisory Opinion 13-10. Ms. Feldman was directed to revise the opinion in accordance with the discussion.
9. There was a discussion of Complaint 12-07. Michael Davis, counsel for Respondent, made oral argument regarding three motions:
  - a. Renewed Motion to Recuse Dan Grossman;
  - b. Motion in limine to exclude legal claims outside of the complaint and to exclude allegations regarding the Secretary's security system;
  - c. Renewed Motion to Refer the matter to an Administrative Law Judge.

Peg Perl, attorney for Complainant argued against all three motions. She stated that the Complainant had no intention of introducing any evidence regarding the security system.

10. At 12:25 p.m. 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 issues regarding Complaint 12-07.

## II. EXECUTIVE SESSION BUSINESS

The Commission met in Executive Session from 12:30 p.m. until 1:27 p.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 Complaint 12-07.

11. The Commission returned to open session, at 1:30 p.m.

12. There was a discussion of the Motion to Recuse Commissioner Grossman from participation in Complaint 12-07. It was moved, seconded and passed unanimously to deny the Motion to Recuse Commissioner Grossman because the Motion did not contain facts from which it may be inferred that Commissioner Grossman has a bias or prejudice that will prevent him from dealing fairly with Secretary Gessler or the office of the Secretary of State. Although not necessarily relevant to the analysis, Commissioner Grossman commented that the allegations in the affidavit were in fact false.

13. It was moved, seconded, and passed unanimously to exclude evidence relating to the Secretary's use of discretionary funds to pay for his home security system. The Commission stated that it retained the right to admit or exclude other evidence on grounds of relevancy or other evidentiary reasons during the hearing.

14. It was moved, seconded, and passed unanimously to deny the motion to refer the hearing on Complaint 12-07 to an administrative law judge. The Commission stated that there was no reason for referral of the matter to an administrative law judge for an Initial Decision given the nature of the allegations in the case and the effort already expended by the Commission.

15. There was a discussion of the process for issuing of subpoenas in Complaint 12-07. The parties agreed that the authority to issue subpoenas could be delegated to Commissioners Smith and Grossman. All requests for subpoenas must be filed by May 21, 2013 at 5 p.m., and any disputes regarding subpoenas will be discussed at a telephonic meeting with Commissioners Smith and Grossman on May 23, 2013 at 9 a.m. Commissioner Smith stated that subpoenas would only be issued for those individuals with relevant testimony regarding the factual allegations in the complaint.

16. There was a discussion of Complaint 12-03. Commissioner Smith did not participate, and Commissioner Marshall served as chair. It was moved, seconded, and passed unanimously (3-0, Commissioners Smith and Grossman not participating) to set for oral argument on the motion to dismiss at the next available meeting.

17. There was a discussion of budget and personnel issues. It was moved, seconded and passed unanimously to approve the payment of \$628.07 to reimburse Ms. Feldman for her airfare to Quebec for the COGEL meeting, and to reimburse her for the payment of \$150 for the posting of the Assistant

Attorney job announcement on the Bar Association web site.

18. There was a discussion of the process to be used for the hiring of the Assistant Director. Ms. Feldman described the grid system which the Human Resources Division of the Judicial Department would use. Commissioner Marshall asked Ms. Feldman to provide the questions she will ask the candidates in the initial screening process. It was decided that the full Commission would interview the top three candidates.

The Commission adjourned at 3:45 p.m. The next meeting is June 7, 2013 at 9 a.m. for a hearing on Complaint 12-07.

Respectfully submitted,

Jane T. Feldman  
Executive Director