

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 18-08

RESPONSE AND MOTION TO DISMISS COMPLAINT

CHARLES EUGENE PARK, JR.

VS

COMMISSIONER JULIE COZAD

Comes now, Weld County Commissioner Julie Cozad, by and through the undersigned assistant to Weld County Attorney Bruce T. Barker, and hereby moves to dismiss the instant action. In support, Commissioner Cozad offers the following:

STATEMENT OF CASE

1. Weld County Commissioner Julie Cozad (Cozad) is a local government official, currently serving an elected position on the Board of Weld County Commissioners as a representative for Weld County District 2. Her current term ends December 31, 2018 and she is not seeking an additional term on the Board of Weld County Commissioners or in any other elected position at this time.
2. On June 5, 2018, notice was sent to Cozad regarding a complaint submitted to the Independent Ethics Commission (IEC) by, Charles Eugene Parks, Jr., alleging violations of Sections 24-18-109 and 18-8-308 of the Colorado Revised Statutes. The complaint alleges that Commissioner Cozad violated these statutes when she voted to approve a consent agenda that included a warrant for reimbursement to her for legal fees.

ARGUMENT

3. Colorado Revised Statutes § 18-8-308, is a criminal statute and is under the jurisdiction of the District Attorney not the IEC. Additionally, the statute is not applicable for the alleged violation. The statute defines a “potential conflicting interest” as, “when the public servant is a director, president, general manager or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.” Section 18-8-308(2) C.R.S.). There was no ownership or nongovernmental entity participating in this transaction. This was simply a reimbursement of expenses, approved by the Board in the normal course of business, that were determined by the County to be owed to Cozad. As further confirmation of Cozad’s position in this matter, attached as Exhibit A is a letter from Michael Rourke, District Attorney for the 19th Judicial District, which states that this statute is not applicable in this case and that he will not be taking further action in this matter.
4. The expense for which Cozad was reimbursed is not a gift. She was reimbursed for expenses that she incurred on behalf of the County. The attorney that she engaged for her defense in IEC complaint 17-28 was employed primarily to work on the home rule jurisdiction issue which dominated the beginning of Cozad’s case. The complaint was filed against Cozad personally, however, it implicated an issue that affected the entire County. At that time, home rule entities including Weld County believed that the IEC did not exercise jurisdiction over these entities. This complaint was a challenge to this precedent and Cozad had to address this initial jurisdictional issue as part of her complaint before it could be determined if the substance of the complaint against her would move forward. There was clearly

lawful consideration between Cozad and her attorney. The reimbursement was simply the County reimbursing her for the work that was done on its behalf. Once the jurisdictional issue was decided, Cozad no longer employed a personal attorney for her representation. Attached as Exhibit B are the invoices and payments for legal fees that were provided to the County as support for reimbursement.

5. This jurisdictional issue was of vital importance to Weld County. Cozad and her attorney assisted in the pursuit of this issue on behalf of Weld County. For this reason, the Board of Weld County Commissioners had a work session on February 26, 2018 to discuss whether or not it was appropriate for the County to reimburse Cozad for these attorney fees. No vote was taken at the work session, however, a consensus was reached that reimbursement of these fees would be put on the consent agenda for an open meeting.
6. Approval of warrants on the consent agenda is a frequent occurrence at a Weld County Board of Commissioners meeting and occurs in the usual course of business. Reimbursements for Commissioners are regularly approved at those meetings by unanimous vote. It is not unusual for a commissioner to vote to approve a consent agenda that includes a reimbursement for expenses that he or she incurred on behalf of or while performing official functions for the County. Addressing this type of action is not the purpose of the relevant statutes or the constitutional provision. Her alleged approval of a consent agenda, which included a significant amount of other warrants and items, with only a single legitimate expense on it for which she was being reimbursed, does not rise to the level of a conflict of interest, appearance of impropriety, or breach of the public trust. Nor is

it practical to assume an official would have to recuse themselves from a vote every time a consent agenda included a reimbursement of an expense.

7. Colorado Revised Statutes § 24-18-109, requires proof beyond a reasonable doubt that the commission of one of the listed acts was conducted by the official in order to find a breach of fiduciary or public trust. Specifically, Cozad is being accused of violating Section 24-18-109 (3)(a), C.R.S., which states:

“A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not note thereon and shall refrain from attempting to influence the decisions of other members of the governing body in voting on the matter.”

There is no evidence that Cozad attempted to influence her fellow board members in any way. As stated herein, it is in the usual course of business for a board member to vote to approve the consent agenda that may also include a reimbursement for themselves as well as many other warrants and documents. Simply being present at the meeting is not proof of attempting to influence a member. Additionally, there is not proof beyond a reasonable doubt that she voted on the item. There was not a roll call vote. The minutes state that there was a unanimous vote to approve the consent agenda. A “Unanimous vote” is defined by Black’s Law Dictionary as “a vote in which every voter concurs.” (10th ed. 2014). It does not mean that everyone present voted in concurrence. Only that the people who voted, all voted in concurrence. The burden of proof is on the complaining party and without a roll call vote on the consent agenda there is not proof beyond a reasonable doubt that Cozad voted to approve a warrant for herself.

CONCLUSION

This is not a situation that warrants review by the IEC. There was not a stand-alone vote on an issue in which Cozad had a financial interest, nor was there an attempt to conceal the reimbursement by putting the warrant on the consent agenda. It is simply how expenses are reimbursed in Weld County. A reimbursement of legitimate expenses by a public entity for which one works or performs duties is not a gift and not a financial interest that the statutes or constitution attempt to address. A vote to approve warrants on a consent agenda is the normal course of business and the consent agenda often includes reimbursements for different board members voting to approve the agenda. There was lawful consideration for the expenses that were reimbursed and there were rational and equitable reasons for the County to reimburse Cozad for these expenses. There was no conflict of interest to report and there was no violation of the public trust. This was regular business of the County and there is not a violation of Article XXXIX of the Colorado Constitution or any of the related statutes.

THEREFORE, for reasons stated herein, Commissioner Cozad respectfully requests that this complaint be dismissed.

Respectfully submitted this 5th day of July 2018

ON BEHALF OF WELD COUNTY COMMISSIONER JULIE COZAD



KARIN MCDUGAL
ASSISTANT WELD COUNTY ATTORNEY

MICHAEL J. ROURKE
District Attorney



ROBERT W. MILLER
Assistant District Attorney

Office of the District Attorney
Nineteenth Judicial District

915 10TH Street
P.O. Box 1167
Greeley, CO 80632
Phone: (970) 356-4010
Fax: (970) 352-8023
www.weldda.com

June 19, 2018

Bruce Barker, Esq.
Weld County Attorney

Julie Cozad
Weld County Commissioner

Re: IEC Complaint Dated April 4, 2018

Dear Commissioner Cozad and Mr. Barker,

I am in receipt of a copy of the Independent Ethics Commission Complaint dated April 17, 2018, and assigned Case Number 18-08. I also received the notice to Commissioner Cozad from the IEC of an initial finding of "non-frivolous." I received these from Weld County Attorney Bruce Barker via email on June 6, 2018.

In his complaint, Mr. Charles Parks alleges, *inter alia*, that Commissioner Cozad's vote on March 7, 2018 at the Board of County Commissioners' public meeting violated Colorado Revised Statute §18-8-308. I was asked to review the complaint as well as that statutory provision to determine whether an investigation needed to be undertaken. My review of this matter was limited to the applicability of that specific statute, and by this letter I am not offering an opinion as to any other portion of the complaint.

After review, I have determined that, if true, Commissioner Cozad's conduct would not violate that specific criminal statute. Section 18-8-308(2) defines "potential conflict of interest." That definition clearly applies to a situation in which a public servant is also acting or has an interest in a particular matter as a result of an executive position in a private sector business. In this case, if true, Commissioner Cozad was acting as a public servant and concurrently in her individual capacity. This conduct falls outside of that specific criminal definition.

No further criminal investigation will be undertaken on the facts as alleged in the complaint because of this conclusion. I have notified Mr. Parks of the results of my limited scope review as well.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Rourke".

Michael J. Rourke
District Attorney

CHARLES EUGENE PARK, JR.

VS

COMMISSIONER JULIE COZAD

AFFIDAVIT OF COMMISSIONER JULIE COZAD

STATE OF COLORADO)
) ss
COUNTY OF WELD)

I, Julie Cozad, Weld County Commissioner, Weld County, Colorado, being duly sworn, state as follows:

1. I am Julie Cozad and I hereby swear and affirm that the attached invoices are a true and correct copy of the invoices that I received from my personal attorney, Jason Dunn with Brownstein Hyatt Ferber Schreck for his representation of me in Complaint 17-28 in front of the Independent Ethics Commission.
2. I paid for the attached invoices through my personal checking account.
3. I submitted these invoices and copies of the checks to Weld County which was used to determine the amount I was reimbursed.


JULIE COZAD
WELD COUNTY COMMISSIONER


SUBSCRIBED AND SWORN to before me this 3rd day of July 2018.

WITNESS my hand and official seal.


Notary Public

My commission expires October 7, 2020
DIANE K. BECKMAN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19924013859
MY COMMISSION EXPIRES OCT. 7, 2020

@00024564
1000-90100-6570-900

Julie Cozad


Invoice Date: January 18, 2018
Invoice #: 707479
Client.Matter #: 060203.0001

Payable Upon Receipt

Client: Julie Cozad
Matter: Independent Ethics Commission Complaint

INVOICE SUMMARY

For Professional Services Rendered Through December 31, 2017

NET FEES	\$ 4,009.87
TOTAL COSTS	100.25
Total Amount Due This Invoice	\$ 4,110.12

Pd 2/3/18
check # 6916

Julie Cozad


Invoice Date: January 18, 2018
Invoice #: 707479
Client.Matter #: 060203.0001

Re: Independent Ethics Commission Complaint

For Professional Services Rendered Through December 31, 2017

FEES

<u>Date</u>	<u>Tkpr</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
12/01/2017	A. Cavallaro	Review and update file with Amicus Briefs	0.10	280.00 \$	28.00
12/14/2017	J. Dunn	Review of reply brief from complaint tent; telephone conference with client	0.50	565.00	282.50
12/19/2017	J. Dunn	Prepare for hearing	2.40	565.00	1,356.00
12/20/2017	J. Dunn	Prepare for hearing	1.90	565.00	1,073.50
12/21/2017	J. Dunn	Final preparation and attendance at IEC hearing	3.50	565.00	1,977.50
Total Fees			8.40		\$ 4,717.50
Client Courtesy Discount					(707.63)
Net Fees					\$ 4,009.87

TIMEKEEPER SUMMARY

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Jason R. Dunn	8.30	565.00	\$ 4,689.50
Allecia Cavallaro	0.10	280.00	28.00
Total Fees	8.40		\$ 4,717.50

**Brownstein Hyatt
Farber Schreck**

Julie Cozad
Re: Independent Ethics Commission Complaint

Invoice Date: January 18, 2018
 Invoice #: 707479
 Client.Matter #: 060203.0001
 Page 2

COSTS

<u>Date</u>	<u>Description</u>	<u>Amount</u>
01/18/2018	Administrative Fee for Services Through December 31, 2017	\$ 100.25
	Total Costs	\$ 100.25

COST SUMMARY

<u>Description</u>	<u>Amount</u>
Administrative Fee	\$ 100.25
	<u>\$ 100.25</u>
Total Amount Due This Invoice	\$ 4,110.12
Previous Balance	\$ 8,158.45
Less Credits	(8,158.45)
TOTAL AMOUNT DUE	<u>\$ 4,110.12</u>

**Brownstein Hyatt
Farber Schreck**

Brownstein Hyatt Farber Schreck, L.L.P.
410 17th Street
22nd Floor
Denver, CO 80202
Phone: 303-223-1100
Facsimile: 303-223-1111
http: www.bhfs.com
EIN: 26-1367865
For W-9 Form: www.bhfs.com/w-9

Julie Cozad


Invoice Date: January 18, 2018
Invoice #: 707479
Client.Matter #: 060203.0001

Payable Upon Receipt

Re: Independent Ethics Commission Complaint

For Professional Services Rendered Through December 31, 2017

Previous Balance	\$ 8,158.45
Less Credits	(8,158.45)
Balance Forward	\$ -
Net Fees	\$ 4,009.87
Total Costs	100.25
Total Amount Due This Invoice	\$ 4,110.12
TOTAL AMOUNT DUE	\$ 4,110.12

PLEASE SEND WITH CHECK TO:

Brownstein Hyatt Farber Schreck, LLP
P.O. Box 172168
Denver, CO 80217-2168

NOTE: The above address is for regular mail delivery only
NO PAYMENTS SHOULD BE SENT CERTIFIED MAIL

OR via Courier Service To:

KeyBank Lockbox Operations
Brownstein Hyatt Farber Schreck, LLP
Lockbox #6025
1000 South McCaslin Blvd.
Superior, CO 80027

WIRE FUNDS TO:

Brownstein Hyatt Farber Schreck, LLP
Bank Name: KeyBank of Colorado
Bank Address: 1675 Broadway
Denver, CO 80202
ABA#: 307070267
Account #: 769681047122
Ref: 060203.0001, Invoice No. 707479

Julie Cozad


Invoice Date: December 29, 2017
Invoice #: 705165
Client.Matter #: 060203.0001

Payable Upon Receipt

Client: Julie Cozad
Matter: Independent Ethics Commission Complaint

INVOICE SUMMARY

For Professional Services Rendered Through November 30, 2017

NET FEES		\$ 7,943.85
TOTAL COSTS		214.60
	Total Current Invoice Amount	\$ 8,158.45
	Less Credits Applied	(7,500.00)
	Total Amount Due This Invoice	<u><u>\$ 658.45</u></u>

Julie Cozad


Invoice Date: December 29, 2017
Invoice #: 705165
Client Matter #: 060203.0001

Re: Independent Ethics Commission Complaint

For Professional Services Rendered Through November 30, 2017

FEES

<u>Date</u>	<u>Tkpr</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
11/02/2017	J. Weiss	Research and analyze home rule legal provisions and Weld County ethics provisions; review and analyze background materials	2.50	385.00 \$	962.50
11/02/2017	J. Dunn	Review of background documents	1.30	565.00	734.50
11/03/2017	J. Weiss	Research and review home rule questions and Article XXIX; draft and revise brief re jurisdiction of IEC	4.80	385.00	1,848.00
11/06/2017	J. Weiss	Conference with J. Dunn re home rule brief strategy	0.20	385.00	77.00
11/06/2017	J. Dunn	Work on legal response; conference with J. Weiss re same	1.00	565.00	565.00
11/07/2017	J. Weiss	Telephone conferences with J. Dunn re research and brief; research and revisions re same	0.60	385.00	231.00
11/07/2017	J. Dunn	Review of draft legal brief to IEC on jurisdiction and edits to same	1.20	565.00	678.00
11/08/2017	J. Weiss	Research and revise home rule brief	1.20	385.00	462.00
11/10/2017	J. Weiss	Revise home rule brief; discussions with J. Dunn re same	1.30	385.00	500.50
11/10/2017	J. Dunn	Further edits to brief; conference with J. Weiss	0.70	565.00	395.50

**Brownstein Hyatt
Farber Schreck**

Julie Cozad
Re: Independent Ethics Commission Complaint

Invoice Date: December 29, 2017
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Page 2

FEES

<u>Date</u>	<u>Tkpr</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
		to discuss same			
11/14/2017	J. Weiss	Revise brief per J. Dunn	0.30	385.00	115.50
11/14/2017	J. Dunn	Review of amicus brief; emails with J. Weiss re same	0.60	565.00	339.00
11/17/2017	J. Weiss	Revise brief formatting and circulate same	0.30	385.00	115.50
11/28/2017	J. Weiss	Review and revise brief per J. Dunn	0.80	385.00	308.00
11/28/2017	J. Dunn	Final edits to Brief; conference with J. Weiss	0.70	565.00	395.50
11/29/2017	J. Weiss	Review and revise brief per J. Dunn	0.40	385.00	154.00
11/29/2017	J. Weiss	Attend part of IEC conference	0.40	385.00	154.00
11/29/2017	J. Dunn	Participate in IEC telephone conference; emails with amicus parties; filing of brief	1.40	565.00	791.00
Total Fees			19.70		\$ 8,826.50
Client Courtesy					(882.65)
Net Fees					\$ 7,943.85

TIMEKEEPER SUMMARY

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Jason R. Dunn	6.90	565.00	\$ 3,898.50
Joshua A. Weiss	12.80	385.00	4,928.00
Total Fees	19.70		\$ 8,826.50

**Brownstein Hyatt
Farber Schreck**

Julie Cozad
Re: Independent Ethics Commission Complaint

Invoice Date: December 29, 2017
 Invoice #: 705165
 Client.Matter #: 060203.0001
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COSTS

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11/30/2017	Mileage/Parking Expense - Joshua A. Weiss - Parking - Parking to attend IEC hearing - Joshua Weiss	\$ 16.00
12/29/2017	Administrative Fee for Services Through November 30, 2017	198.60
	Total Costs	\$ 214.60

COST SUMMARY

<u>Description</u>	<u>Amount</u>
Mileage/Parking Expense	\$ 16.00
Administrative Fee	198.60
	<u>\$ 214.60</u>
Total Current Invoice Amount	\$ 8,158.45
Less Unallocated Funds Applied	(7,500.00)
Total Amount Due This Invoice	\$ 658.45
Previous Balance	\$ -
Less Credits	-
TOTAL AMOUNT DUE	<u>\$ 658.45</u>

**Brownstein Hyatt
Farber Schreck**

Julie Cozad
Re: Independent Ethics Commission Complaint

Invoice Date: December 29, 2017
 Invoice #: 705165
 Client Matter #: 060203.0001
 Page 4

UNALLOCATED FUNDS

Previous Unallocated Balance	\$ 7,500.00
Less Unallocated Funds Applied	<u>7,500.00</u>
Net Unallocated Balance	<u><u>\$ -</u></u>

TRUST ACTIVITY

Account: KeyBank - Trust Account

<u>Date</u>	<u>Receipts</u>	<u>Disbursements</u>
11/15/2017	\$ 7,500.00	
12/18/2017		\$ (7,500.00)
Total	<u>\$ 7,500.00</u>	<u>\$ (7,500.00)</u>

Trust Balance	<u><u>\$ -</u></u>
---------------	--------------------

**Brownstein Hyatt
Farber Schreck**

Brownstein Hyatt Farber Schreck, LLP
410 17th Street
22nd Floor
Denver, CO 80202
Phone: 303-223-1100
Facsimile: 303-223-1111
http: www.bhfs.com
EIN: 26-1367865
For W-9 Form: www.bhfs.com/w-9

Julie Cozad


Invoice Date: December 29, 2017
Invoice #: 705165
Client.Matter #: 060203.0001

Payable Upon Receipt

Re: Independent Ethics Commission Complaint

For Professional Services Rendered Through November 30, 2017

Previous Balance	\$ -
Less Credits	-
Balance Forward	\$ -
Net Fees	\$ 7,943.85
Total Costs	214.60
Total Current Invoice Amount	\$ 8,158.45
Less Unallocated Funds Applied	(7,500.00)
Total Amount Due This Invoice	\$ 658.45
TOTAL AMOUNT DUE	\$ 658.45

PLEASE SEND WITH CHECK TO:

Brownstein Hyatt Farber Schreck, LLP
P.O. Box 172168
Denver, CO 80217-2168

NOTE: The above address is for regular mail delivery only
NO PAYMENTS SHOULD BE SENT CERTIFIED MAIL

OR via Courier Service To:

KeyBank Lockbox Operations
Brownstein Hyatt Farber Schreck, LLP
Lockbox #6025
1000 South McCaslin Blvd.
Superior, CO 80027

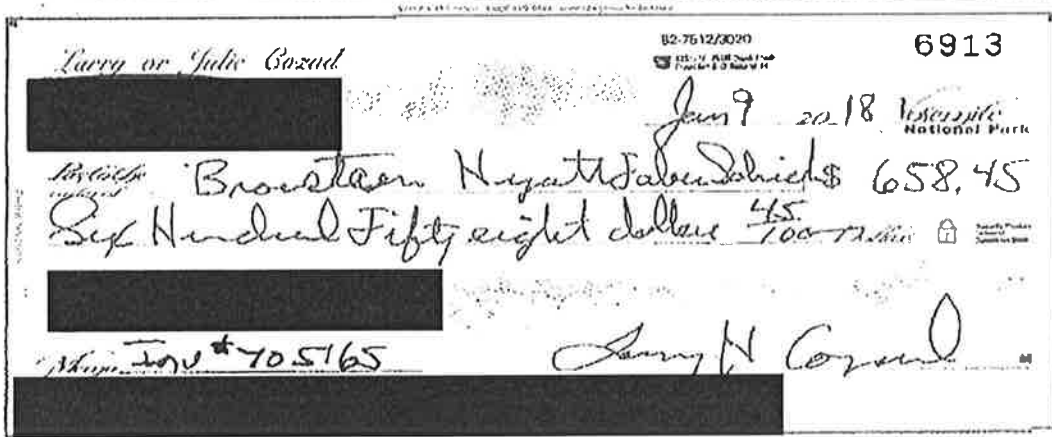
WIRE FUNDS TO:

Brownstein Hyatt Farber Schreck, LLP
Bank Name: KeyBank of Colorado
Bank Address: 1675 Broadway
Denver, CO 80202
ABA#: 307070267
Account #: 769681047122
Ref: 060203.0001, Invoice No. 705165

View Check: #0000006913 Amount: \$658.45 Date: 1/18/2018

[Print Check](#)

Check Front



Check Back

DDA 000769681047122 Lbx 0006025 CLE Batch 5173613 Seq 000106 Date 20180117

CREDIT TO DDA BILLING ACCOUNT
 ABSENT ENDORSEMENT GUARANTEED
 KEYBANK LB NATIONAL ASSOCIATION
 LB 0006025>000769681047122<CLE

View Check: #000006904 Amount: \$7,500.00 Date: 11/16/2017

Print Check

Check Front

Check (Front) 11/16/2017 000006904

Larry or Julie Cozad

82-7512/3020 6904

Nov 6 2017 Lakes National Park

Pay to the order of *Brownstein, Hyatt, Farber, Schuch* \$ *7,500.00*

Seven thousand five hundred dollars and ⁰⁰/₁₀₀ - 00/100

COLTAS Trust Acct. 82123967 *Larry N Cozad*

Check Back

VOID HERE

226
82123967
For Deposit Only

Printed Name 1.802233048 www.irs.gov

Larry or Julie Cozart

62-7618/3020

6916

June 31 2018

Member National Park

Pay to the order of Brownstein Hyatt Farber Shreders & 4,110.12
Southwestern One Member Fund 17/100

Phone 707479

Larry H. Cozart