

The Commission is authorized to adopt such reasonable rules as may be necessary for the purpose of administering and enforcing Article XXIX and any other standards of conduct and reporting requirements as provided by law. Colo. Const. art. XXIX, § 5(1). The purpose of this rulemaking is to clarify the Commission's practices and procedures for the public, and provide more guidance to parties appearing before the Commission.

These rules become effective on August 1, 2019, and supersede prior adoptions thereof.

INDEPENDENT ETHICS COMMISSION

RULES OF PROCEDURE

1. SCOPE AND PURPOSE

- A. These rules shall be referred to as the Independent Ethics Commission Rules of Procedure (IEC Rules).
- B. Constitutional authority. Article XXIX of the Colorado Constitution provides:

The [Commission] shall have authority to adopt such reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of this article and any other standards of conduct and reporting requirements provided by law.

Colo. Const. art. XXIX, §5(1).

- C. The intent of the IEC Rules is to implement the requirements of Article XXIX of the Colorado Constitution. The IEC Rules shall apply to all proceedings and matters before the IEC.

2. [Deleted and reserved.]

3. DEFINITIONS AND RULES OF CONSTRUCTION

- A. Definitions. Article XXIX, § 2 of the Colorado Constitution provides the definitions of many of the terms used in these Rules of Procedure. The definitions provided in this rule are intended to supplement that provision, and all parties should refer to section 2 in interpreting these rules.
 - 1. "Advisory opinion" means an opinion by the IEC addressing ethics issues in response to a written request by a public officer, member of the General Assembly, local government official, or government employee.
 - 2. "Article XXIX" means Article XXIX of the Colorado Constitution.
 - 3. "Commission" or "IEC" means the Colorado Independent Ethics Commission as established by Article XXIX of the Colorado Constitution.
 - 3.5. "Commissioner" means any one of the five individuals appointed to the Commission pursuant to Article XXIX, sec. 5.

4. “Complaint” means a written, signed document filed with the IEC, which complies with the form and manner requirements of Rule 7 and sets forth facts alleging how a public officer, member of the General Assembly, local government official, or government employee has violated the provisions of Article XXIX or any other standards of conduct or reporting requirements as provided by law.
5. “Frivolous” means a complaint filed without a rational basis in fact or law for the IEC’s involvement, including complaints that are untimely or over which the IEC lacks jurisdiction.
6. [Deleted and reserved.]
- 6.5 “Hearing officer” means the presiding commissioner, administrative law judge, or hearing officer appointed or assigned by the Commission to manage a case and conduct a hearing, or the chair of the IEC if the hearing officer is unavailable.
7. [Deleted and reserved.]
8. [Deleted and reserved.]
9. [Deleted and reserved.]
10. [Deleted and reserved.]
11. “Member” means any of the five Commissioners of the IEC.
12. [Deleted and reserved.]
13. “Party” means the person or persons filing a request for an advisory opinion, a request for a letter ruling, or a complaint, and the person or persons against whom a complaint is filed.
14. [Deleted and reserved.]
15. “Position Statement” means a written statement addressing ethics issue(s), which is intended to provide general guidance for public officers, members of the General Assembly, local government officials, government employees, and members of the public and which is not applicable to a specific individual.
16. [Deleted and reserved.]
17. [Deleted and reserved.]
18. “Quorum” means a majority of the number of members of the IEC.
19. “Record” means the record certified by the IEC’s custodian of records upon appeal of an IEC decision, and includes all pleadings, motions, filings, evidence, exhibits, and other papers presented or considered, any findings of fact and conclusions of law, and audio recordings of any hearing held in the matter with executive sessions redacted.

B. Rules of construction.

1. Words in the singular shall include the plural and words in the plural shall include the singular.

2. The IEC Rules shall be liberally construed to secure the just, fair, speedy, and economical determination of all matters before the IEC.

4. MEETINGS

- A. All meetings of the IEC shall include a public comment period. The length of time for public comment shall be at the discretion of the IEC.
- B. Minutes of all meetings shall be prepared and posted on the IEC website as soon as practicable following approval by the Commission.

5. REQUESTS FOR ADVISORY OPINIONS AND LETTER RULINGS

- A. The provisions of Section 5(5) of Article XXIX of the Colorado Constitution and Section 24-18.5-101(4), C.R.S., shall govern requests for advisory opinions and letter rulings, respectively. A request may be dismissed for failure to provide information requested by the IEC or its staff.
- B. [Deleted and reserved.]
- C. Submission and filing.
 1. A request for an advisory opinion or letter ruling from the IEC must be submitted in writing, signed by the person making the request, fact-specific and narrowly framed, and filed with the IEC at the offices of the IEC. A request for an advisory opinion or letter ruling may be hand delivered to the IEC or sent to the IEC offices via first class mail or by facsimile. Requests may be sent via electronic mail if they are signed by the person making the request.
 2. All requests for an advisory opinion or letter ruling should be filed with the IEC at least 10 calendar days prior to the next scheduled meeting of the IEC.
- D. The IEC may request additional information and documents from a person submitting a request for an advisory opinion or letter ruling.
- E. A request for an advisory opinion or letter ruling is complete when the IEC has determined that no additional information is necessary to issue the advisory opinion or letter ruling.
- F. The IEC shall publish advisory opinions, letter rulings, and position statements on the IEC website as soon as practicable after an opinion is issued.
- G. In the event of disagreement by any Commissioner in any advisory opinion or letter ruling, that Commissioner may, at that Commissioner's discretion, include a dissenting or concurring opinion in the issued document.
- H. A person who receives an advisory opinion or letter ruling from the Commission may rely on that opinion as an affirmative defense should a complaint be filed against that individual regarding the subject of the advisory opinion or letter ruling.
- I. Advisory opinions and letter rulings are not final agency actions and are not appealable.
- J. Advisory opinions and letter ruling requests shall be considered as soon as practicable after receipt of a completed request for an advisory opinion or letter ruling.

- K. Advisory opinion and letter ruling requests are not confidential. Absent a waiver, personal identifying information is redacted from letter rulings pursuant to section 24-18.5-101(4)(b)(IV), C.R.S. However, advisory opinions and letter rulings frequently contain information provided by the requesting party and sufficient facts to ascertain the identity of the requesting party. The IEC considers such requests in open session, and such requests are subject to open records inquiries. Advisory opinions and letter rulings are public records pursuant to section 24-18.5-101(4)(b)(IV), C.R.S., and are published on the IEC's website.

6. POSITION STATEMENTS

The IEC may, in its discretion, issue position statements. Position statements shall be published on the IEC website.

7. COMPLAINTS

- A. Any person may file a written complaint with the IEC alleging how a public officer, member of the General Assembly, local government official, or government employee has failed to comply with the provisions of Article XXIX or any other standards of conduct or reporting requirements as provided by law.
 - A.5. Requirements for Separate Complaints – Caption. Complaints must be separately filed against individuals, even if the complaints allege the same conduct by multiple persons. The complainant shall ensure that each complaint does not cross-reference the existence of other complaints. The caption of each complaint and pleadings filed thereafter shall be styled “In the matter of: [name of respondent]”.
- B. Complaints must be submitted in writing, signed, and filed with the IEC at the offices of the IEC. A complaint must be either hand delivered to the IEC or sent to the IEC's offices via first class mail, facsimile, or electronic mail (email). Filing by email is encouraged. Anonymous complaints shall not be considered.
- C. All complaints filed with the IEC must contain the name, address and telephone number of the person filing the complaint. An email address should be provided if available.
- D. The complaint shall contain the following information:
 - 1. A statement of the facts underlying the complaint with specificity regarding the ethical violations, including the section or sections of Article XXIX, other standards of conduct, or reporting requirements which the complainant believes were violated;
 - 2. [Deleted and reserved.]
 - 3. The date of the alleged violation; and
 - 4. A statement that, to the best of the complainant's knowledge, information and belief, the facts and allegations set out in the complaint are true, which must be signed by the complainant.
- E. Any complaint provided to the Commission shall be kept confidential until a determination is made as to whether or not the complaint is frivolous. Any complaint dismissed as frivolous shall be maintained confidential by the Commission.

- F. The Commission may determine whether a complaint is frivolous based on the face of the complaint itself. Alternatively, the Commission in its discretion may defer a frivolous determination until after a preliminary investigation of the complaint by Commission staff. The Commission shall exercise care to the extent practicable not to disclose the contents of the complaint as part of the preliminary investigation. If, after a preliminary investigation, the Commission is unable to determine whether or not a complaint is frivolous, in order to aid the Commission in rendering a frivolous determination, the Commission may disclose the complaint to the individual who is the subject of the complaint with Complainant's consent.
- G. Dismissal as Frivolous. A complaint shall be dismissed as frivolous by the IEC if the complaint does not allege a rational basis in fact or law for the IEC's involvement; the IEC does not have jurisdiction over the complaint; or the complaint fails to credibly allege that the conduct complained of occurred within twelve months of the filing of the complaint.
- H. A complaint may be stayed by the IEC on one or more of the following grounds:
1. An action on the same subject of the complaint is pending before another body with concurrent jurisdiction;
 2. An adjudication regarding the same subject of the complaint is more properly before another body or agency which has concurrent jurisdiction with the IEC; or
 3. The alleged violation is a criminal matter or a criminal investigation is pending.
- I. All non-frivolous complaints shall be referred to the staff of the Commission for an investigation.
- J. Response to non-frivolous complaints
1. The IEC shall advise, in writing, the party who is the subject of a complaint that a complaint has been filed, his or her right to file a response to the complaint, and his or her right to be represented by counsel of his or her choice. The IEC shall provide a copy of the complaint to the party who is the subject of the complaint.
 2. Any person named as a respondent in a complaint filed with the IEC may file a response to the complaint. Any response shall be in writing, signed by the person submitting the response, and may explain, rebut, or provide information, including providing documentation, concerning the facts and any allegations in the complaint.
 3. The response shall include a statement that, to the best of the respondent's knowledge, information and belief, any statements set out in the response are true. The response shall be filed with the IEC within thirty (30) days of the date on the letter from the IEC advising the respondent of the right to file a response. A respondent may, for good cause, submit a written request for an extension of time to respond to a complaint.
- K. Investigations.
1. Commission staff shall investigate all non-frivolous complaints.
 2. A copy of the Commission's staff's investigative report shall be provided to the parties at least 10 business days before the hearing date. Prior to its disclosure, the report shall remain confidential.

- L. Authority of Chair. In the absence of the IEC's ability to act regarding an ongoing complaint pending before the IEC, the Chair or hearing officer has delegated authority to act on non-dispositive motions or matters necessary to facilitate timely consideration and progress of matters pending before the IEC.
- M. Party Appearances. During the pendency of a complaint, the IEC may require the parties to appear at an IEC meeting in order to provide for the speedy and efficient resolution of the complaint. If party appearances are required, party appearances will be indicated as "mandatory" on the IEC's meeting agenda. Party appearances are mandatory when there is a fully briefed, contested motion pending before the IEC, at hearings, or as otherwise ordered by the IEC. Parties may appear in person or by telephone.

7.5. MOTIONS

- A. Any party may submit a motion to the IEC. Before filing a motion, a moving party shall confer with opposing parties. A motion shall:
 - 1. Contain a statement that the moving party has conferred with all parties, and whether those parties oppose the motion;
 - 2. Contain a recitation of legal authority; and
 - 3. Include a proposed order attached to, or filed concurrently with, the motion.
- B. At the discretion of the IEC or the hearing officer, the requirements in paragraph (A.) may be relaxed for pro se parties.
- C. Unless other deadlines are set by the Commission, a responding party shall have 14 days from service of the motion to file and serve a response to a non-dispositive motion. If a motion is dispositive, a responding party shall have 21 days from service of the motion to file and serve a response.
- D. A reply by the moving party may be filed only by leave of the hearing officer or IEC chair. If permitted, a reply shall be filed within 5 days of the date such permission is granted.
- E. The IEC may, in its discretion, receive oral argument regarding a motion at a Commission meeting.
- F. The hearing officer or IEC chair has discretion to rule on non-dispositive motions, including outside of a regularly scheduled meeting. The Commission may decline to ratify that action at a regularly scheduled meeting.
- G. If a motion is filed immediately prior to a hearing, the IEC may prescribe different briefing deadlines, delay the hearing, decline to hear the motion, or such other relief as is necessary to effectuate a just and speedy resolution.
- H. A party may file a motion to dismiss or a motion for summary judgment in order to expedite the IEC's consideration of a pending complaint or narrow the issues for hearing.
- I. Motions filed prior to the IEC's completion of an investigation are disfavored. In its discretion, the IEC may delay ruling on a motion until hearing.

8. HEARINGS

- A. The IEC shall hold a public hearing on all complaints within the jurisdiction of the IEC, arising under Article XXIX and under any other standards of conduct and reporting requirements as provided by law that have not been dismissed as frivolous or dismissed on other grounds consistent with the Constitution.
1. Hearings may be held before the IEC or the IEC, at its discretion, may delegate a particular hearing to an appointed administrative law judge or hearing officer. In such circumstances, the administrative law judge or hearing officer will render an Initial Decision and thereafter, the Commission will enter final Findings of Fact and Conclusions of Law. The parties must follow the procedures for filing exceptions to the Initial Decision set forth in section 24-4-105(14)(a)(II), C.R.S.
 2. The scope of the hearing shall be determined by the IEC and may be limited to specific factual, ethical or legal issues.
- B. Setting hearings.
1. Hearings on complaints will be set as soon as practicable. A hearing date can be continued only at the discretion of the IEC or upon a showing of good cause as determined by the IEC.
 2. The IEC shall send the complainant and the respondent a notice of the hearing date.
 3. Any person receiving notice of the hearing may request inspection of IEC documents pertaining to the complaint, with reasonable notice to the IEC, unless such documents constitute investigative work product or are otherwise privileged or confidential. The IEC shall provide such requested non-confidential, non-privileged documents during regular business hours.
 4. [Deleted and reserved.]
 5. The Commission may schedule a hearing in the form of oral argument on the legal issues when it appears that there are no issues of material fact in dispute. Such hearing may include all or a portion of the case before the Commission.
- C. Prehearing matters.
1. Consolidation. Notwithstanding the requirement that complaints be separately filed against individuals, any party may move to consolidate complaints pending before the IEC which are based on a common question of law or fact. The IEC, upon its own motion, may consolidate complaints in the interest of administrative efficiency. Any party may respond to a motion or file a motion for purposes of opposing consolidation.
 - 1.5. Disclosure of Witnesses and Documents. Within thirty (30) days after the IEC serves the notice of hearing, each party shall provide to all other parties and to the IEC prehearing disclosures including: Copies of all relevant documents and other tangible things; a list, including contact information, of all persons who have relevant information or knowledge regarding the allegations in the complaint; and a short statement regarding the relevant facts or opinions about which such persons have information or knowledge.

2. Each party has an ongoing duty to supplement disclosures as new, different or additional information on witnesses and tangible items becomes available.
 - 2.5. Stipulated Facts. Within thirty (30) days after the IEC sends out a notice of hearing or twenty-one (21) days prior to the scheduled hearing, whichever is earlier, the parties shall confer and file a joint list of stipulated facts that will be deemed admitted at the hearing.
 3. Should either party fail to comply with these rules, the IEC may, at its discretion, limit the presentation of evidence or dismiss the complaint.
 4. Discovery may be permitted at the discretion of the Commission in such form as the Commission deems appropriate.
 - 4.5. Notice of Issues for Hearing. Prior to hearing, the IEC will issue a Notice of Issues for Hearing that sets forth the legal issues that the IEC will consider at hearing. Such notice is based on all the facts alleged in the complaint, but is not limited to the specific legal grounds or citations set forth in the complaint. The notice may be amended prior to hearing at the IEC's discretion.
 5. Prehearing conference. A prehearing conference may be scheduled at the discretion of the IEC. Either party may request a prehearing conference. A prehearing conference may be conducted by the hearing officer or IEC chair.
 6. Subpoenas. Members of the Commission have the power to subpoena documents and witnesses.
 - a. Pursuant to Colo. Const. art. XXIX, § 5(4), the IEC may subpoena documents or witnesses upon its own motion or upon the motion of any party. A party's motion for issuance of a subpoena shall be made not later than 7 days before such attendance or production is requested.
 - b. The IEC may authorize IEC staff to use a stamp signature or to sign a subpoena on behalf of the IEC. However, no other person may duplicate the signature of a Commissioner in issuing a subpoena.
- C.5. Standard of Proof. Pursuant to Colo. Const. art. XXIX, § 5(3)(e), the standard of proof applicable to IEC proceedings shall be a preponderance of the evidence, unless the IEC determines that the circumstances warrant a heightened standard.
- D. Rules of evidence. To the extent practicable, the Colorado Rules of Evidence apply in all hearings conducted by the IEC. Unless the context requires otherwise, whenever the word "court", "judge", or "jury" appears in the Colorado Rules of Evidence, such word shall be construed to mean the IEC. The IEC has discretion to admit evidence not admissible under such rules, as allowed under Colorado law.
- D.3. Hearing. The IEC may conduct such a hearing as is necessary to resolve issues of disputed fact. The IEC may consider filings, admit evidence, receive arguments, examine witnesses, consider the stipulations of parties, or consider other presentations of evidence in the course of a hearing.
- D.6. Settlement. The parties shall promptly notify the IEC of any proposed settlement, stipulation, or other action eliminating the need for a hearing. Any settlement agreement is subject to final

approval or disapproval by the Commission, and shall be signed by all parties and either the hearing officer or the Commission.

- E. Presentation of evidence. Evidence at a hearing shall be presented through the testimony of witnesses and by the submission of documents or other tangible items. The IEC may consider any evidence obtained during the IEC's investigative phase, and the parties may use or counter such evidence as is normally permitted under the Colorado Rules of Evidence. Testimony by affidavit or by telephone may be permitted at the discretion of the IEC if a witness is unavailable to testify in person. All arrangements for the taking of testimony by telephone or video conference shall be made by the party requesting such testimony, who shall be responsible for all costs associated with the testimony. The IEC may exclude evidence that is not relevant, that is cumulative, or for such other reasons as determined by the IEC.
- E.5. At hearing, a party proffering an exhibit shall furnish seven (7) hardcopies of such exhibit for the IEC and its counsel, in addition to a copy for each party present at the hearing. Parties should sequentially mark these documents beginning with "001" (complainant) or "A" (respondent), either prior to the hearing or when the party submits such exhibit into evidence. IEC records shall be sequentially identified, beginning with "IEC001". The Commission may limit the number of copies to be furnished where reproduction is burdensome.
- F. The IEC, in its discretion, may accept written closing statements.
- G. The IEC does not supply court reporters. All hearings shall be electronically recorded. If any party wishes to have all or a portion of a proceeding transcribed by a court reporter, that party may make private arrangements to do so at that party's own expense. The recording of any proceeding made electronically by the IEC shall be the official record.
- H. IEC decision.
 - 1. A copy of the IEC's written decision concerning any complaint that proceeds to hearing shall be sent to all parties of record at the earliest practicable time.
 - 2. A copy of the IEC's written decision concerning any complaint that proceeds to hearing will be published on the IEC website at the earliest practicable time.
 - 3. A decision is final for appeal purposes when the IEC's written decision is entered.
 - 4. On appeal, the IEC's official record shall include a written transcript or audio recording of the hearing, together with all exhibits or copies thereof introduced; all information secured by the IEC on its own initiative and considered by it in rendering its order or decision; and the pleadings, record, and proceedings in the case.
- I. [Deleted and reserved.]

8.5. REPRESENTATION

Entries of appearance and withdrawals of counsel shall be in conformance with C.R.C.P. 121, § 1-1. Entries of appearance shall be made at the earliest practicable time in the proceedings.

9. GENERAL

- A. *Ex parte* communications with any Commissioner concerning any matter before the IEC are strictly prohibited.
- B. Requests for advisory opinions, requests for letter rulings, and/or complaints may not be filed with individual Commissioners.
- C. Authority of IEC Executive Director and Staff. The IEC may, at its discretion, delegate functions and responsibilities to its Executive Director and staff. IEC staff is not permitted to render legal advice. Staff will not provide legal advice to the public, or provide an opinion regarding the validity of a complaint.
- C.5. Authority of Chair. The IEC Chair shall have the authority to manage IEC staff, run meetings, conduct prehearing conferences, rule on nondispositive motions outside of regularly scheduled meetings, grant leave to file replies to responses to motions, manage the IEC's budget, work with IEC staff to create meeting agendas, and such other duties as are delegated to the Chair by the IEC.
- D. Computation of time. In computing any period of time described in these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period of time shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period of time runs until the next day which is not a Saturday, Sunday, or legal holiday. The IEC may, at its own discretion or upon the request of a party, enlarge any period of time set forth in these rules so long as any request to enlarge any period of time is made before the expiration of the period of time originally prescribed herein.
- E. Service of Process.
 - 1. Service of pleadings and other filings shall be done by either hand delivery or by mailing the pleadings, other documents and tangible things to a person at his or her last known address on file with the IEC, first class mail, postage prepaid or to the party's counsel of record on file with the IEC. If a party has provided an email address to the IEC, service by email is sufficient.
 - 2. Filing. Filing of pleadings and other filings shall be done by either hand delivery, mail, or email to the IEC at: Colorado Independent Ethics Commission, 1300 Broadway, Suite 240, Denver, CO 80203; iecinfo@state.co.us. To the extent practicable, a party should send an electronic copy of all pleadings to iecinfo@state.co.us. Email is preferred.
- F. The Commission may develop and implement training programs and other related tools for the purpose of administering and enforcing the provisions of Article XXIX and any other standards of conduct and reporting requirements as provided by law.