

COLORADO INDEPENDENT ETHICS COMMISSION

ANNUAL REPORT 2019

Elizabeth Espinosa Krupa, Chair
William Leone, Vice-Chair
Selina Baschiera, Commissioner
Debra Johnson, Commissioner
Yeulin Willett, Commissioner

Dino Ioannides, Executive Director

Background

The Colorado Independent Ethics Commission (“IEC” or “Commission”) was created by a voter-initiated constitutional amendment. This amendment, commonly referred to as “Amendment 41,” passed with more than 62% of the vote, and became effective on December 31, 2006, as Article XXIX of the Colorado Constitution. The IEC is authorized to implement and enforce Article XXIX. Section 5 of the article provides:

The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions on ethics issues arising under this article, and any other standards of conduct and reporting requirements as required by law.

The IEC has jurisdiction over all employees and elected officials in the legislative and executive branches of state government. The IEC also has jurisdiction over employees and elected officials of county and municipal governments, except for home rule county or municipal governments that “have adopted charters, ordinances, or resolutions that address the matters covered by [Article XXIX].” Colo. Const. Art. XXIX, § 7. The Commission does not have jurisdiction over employees and elected officials of special districts or school districts.

The Commission consists of five members, appointed as follows: one member is appointed by the Colorado House of Representatives, one by the Colorado Senate, one by the Governor, and one by the Chief Justice of the Colorado Supreme Court. The fifth commissioner is selected by the other four members of the IEC and must be a local government employee or elected official.

Commissioners serve without compensation but are reimbursed for actual and necessary expenses incurred in carrying out their official duties. Commissioners are appointed to four-year terms and may be reappointed. No more than two commissioners may be from the same political party.

The IEC held its first meeting on December 11, 2007. Originally located in the Office of Administrative Courts at the Department of Personnel and Administration, the IEC’s offices were moved to the Judicial Department in 2010 pursuant to HB 10-1404 (codified at § 24-18.5-101, C.R.S.). The Commission’s offices moved to the Ralph Carr Judicial Center in December 2012.

The members of the Commission in 2019 were:

- April Jones, who served as chair until April 22, 2019, and as a commissioner until June 30, 2019. Commissioner Jones was the appointee of the Colorado House of Representatives.
- Jo Ann Sorensen, who served as vice-chair until April 22, 2019, and as a commissioner until June 30, 2019. Commissioner Sorensen was the local government representative appointed by the other commissioners.
- Elizabeth Espinosa Krupa, who was elected chair on April 22, 2019. Commissioner Espinosa Krupa is the appointee of the governor.
- William J. Leone, who was elected vice-chair on April 22, 2019. Commissioner Leone is the appointee of the Colorado Senate.¹
- Matt Smith, who served until June 30, 2019. Commissioner Smith was the appointee of the Chief Justice.
- Debra Johnson, who was appointed as a commissioner on July 1, 2019. Commissioner Johnson is the appointee of the Colorado House of Representatives.
- Yeulin Willett, who was appointed as a commissioner on July 1, 2019. Commissioner Willett is the appointee of the Chief Justice.
- Selina Baschiera, who was appointed as a commissioner on October 29, 2019. Commissioner Baschiera is the local government representative commissioner appointed by the other commissioners.

Dino Ioannides is the Commission's executive director.

The work of the Commission to issue advice and hear complaints is summarized below. In addition, Commission staff conducts trainings of state and local employees and officials; and responds to informal inquiries from covered individuals, the press, and the public.

Advisory Opinions

The Commission issued five advisory opinions in 2019. Three advisory opinion requests remained pending at the end of the calendar year. The advisory opinions issued were:

Advisory Opinion 19-01 (Travel Expenses Paid for by a Third Party). This opinion addressed whether a state representative could accept airfare expenses from a foreign organization to attend a conference and participate on conference panels in Columbia.

Advisory Opinion 19-02 (Acceptance of Travel Expenses Paid for by a Non-Profit Organization). This opinion addressed whether a district attorney could accept travel and related expenses to attend a conference in Israel as a representative of state government.

Advisory Opinion 19-03 (Travel Expenses Paid for by a Third Party). This opinion addressed whether a district attorney could accept travel and related expenses, as a gift to the state, to attend a technology and court systems modernization conference.

¹ Previously appointed by the governor, Commissioner Leone was reappointed by the Senate effective July 1, 2017. See SR17-004.

Advisory Opinion 19-04 (Acceptance of Travel Expenses Paid for by a Third Party). This opinion addressed whether a government employee could accept travel and related expenses paid by the State of Indiana to participate on a symposium panel while representing the State of Colorado.

Advisory Opinion 19-06 (Fellowship Expenses Paid by a Non-Profit Third Party). This opinion addressed whether members of the Colorado General Assembly could accept fellowships to defray registration, lodging, and meal costs to attend an annual health symposium while representing state government.

Letter Rulings

The Commission issued three letter rulings in 2019. No letter ruling requests remained pending at the end of the calendar year. The letter rulings issued were:

Letter Ruling 19-01 (Acceptance of Pro Bono Lobbyist Services). This opinion addressed whether a state agency could solicit and obtain the services of a *pro bono* lobbyist.

Letter Ruling 19-02 (Information Provided to Members of the General Assembly). This opinion addressed whether a nonprofit advocacy organization could provide informational material to members of the Colorado General Assembly.

Letter Ruling 19-03 (Fellowship Expenses Paid by a Non-Profit Entity). This opinion addressed whether individuals subject to the gift ban could accept fellowships to defray registration, lodging, and meal costs to attend an annual health symposium.

Position Statements

The Commission issued one position statement in 2019, as follows:

Position Statement 19-01 addressed the periodic adjustment of the gift ban limit set forth in Colo. Const. art. XXIX, § 3(2).

Complaints

Of the 50 complaints received in 2017 (two years prior), three were resolved in 2019: one was dismissed as frivolous; one was dismissed after hearing; and one resulted in an opinion finding a violation of Colo. Const. art. XXIX. Two complaints received in 2017 remained pending at the end of 2019.²

Of the 37 complaints received in 2018 (the prior year), 13 were resolved in 2019: eight were dismissed as frivolous; three were dismissed as non-jurisdictional; one was resolved by the acceptance of a joint stipulation of dismissal; and one resulted in an opinion finding a violation of Colo. Const. art. XXIX. Two complaints received in 2018 remained pending at the end of 2019.

² One of these two complaints remains pending due to ongoing court appeals. The other complaint, which is unrelated to the first, is stayed and is, in part, pending the outcome of the appeals in the first complaint based on similar issues presented by both complaints.

The Commission received 26 complaints in 2019. Of those, 23 complaints were dismissed as frivolous and three remained pending at the end of the calendar year.

Litigation

Dunafon v. Jones, No. 2019CA321 (Colo. Ct. App.):

In July 2018, the Commission found two complaints against Michael Dunafon, the mayor of Glendale, non-frivolous. Prior to proceeding to an investigation and hearing, Dunafon filed an interlocutory appeal of the Commission's jurisdictional determination under C.R.C.P. 106. In 2019, that case worked its way through Colorado district court and ultimately the Court of Appeals. At the end of 2019, the appeal was fully briefed at the Court of Appeals.³

Dunafon v. Jones, No. 2019CA1344 (Colo. Ct. App.):

In connection with the Dunafon complaint litigation, Dunafon filed a CORA request seeking the executive session recordings of the Commission, which were recorded while the complaints were still confidential under Colo. Const. art. XXIX, § 5(3)(b). The Commission denied the request on the basis that the executive sessions were properly held under the Colorado Open Meetings Law. Dunafon appealed and, in 2019, that case worked its way through Colorado district court and ultimately the Court of Appeals. At the end of 2019, the appeal was full briefed at the Court of Appeals and awaiting scheduling of oral argument.⁴

Marble v. Jones, No. 2018CV32433 (Den. District Ct.)

In 2018, the Commission decided a complaint against Vicki Marble, a Colorado state senator. The Commission found a violation and assessed a penalty by a 3-2 vote. Between the time the Commission voted to find a violation and assess a penalty and the time the Commission issued a decision, a commissioner who participated in the majority vote resigned from serving on the Commission. The Commission issued a written decision noting both the vote and the commissioner's resignation. Marble appealed, in part based on the procedure following the commissioner's resignation and the Commission's decision to treat its vote as its final action. The case was fully briefed at the end of 2018. In June 2019, the district court issued a decision finding that the Commission's final action was the issuance of its written decision. Because that decision resulted in a 2-2 split without the former commissioner's participation, the court overturned the Commission's finding of a violation and imposition of a penalty against Marble.

³ As of the date of this Annual Report, the Court of Appeals had issued a decision holding that the district court lacked subject matter jurisdiction because only final actions of the Commission were subject to judicial review under § 24-18.5-101, C.R.S. Dunafon has filed a petition for rehearing that is currently pending.

⁴ As of the date of this Annual Report, the parties' requests for oral argument were still pending.

Conclusion

The Commission received eight requests for opinions (advisory opinions and letter rulings) in 2019, which represents 75% of the Commission's annual average. The Commission received 26 complaints in 2019, which returns the Commission from the elevated numbers of prior years to a number closer—though still elevated—to its annual average. The Commission's annual training events in 2019 approximately doubled its annual average and reached an estimated 830 individuals. The Commission's remaining workload was generally within the normal historical range. *See Appendix.*

Appendix

Year	Meetings	Opinions				Complaints	Hearings	Records Requests	Trainings	Informal Advice Calls
		AO	LR	PS	Total Opinions					
2008	24			3	3	4	0	4	2	57
2009	25	9	5	7	21	14	1	8	6	@175
2010	20	16	2	1	19	9	3	12	7	@150
2011	13	12	0	1	13	12	1	9	34	82
2012	13	9	1	2	12	7	2	13	14	75
2013	21	10	0	0	10	14	3	27	4	232
2014	21	17	2	0	19	24	1	19	3	@110
2015	12	12	2	1	15	35	3	10	19	133
2016	18	7	4	1	12	27	4	6	1	@97
2017	11	8	1	0	9	50	2	4	6	205
2018	12	3	0	0	3	37	1	8	5	115
2019	10	5	3	1	9	26	4	14	19	151
Total	200	108	20	17	145	259	25	134	120	1582
Average	16.7	9	1.7	1.4	12.1	21.6	2.1	11.2	10	132
Median	15.5	9	1.5	1	12	19	2	9.5	6	124

LEGEND:

AO = Advisory Opinion

LR = Letter Ruling

PS = Position Statement

@ = estimated calls (official records not maintained)

Meetings include all in person meetings and telephonic meetings.