

# COLORADO INDEPENDENT ETHICS COMMISSION

## ANNUAL REPORT 2020

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

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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 2020 were:

- Elizabeth Espinosa Krupa, who has served as the Commission's chair since April 22, 2019. Commissioner Espinosa Krupa is the appointee of the governor.
- William J. Leone, who has served as vice-chair since April 22, 2019. Commissioner Leone is the appointee of the Colorado Senate.<sup>1</sup>
- 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 six advisory opinions in 2020, three which remained pending from the end of 2019. No advisory opinion requests remained pending at the end of the 2020 calendar year. The advisory opinions issued were:

Advisory Opinion 19-05 (Negotiations of Future Employment). This opinion addressed whether a state employee could obtain employment or contract opportunities outside Colorado, mostly in the marijuana industry, to provide webinars, risk assessments, and accounting services.

Advisory Opinion 19-07 (Travel Expenses Paid by US Government). This opinion addressed the propriety of state employees accepting travel-related expenses from the federal government for activities related to the Colorado Department of Transportation's High Performance Transportation Enterprise.

Advisory Opinion 19-08 (Travel Expenses Paid for by a Non-Profit Organization). This opinion addressed whether a Colorado district attorney could accept travel-related expenses, from a non-profit organization, to serve as a panelist at an out-of-state conference.

Advisory Opinion 20-01 (Acceptance of Winnings in Raffle). This opinion addressed whether a Colorado district attorney could accept the winnings of a raffle/giveaway hosted by a non-profit organization as part of a fundraising event.

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

Advisory Opinion 20-02 (Acceptance of Employment Award). This opinion addressed whether local government employees could accept a one-time cash award for work done above and beyond the employees' normally assigned duties.

Advisory Opinion 20-03 (Government Acceptance of a Cash Gift). This opinion addressed the propriety of a local government's acceptance of a cash gift.

### Letter Rulings

The Commission issued no letter rulings in 2020. No letter ruling requests remained pending at the end of the calendar year.

### Position Statements

The Commission issued no position statements in 2020.

### Complaints

There were eight complaints without a final disposition at the end of 2019. Of those, one complaint from 2016 and two from 2017 were either (a) the subject of ongoing litigation; or (b) stayed, pending the outcome of said litigation. Of the remaining five complaints, two were filed in 2018 and three were filed in 2019. Of the eight complaints without a final disposition at the end of 2019, four were resolved in 2020: two were dismissed and two resulted in an opinion finding a violation of Colo. Const. art. XXIX.

Eighty (80) complaints were filed in 2020. Of the 80 complaints filed in 2020, 74 were dismissed as frivolous, one was withdrawn, and five were determined to be non-frivolous.

At the end of 2020, there were seventeen complaints that remained pending: thirteen from 2020 and four from prior years.

### 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. On March 6, 2020, the Court of Appeals held that only the Commission's final actions are reviewable and, therefore, that the district court has no jurisdiction to review the Commission's preliminary jurisdictional determination. On November 9, 2020, the Colorado Supreme Court denied Dunafon's Petition for Writ of Certiorari. The case was remanded to the Commission for further proceedings.

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

In connection with the Dunafon complaint litigation, Dunafon filed a Colorado Open Records Act ("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 (“COML”). Dunafon appealed and, in 2019, that case worked its way through Colorado district court and ultimately the Court of Appeals. On October 22, 2020, the Colorado Court of Appeals ruled that the district court lacked subject matter jurisdiction because: the Commission is not an “agency” or “institution” subject to CORA; the Commission’s denial of records was not a “final action” under § 24-18.5-101(9), C.R.S.; and the Commission is not a “state public body” subject to the COML.

*City of Glendale v. Indep. Ethics Comm’n*, No. 2020CV34205 (Denver Dist. Ct.):

On December 10, 2020, the City of Glendale, Colorado, filed a complaint against the Commission in Denver District Court, seeking: (1) a declaration that the City, its elected officials, its officers, its board members, its employees, and its independent contractors are exempt from the Commission’s jurisdiction; and (2) an order enjoining the Commission from exercising jurisdiction over same. On January 4, 2021, the Commission filed a motion to dismiss. The motion is fully briefed and awaiting a decision.

### Conclusion

The Commission received three requests for opinions (advisory opinions and letter rulings) in 2020, which represents approximately 30% of the Commission’s annual average; the Commission issued six opinions, including three from the prior year. The Commission received 80 complaints in 2020, representing the highest number of complaints ever filed in a single calendar year. This volume nearly quadruples the average annual number of complaints filed in 2008-2019. The Commission’s annual training events in 2020 were significantly impacted by COVID-19: only two training events were held. The Commission’s remaining workload was generally within the normal historical range. *See* Appendix.

Appendix

Year	Meetings Held	Opinions Issued				Complaints Received	Hearings Held	Records Requests Processed	Trainings Conducted	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
2020	15	6	0	0	6	80	3	19	2	109
<b>Total</b>	215	114	20	17	151	339	28	153	122	1691
<b>Average</b>	16.5	8.8	1.5	1.3	11.6	26.1	2.2	11.8	9.4	130.1
<b>Median</b>	15	9	1	1	12	24	2	10	6	115

**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.