

NOTICE

The Independent Ethics Commission issues this notice of rulemaking, proposing to repeal and reenact its [Rules of Procedure](#) and its [Access to Records Rule](#). The proposed rules appear after this Notice, below.

The Commission invites written public comment on the proposed rules. Any person interested in filing written comments may do so by emailing comments to iecinfo@state.co.us. Written comments may also be mailed to the Independent Ethics Commission, 1300 Broadway, Suite 240, Denver, CO 80203. Written comments must be received no later than December 31, 2021.

The Commission will consider any timely filed written comments at its meeting scheduled for February 15, 2022. The Commission may, at that time and in its discretion, authorize oral public comments. Due to the COVID-19 pandemic, unless the Commission orders otherwise, the Commission's meeting will be held remotely via Cisco WebEx at 9:00 a.m. at this link: judicial.webex.com/meet/Colo.IEC. Persons interested in attending the rulemaking meeting are encouraged to monitor the Commission's meeting agenda, which will be posted on the Commission's [2022 Agendas](#) web page; any change in meeting venue will be posted on the agenda. The Commission may order additional meetings to consider the proposed rules.

PROPOSED RULES

Chapter 1 – Definitions and Rules of Construction

Rule 1. SCOPE AND PURPOSE

- (A) These rules shall be referred to as the “Independent Ethics Commission Rules of Procedure” or “IEC Rules”.
- (B) Constitutional Authority. Section 5(1) of 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.

- (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.

Rule 2. DEFINITIONS AND RULES OF CONSTRUCTION

- (A) Definitions. Article XXIX, § 2 of the Colorado Constitution provides the definitions of many of the terms used in the IEC Rules. The following definitions apply to the IEC Rules, in addition to the definitions set forth in § 2 of Article XXIX.
- (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) “Closed session” means a portion of an IEC meeting that is conducted in private and is closed to the public.
 - (4) “Commission” or “IEC” means the Colorado Independent Ethics Commission as established by Article XXIX.
 - (5) “Commissioner” or “member” means any one of the five individuals appointed to the Commission pursuant to Article XXIX, § 5.
 - (6) “Complaint” means a written, signed document filed with the IEC pursuant to Article XXIX, § 5(3)(a), which complies with the form and manner requirements of rule 5.
 - (7) “Deliberations” means any discussion of the IEC commissioners with each other or counsel regarding a pending investigation, pending complaint, pending motion, advisory opinion, letter ruling, or position statement, whether such discussion occurs during a closed session, an open session, or outside of a regularly scheduled meeting.
 - (8) “Dispositive”, in the context of a motion, means any motion that may result in a final determination on the merits of a complaint matter, including, but not limited to, motions brought pursuant to C.R.C.P. 12(b)(1), (2), (5), and (6).

- (9) “Frivolous” means a complaint filed without a rational basis in fact or law for the IEC’s involvement, including complaints over which the IEC lacks jurisdiction pursuant to Article XXIX.
- (10) “Hearing officer” means the presiding commissioner assigned by the IEC to manage a case and conduct a hearing, or the chair of the IEC, if the hearing officer is unavailable.
- (11) “IEC record” means any document, regardless of format, regarding IEC official business, maintained by the IEC in the ordinary course of business, and in the custody of the IEC’s custodian of records.
- (12) “Non-public record” is an IEC record that is exempt from disclosure pursuant to these rules.
- (13) “Open meeting” means a meeting of the IEC that is convened to conduct official business, portions of which are open to the public, and is noticed on the IEC’s website pursuant to these rules. Open meetings may be held in-person, via phone or web conference, or by other electronic means.
- (14) “Open session” means a portion of an open meeting that is conducted in public.
- (15) “Party” means the person, persons, or entity filing a request for an advisory opinion, a request for a letter ruling, or a complaint, and the person against whom a complaint is filed.
- (16) “Personal identifying information” means a person’s home address, telephone number, social security number, birth date, bank account, or other personal financial information, tax identification number, personal Signature, personal email addresses, or similar unique identifying information other than a person’s name.
- (17) “Personnel file” means any document maintained because of the employer-employee relationship, including home addresses, telephone numbers, financial information, and other documents specific to an individual’s employment with the IEC.
- (18) “Position statement” means a written statement addressing ethics issue(s) that 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.
- (19) “Public record” is an IEC Record that, pursuant to these rules, is subject to public disclosure under the procedures set forth in Chapter 7.

- (20) “Published decision” means any IEC advisory opinion, letter ruling, position statement, written order, final decision regarding a complaint, or other similar document issued by or on behalf of the IEC.
 - (21) “Quorum” means a majority of the number of commissioners of the IEC fixed by § 5 of Article XXIX, that is, three commissioners.
 - (22) “Respondent” means the person who is the subject of a complaint.
 - (23) “Signature” or “signed” includes electronic signatures and documents signed using such signatures consistent with the Uniform Electronic Transactions Act, adopted by Colorado pursuant to Article 71.3 of Title 24 of the Colorado Revised Statutes and § 24-71-101, C.R.S.
 - (24) “Work product” means any draft, non-final decision of the IEC; drafts, research, or notes created by IEC staff; notes or other deliberative process materials created by commissioners, draft position statements, draft agendas, draft minutes, draft reports of investigation, internal memoranda, communications between commissioners, communications between commissioners and staff, and all other preliminary or draft IEC records.
- (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 efficient determination of all matters before the IEC.
 - (3) The IEC Rules should be construed in accordance with the principles of statutory construction set forth in §§ 2-4-101 through 2-4-114, C.R.S., unless a different definition or principle is set forth by these rules.

Chapter 2 – Advisory Opinions, Letter Rulings, and Position Statements

Rule 3. REQUESTS FOR ADVISORY OPINIONS AND LETTER RULINGS

- (A) The provisions of § 5(5) of Article XXIX and § 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) Submission and Filing.

- (1) A request for an advisory opinion or letter ruling must: be submitted in writing; set forth the facts underlying the request in as much detail as possible; be signed by the party making the request; and be filed with the IEC via mail or email.
 - (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.
- (C) The IEC or IEC staff may request additional information and documents from a person submitting a request for an advisory opinion or letter ruling.
 - (D) A request for an advisory opinion or letter ruling is complete when the IEC or IEC staff has determined that no additional information is necessary to consider the request at a regular meeting of the IEC.
 - (E) The IEC shall publish advisory opinions, letter rulings, and position statements on the IEC website as soon as practicable after an opinion is issued.
 - (F) In the event of disagreement by any commissioner with an advisory opinion or letter ruling, that commissioner may, at that commissioner's discretion, include a dissenting or concurring opinion to be published concurrently with the issued decision.
 - (G) A person who is the subject of an advisory opinion or letter ruling 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. Similarly, parties who request a letter ruling may rely on that letter ruling as an affirmative defense against a claim that the party induced a breach of the public trust for private gain pursuant to § 6 of Article XXIX.
 - (H) Advisory opinions and letter rulings are not final IEC actions and are not appealable.
 - (I) 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.
 - (J) Requests for advisory opinions and letter rulings are not confidential and may be subject to disclosure pursuant to applicable law. Identifying information is redacted from letter rulings pursuant to § 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's issued advisory opinions and letter rulings are public records that are published on the IEC's website.

- (K) A tied vote on an advisory opinion or letter ruling request will result in no opinion being issued, and no affirmative defense being granted as set forth in rule 3(G).

Rule 4. POSITION STATEMENTS

The IEC may, in its discretion, issue position statements to provide guidance to covered individuals and the general public. Position statements shall be published on the IEC website.

Chapter 3 – Filing and Responding to Complaints

Rule 5. COMPLAINTS

- (A) Requirements for Separate Complaints – Caption. Complaints must be separately filed against individual persons, 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 by the person filing the complaint, and filed with the IEC via mail or 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 alleged to have been violated, including the section or sections of Article XXIX, statutory standards of conduct, or reporting requirements which the complainant believes were violated;
 - (2) The date(s) of the alleged violation(s); and
 - (3) A statement that, to the best of the complainant’s knowledge, information and belief, the facts and allegations set forth in the complaint are true.
- (E) Preliminary Investigation. A complaint may be dismissed if, on its face, it does not contain adequate factual allegations on which the Commission could base a non-frivolous determination. At its discretion, the Commission may defer a frivolity determination pending a preliminary investigation of the complaint. The Commission will seek not to disclose the contents of the complaint as part

of a preliminary investigation. If the Commission is unable to determine whether a complaint is frivolous after a preliminary investigation, the Commission may disclose the complaint to the respondent if the complainant waives confidentiality. If both parties waive confidentiality, Commission staff may discuss the complaint with third parties as part of the Commission's preliminary investigation.

- (F) Dismissal as Frivolous. Subject to § 5(3)(b) of Article XXIX, all complaints and related records shall be kept confidential until a frivolity determination is made. A complaint shall be dismissed pursuant to § 5(3)(b) if the IEC determines the complaint is frivolous. Complaints dismissed as frivolous and all related records shall remain confidential and shall be destroyed pursuant to the IEC's records retention policy.
- (G) The IEC may stay a complaint on one or more of the following grounds:
 - (1) An action regarding the same subject as the complaint is pending before another body with concurrent jurisdiction;
 - (2) An adjudication regarding the same subject as the complaint is more appropriate for resolution by another body or agency which has concurrent jurisdiction with the IEC; or
 - (3) The subject matter of the complaint overlaps with pending criminal charges or a pending criminal investigation.
- (H) Response to Non-Frivolous Complaints.
 - (1) If the IEC determines that a complaint is non-frivolous, the IEC shall advise, in writing, the Respondent that a complaint has been filed and his or her right to be represented by counsel of his or her choice at his or her own expense. The IEC shall provide a copy of the complaint to the respondent.
 - (2) If the IEC determines that a complaint is non-frivolous, respondent shall file a response to the complaint. Such response shall be in writing, signed by the person or the person's counsel, and may explain, rebut, or provide information, including providing documentation, concerning the facts and allegations in the complaint.
 - (3) The response shall include a statement that, to the best of the person'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 IEC's non-frivolous determination. A respondent may, for good cause, submit a written request for an extension of time to respond to a complaint.
- (I) Investigations.

- (1) Commission staff shall investigate all non-frivolous complaints.
 - (2) A copy of the Commission's report of investigation shall be provided to the parties at least 10 business days before the hearing date. Prior to its disclosure, the draft report shall remain confidential.
- (J) 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. Parties may appear in person, by telephone, or by web conference.

Chapter 4 – Motions and Hearings

Rule 6. MOTIONS

- (A) Any party may submit a motion to the IEC. Motions should be made by separate pleading and should not be included in the body of a complaint, response, or other pleading. 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 rule 6(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 a non-dispositive motion to file and serve a response to that motion. Unless other deadlines are set by the Commission, a responding party shall have 21 days from service of a dispositive motion to file and serve a response to that motion.
- (D) A reply by the moving party may be filed only by leave of the IEC, the hearing officer, or the IEC chair. If permitted, a reply shall be filed within five (5) days of the date such permission is granted.
- (E) The IEC may, in its discretion, hear oral argument regarding a motion at an open meeting of the IEC. A request for oral argument should be included in the motion or response.

- (F) The IEC may orally rule on pending motions in open session, or, if the motion is dispositive or presents issues of law or fact more suitable to resolution by written decision, the IEC may issue a written ruling on the motion to the parties at the earliest practicable time.
- (G) 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 to narrow the issues for hearing.
- (H) 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.

Rule 7. HEARINGS

- (A) Scope of Hearings. The scope of the hearing shall be determined by the IEC and may be limited to specific factual or legal issues. The hearing may be limited to oral argument on the legal issues when it appears that there are no issues of disputed fact.
- (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 party may, upon receiving notice of the hearing, 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 pursuant to these rules. The IEC shall provide such requested non-confidential, non-privileged documents during regular business hours, and will provide such documents in electronic form only.
- (C) Prehearing Matters.
 - (1) Failure to Prosecute or Defend. Should either party fail to comply with these rules, the IEC may, at its discretion, limit the presentation of evidence or dismiss the Complaint.
 - (2) 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.

- (3) 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 of evidence relevant to the alleged violations, including: (1) copies of all relevant documents and other exhibits; and (2) a list, including contact information, of all persons who may have knowledge regarding the facts of the case, and a short statement regarding the relevant facts or opinions about which the person has knowledge. The disclosing party should specify which of the disclosed witnesses the disclosing party intends to call to testify at hearing.
 - (4) Stipulated Facts. Within forty (40) days after the IEC serves the notice of hearing, the parties shall confer and file a joint list of stipulated facts that will be deemed admitted at the hearing.
 - (5) Discovery. Limited discovery may be permitted at the discretion of the Commission in such form as the Commission deems appropriate.
 - (6) 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.
 - (7) 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.
 - (8) Subpoenas. Commissioners have the power to subpoena documents and witnesses pursuant to § 5(4) of Article XXIX.
 - (a) Commissioners may subpoena documents or witnesses upon their own motion or upon the motion of any party, during either the investigative or hearing phase of adjudicating a complaint. A party's motion for issuance of a subpoena shall be made not later than seven (7) days before such attendance or production is requested.
 - (b) Members of 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.
- (D) Standard of Proof. Pursuant to § 5(3)(e) of Article XXIX, 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.

- (E) 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.
- (F) Purpose of Hearing. 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.
- (G) 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.
- (H) Presentation of Evidence. Testimony by affidavit, telephone, or web conference 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.
- (I) Parties should sequentially mark exhibits either prior to the hearing or when the party submits such exhibit into evidence. Complainants shall mark exhibits beginning with “001”. The respondent shall mark exhibits beginning with “A”. IEC records admitted on the IEC’s own motion shall be sequentially identified, beginning with “IEC001”.
- (J) The IEC, in its discretion, may accept written closing statements.
- (K) The IEC will record audio of all hearings. The IEC does not supply court reporters. 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.
- (L) IEC Decision.
 - (1) The IEC’s written decision shall include findings of fact and conclusions of law, which shall address the material issues of fact and law in the case and shall set forth the appropriate sanction or penalty, if any, in accordance with § 6 of Article XXIX.
 - (2) A copy of the IEC’s written decision concerning any complaint that proceeds to hearing shall be served upon all parties of record and published on the IEC’s website at the earliest practicable time. A decision is final for appeal purposes on the date that the IEC’s written decision is served upon the parties via email by the IEC’s staff.

- (3) A majority of a quorum of IEC commissioners is required to find a violation in a complaint matter. A tied vote on a complaint matter will result in a finding of no violation.
- (4) Motions for reconsideration following entry of a final decision shall not be considered.
- (5) On appeal, the IEC's official record shall include a written transcript or audio recording of the open session portions of the hearing, together with copies of all pleadings submitted in the case, all exhibits admitted, and all information secured by the IEC on its own initiative and considered by it in rendering its decision.
- (6) The time for appeal pursuant to § 24-18.5-101(9), C.R.S., is 30 days. The time for appeal runs from the date that the IEC's written decision is final pursuant to rule 8(L)(1).

Rule 8. 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.

Chapter 5 – Miscellaneous Procedural Rules

Rule 9. GENERAL PROVISIONS GOVERNING PROCEEDINGS BEFORE THE IEC

- (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 to parties or the public. Staff will not provide an opinion regarding the validity of a complaint.
- (D) Authority of Chair. The IEC chair shall have the authority to manage IEC staff, run meetings, conduct prehearing conferences, rule on non-dispositive motions outside of regularly scheduled meetings, grant or deny requests for extensions of time, grant leave to file replies to responses to motions if no hearing officer is assigned to a case, supervise the staff's management of the IEC's budget, work with IEC staff to create meeting agendas, and any other

duties that are delegated to the chair by the IEC with specificity in writing or in the IEC's meeting minutes.

- (E) **Authority of Hearing Officer.** The hearing officer assigned to a case shall have the authority to manage the case outside of regularly scheduled meetings of the IEC. This delegated authority includes the authority to rule on non-dispositive motions, grant leave to file replies to responses to motions, hold pre-hearing conferences, and otherwise work with IEC staff to ensure the just and efficient resolution of a case. Consistent with § 5(4) of Article XXIX, a hearing officer shall have the authority to issue subpoenas. Other duties may be delegated to the hearing officer by the IEC with specificity in writing or in the IEC's meeting minutes.
- (F) **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.
- (G) **Service of Process.**
 - (1) **Service on Other Parties.** Service of pleadings and filings on other parties shall be done by either hand delivery or by U.S. mail to a party at his or her last known address on file with the IEC, or to the party's counsel of record on file with the IEC. If email addresses are confirmed as valid and current by IEC staff, email service is sufficient unless the parties expressly request service by U.S. mail. If an email address changes, the party whose email changes is responsible for notifying IEC staff and opposing parties.
 - (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. A pleading is considered filed on the date received by the IEC.
- (H) **Trainings.** 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.

Chapter 6 – Open Meetings

Rule 10. MEETING PROCEDURES.

- (A) All open meetings of the IEC shall include a public comment period. Public comments shall not address pending complaint matters. The length of time for public comment shall be at the discretion of the IEC.
- (B) Minutes of the open sessions of all open meetings shall be prepared and posted on the IEC website as soon as practicable following approval by the Commission.
- (C) The IEC shall provide notice of all open meetings on its website at least 24 hours prior to the scheduled meeting, along with an agenda of topics to be covered at that meeting.
- (D) The IEC may enter into closed session during an open meeting upon the vote of a majority of a quorum of commissioners. A motion to enter closed session must state the purpose for which the closed session will be held in sufficient detail to inform the public regarding the subject matter thereof, but without compromising the purpose of the closed session.
- (E) The IEC may enter into closed session for the purposes set forth in these rules, to receive advice of counsel, or to discuss matters that may be kept confidential by applicable law.
- (F) The IEC or its staff shall record all open sessions of open meetings. Recordings shall be maintained in accordance with the retention periods listed in the IEC's approved records disposition schedule.

Rule 11. FRIVOLITY DETERMINATIONS.

- (A) All deliberations of the IEC regarding complaints not yet found to be non-frivolous pursuant to § 5(3)(b) of Article XXIX shall be held in closed session.
- (B) Notwithstanding rule 11(A), the IEC shall vote to find a complaint frivolous or non-frivolous in open session, or, in the alternative, announce its decision in open session and reflect its decision in the meeting minutes.

Rule 12. DELIBERATIONS; ADOPTION AND ISSUANCE OF DECISIONS.

In its discretion, the IEC may confidentially deliberate, edit, and review draft decisions regarding rulemaking, complaints, advisory opinions, letter rulings, and position statements, in closed sessions or outside of an open meeting.

Rule 13. PREHEARING MATTERS.

- (A) All discussions between the IEC and parties appearing before the IEC in connection with a pending complaint, including oral arguments regarding pending motions, shall take place in open session.
- (B) Preliminary Investigations. As contemplated by rule 5(E), all discussions regarding preliminary investigations shall take place in closed session.
- (C) Ongoing Investigations. Prior to release of the IEC's report of investigation to the parties pursuant to rule 5(I), all investigative updates from IEC staff regarding a complaint and all direction from the IEC to its staff regarding an investigation shall take place in closed session.
- (D) The IEC shall vote to approve the report of investigation and issue a notice of issues for hearing in open session, as contemplated by rules 5(I) and 7(C)(6), respectively. The IEC may delegate such approval to the hearing officer.

Rule 14. HEARINGS.

- (A) Pursuant to § 5(3)(c) of Article XXIX, the IEC shall conduct hearings on complaint matters in open session.
- (B) The IEC may vote regarding whether to find violations and assess penalties in open session, but its decision is not final until a written decision is issued pursuant to rule 7(L)(2).

Rule 15. ADVISORY OPINIONS AND LETTER RULINGS.

- (A) All discussions between the IEC and parties requesting an advisory opinion or letter ruling shall take place in open session during an open meeting.
- (B) The IEC may vote regarding whether to approve or deny an advisory opinion or letter ruling request in open session, but its decision is not final until issuance of a written decision.

Rule 16. OTHER BUSINESS OF THE IEC.

- (A) Personnel matters shall be discussed in closed session unless otherwise required by state law.
- (B) Discussions regarding pending legislation, including fiscal note review, may be held in closed session or outside of an open meeting.
- (C) The IEC's formal adoption of proposed policies, positions, resolutions, rules, or regulations shall take place in open session, unless such action falls under a specific rule herein providing for closed session or is otherwise required to be kept confidential by law.

Chapter 7 – Public Records

Rule 17. DISCLOSURE OF IEC PUBLIC RECORDS

- (A) Public records shall be available for inspection by any person at reasonable times. Absent exigent circumstances, upon the reasonable request of a member of the public, public records shall be produced by the custodian of records within three (3) business days of any such reasonable request. If additional time is necessary to respond to the request, the custodian of records shall notify the requesting party that additional time is necessary and provide an estimated time frame for completion.
- (B) In the event of the custodian of record's absence, the time for responding to such request shall be tolled and shall commence on the first day of the custodian's return to office. The custodian of records shall provide advance notification of their absence by enabling out-of-office automatic email replies and phone recordings.
- (C) The custodian of records may redact personal identifying information from a document that is otherwise a public record, in order to protect the public interest or comply with applicable law.

Rule 18. RECORDS RELATED TO COMPLAINTS, ADVISORY OPINIONS, AND LETTER RULINGS

- (A) IEC records related to a complaint dismissed as frivolous pursuant to § 5(3)(b) of Article XXIX and rule 5(F) are non-public records.
- (B) IEC records related to a pending complaint that has not yet been deemed non-frivolous pursuant to § 5(3)(b) of Article XXIX are non-public records.
- (C) If a complaint is determined to be non-frivolous pursuant to § 5(3)(b) of Article XXIX, IEC records that predate that frivolity determination are non-public records unless expressly defined as public records by these rules.
- (D) Pleadings filed by any party to a complaint are public records, unless required to be kept confidential pursuant to these rules or § 5(3)(b) of Article XXIX.
- (E) Audio or video recordings of IEC hearings held pursuant to § 5(3)(c) of Article XXIX of the Colorado Constitution are public records.
- (F) A published decision of the IEC is a public record.
- (G) An advisory opinion request or a letter ruling request is a public record. For all IEC records related to letter ruling requests, the custodian of records shall redact identifying information from public records to give effect to IEC rule 4(J) and § 24-18.5-101(4)(b)(IV), C.R.S.

Rule 19. RECORDS RELATED TO CLOSED SESSIONS, DELIBERATIONS, WORK PRODUCT, PRIVILEGE

- (A) IEC records related to closed sessions of the IEC are non-public records.
- (B) IEC records related to deliberations that occur in closed session or outside of a regularly scheduled meeting of the IEC, and any other records protected by the common law deliberative process privilege, are non-public records.
- (C) IEC records that constitute work product are non-public records.
- (D) IEC records that are protected by attorney-client privilege are non-public records.

Rule 20. PERSONNEL FILES; COMMISSIONER FILES

- (A) The personnel files of employees are non-public records, except that the following records are public records:
 - (1) Records of any sexual harassment complaints that result in an internal IEC investigation, including the outcome of such investigation; and
 - (2) The general employment policies and procedures of the IEC, to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual employment information.
- (B) Draft reports or related documents prepared by or for the IEC for internal use in evaluating the performance of the IEC or its staff are non-public records.
- (C) Records related to commissioner reimbursement or travel requests are public records.

Rule 21. RECORDS KEPT IN THE ORDINARY COURSE OF BUSINESS

- (A) Published agendas and published minutes of the IEC are public records.
- (B) Recordings of open sessions of IEC meetings are public records.
- (C) Communications between members of the public and IEC staff are public records, unless:
 - (1) The communications relate to the filing of a complaint or can reasonably be interpreted to constitute an inquiry regarding filing a complaint; or
 - (2) The communications relate to a filed complaint that has not yet been deemed non-frivolous by the IEC pursuant to §5(3)(b) of Article XXIX.
- (D) IEC records related to research on pending legislation, draft fiscal analyses, or draft legislation are non-public records unless and until such records are made public by the legislature.

- (E) Final budget requests submitted to the Joint Budget Committee of the Colorado General Assembly are public records.
- (F) IEC records related to security plans and systems, including records developed in consultation with the Judicial Department, are non-public records.
- (G) Records not expressly addressed by these rules are subject to disclosure upon the vote of a majority of a quorum of the IEC. The IEC should weigh the public interest in disclosure against any privacy interest or privilege that may counsel against disclosure.

Rule 22. COSTS OF A RECORDS REQUEST

- (A) When a request is made that requires more than one hour of staff time to locate or produce records, the IEC shall charge the requestor for all copying expenses or staff time at the rate of \$30.00 per hour.
- (B) If hard copies are requested, there will be a 25 cents per page additional cost to requestor.
- (C) Before fulfilling any request that will incur costs as set forth in rules 22(A) and (B), the custodian of records will provide a cost estimate to the requestor. The requestor must approve the cost estimate before the custodian of records will begin work on fulfilling the request.
- (D) The timeframe for completion of the request will be extended by the amount of time between the date a cost estimate is provided to the requestor and the date the requestor approves the cost estimate.
- (E) Costs associated with a records request must be paid in full before the custodian of record produces the records.