

December 27, 2021

*Via Email Only*

Mr. Dino Ioannides  
Independent Ethics Commission  
1300 Broadway #240  
Denver, CO 80203  
iecinfo@state.co.us

*Re: Notice of Rulemaking*

Dear Mr. Ioannides and Commissioners:

Colorado Common Cause is a nonpartisan, nonprofit organization that is dedicated to restoring the core values of American democracy, reinventing an open, honest, and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process.

CCC is uniquely positioned to comment on this issue as the primary drafter of Amendment 41 and as a member of Coloradans for Clean Government, the coalition that sponsored Amendment 41.

Colorado Common Cause is concerned that the proposed rules give the Independent Ethics Commission broad authority to conduct business outside of public view. If adopted, these rules will create an opaque public view of the Commission, threatening its integrity. As the institution charged with providing guidance and enforcement of the state's ethics laws, we believe transparency should be a top priority for Commissioners and Staff.

The proposed rules do not comply with the Colorado Open Records Act (CORA), the Colorado Open Meetings Law (COML), or the State Administrative Procedures Act (APA). We assert that the Independent Ethics Commission is subject to these laws and does not have the authority to adopt rules that do not comply with the above statutes. The rules as set forth are not good public policy and create greater restrictions on public records. They limit transparency and public oversight. As a public institution, the IEC should be operating under rules that are in line with or stronger than the requirements of CORA, COML, and APA. Doing so will ensure the Independent Ethics Commission is operating with adequate transparency and public oversight which is critical for Colorado's highest ethical authority.

The Notice of Rulemaking for these proposed rules does not include a Statement of Basis and Purpose nor a Statement of Authority. Not only is this not in line with the State Administrative Procedures Act (APA), but it also makes it difficult to analyze and understand the rationale for the proposed rules. Colorado Common Cause urges the IEC to reissue rules in a process that complies with the State Administrative Procedures Act. This will ensure that stakeholders and the public have a complete understanding of the rationale for the proposed rules and under which authority they are being

promulgated. By disregarding the APA, the Commission risks the appearance of seeking to avoid public oversight. Inadequate stakeholder input which will undermine the mandate of these rules, if adopted.

Historically the IEC has been subject to CORA. Neither the relocation of the IEC to the judicial department for administrative purposes (in 2010 as a result of HB10-1404) nor the Supreme Court opinion finding that the General Assembly cannot restrict the IEC's enforcement powers (in 2016 as a result of the opinion in Colorado Ethics Watch v Independent Ethics Commission) changes the applicability of CORA to the Independent Ethics Commission.

**Proposed Rule 1(A)(24)** creates a different definition for the term "work product" than that which is used in CORA. The proposed rules define all IEC records as "work product." We find the proposed definition overly broad. If approved, it would give the Commission exceptional authority to withhold documents that would otherwise be available to the public under CORA. These rules create greater restrictions on access to public records. At a minimum, we ask the Commission to adopt the same definition of work product as CORA, but Colorado Common Cause continues to urge the Commission to follow the model of the Colorado Open Records Act.

For the same reasons we believe the IEC is subject to CORA, we believe it is also subject to the Colorado Open Meetings Law (C.R.S. § 24-6-401). As the statute states "It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." **Proposed Rule 12** would give the Commission unprecedented discretion to conduct official business outside of the public view. As written, proposed Rule 12 would give commissioners the authority to discuss official business related to pending complaints or advisory opinions in a commissioner's basement or at a local pub, with no record of what was discussed or decided. We strongly oppose this and urge the commission to adopt rules that are in line with the Colorado Open Meetings Law or have even stricter guidelines. In order to maintain institutional integrity, the IEC must have the public's trust. Operating with transparency is critical to earning and maintaining that.

Colorado Common Cause is dedicated to promoting public participation in the civic process and holding institutions accountable. We urge the IEC to include rules to expand public access and create clear standards for accountability for the Commission and its staff.

Over the last two years, most major industries and government institutions have pivoted to remote and virtual operations. During this process, public meetings that may otherwise only be accessible by attending in-person have been opened to a much wider number of people through remote participation options. Colorado Common Cause sees this as a positive advancement and an opportunity to see a marked increase in participation throughout the public sector. For this reason, we encourage the IEC to adopt rules that, at minimum, require the audio of all public meetings to be broadcast live online and accessible to the public. In addition, we encourage the Commission to add a virtual option for public testimony. Taking these steps will bring the Commission into the 21<sup>st</sup> century and allow a much larger number of Coloradans to monitor and participate in the Commission's work.

**Proposed Rule 7(B)(3)** says that the IEC shall provide certain documents in "electronic form only." This could represent a barrier to some who are not technologically literate or do not own a computer or other necessary device. To avoid this barrier, we urge the Commission to add "unless a physical copy is requested" to the end of proposed Rule 7(B)(3).

In the interest of accountability, the Commission should include timeframes for certain actions which, as written, are only required to be completed “as soon as practicable.” To hold the Commission and staff accountable and to make sure the public has the proper expectations, we recommend the Commission add “within three business days” to the following proposed rules: **Rule 3(E), Rule 7(L)(2), and Rule 10(B).** This will eliminate any ambiguity for the Commission and the public about when they can expect certain documents to be available.

The purposes and findings of Article XXIX note that “[t]he conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people.” As the body that is responsible for providing guidance and enforcement of the state’s ethics laws, it is imperative that the Independent Ethics Commission hold the people’s respect and confidence. To adopt rules that lack transparency would violate the public’s trust.

Colorado Common Cause urges the Independent Ethics Commission to reject these rules and reissue rules that are in line with the Colorado Open Records Act, Colorado Open Meetings Law, and the Colorado Administrative Procedures Act. We also urge you to add provisions that will expand accessibility and add accountability to the Commission’s rules.

Thank you for the opportunity to comment.

Cameron Hill  
Associate Director  
Colorado Common Cause

