



June 30, 2008

Colorado Independent Ethics Commission  
633 17<sup>th</sup> Street  
Suite 1300  
Denver, CO 80202

**Re: Comments regarding the proposed Independent Ethics Commission Rules of Procedure, 8 CCR 1510-1**

Colorado Common Cause appreciates this opportunity to submit comments to the Independent Ethics Commission's Proposed Rules of Procedure. Thank you for your thoughtful consideration of these comments.

**Section 4 – Meetings**

As part of these rules, the IEC may want to clarify the definition of a meeting versus a hearing. It is important that both require proper public notice, however public comment would not be allowed at hearings.

**4 A:** We recommend clarifying this section to note that notice must be given for all hearings as well as regular meetings of the Independent Ethics Commission.

**4 B:** We recommend that the IEC adopt a public comment period as a regular part of all regular meetings. The public should have the ability to comment on the IEC's operations; the best way to encourage public participation is to have a regular opportunity for public comment.

**Section 5 – Requests for Advisory Opinions and Letter Rulings**

One of the most important functions of the IEC is to provide guidance to covered individuals through advisory opinions. While we appreciate the IEC's intent to conduct a thorough investigation prior to issuing an advisory opinion, Common Cause believes that is critically important for covered individuals to have confidence that they will receive responses to their requests in a timely manner.

**5 E:** The IEC should adopt a specific time period to respond to requests for advisory opinions. Covered individuals need to know that they can make a request and get a ruling in a timely manner. The IEC has the authority to set the time period to respond to advisory opinion requests, but we believe that a specific time frame is necessary. We suggest that 45 calendar days (from

the date a request is received) is reasonable to give the IEC enough time to respond to a request while still being responsive to a covered individual's need for a response in a timely manner.

**5 F:** We recommend that the IEC add language "at the earliest practicable time..." to clarify that advisory opinions and letter rulings will be available in a timely manner.

## **Section 7 – Complaints**

It is critical that the rules governing complaints be clear and concise, and give proper guidance to individuals filing complaints as to how those complaints will be processed and heard. Early dismissal of a complaint based on the discretion of the IEC or because some other body may be looking at the issue or because an individual is no longer covered are not appropriate reasons to dismiss a complaint. Common Cause respectfully suggests the following revisions to these subsections:

**7 D 2:** Clarify that it is only complaints filed pursuant to section 3 of Article XXIX that will be deemed frivolous if such complaints fail to allege that a covered individual has accepted or received any gift for private gain or personal financial gain, thereby ensuring that complaints related to other violations of Article XXIX or other standards of conduct are not covered by this standard.

**7 E 1:** This standard for dismissal is in conflict with the language of Article XXIX. Considering that a violation is '*de minimus*' is an appropriate factor for the IEC to consider when deciding penalties or sanctions, if any, but it is not grounds for dismissal.

**7 E 4:** Add clarifying language that the complaint may only be dismissed if the advisory opinion was "based on the same set of facts alleged in the complaint". This is necessary to make sure that, if advisory opinions are based on an incomplete or separate set of facts, complaints may still be pursued on the actual facts, to the extent they differ from those set forth in the advisory opinion.

**7 E 5:** This should be removed from the rules. Article XXIX requires an investigation by the IEC and whether and to what extent another body has looked at an issue may be an appropriate factor for the IEC to consider when deciding penalties or sanctions, if any, but it is not grounds for dismissal.

**7 E 6:** This should be removed from the rules. Article XXIX requires an investigation by the IEC and whether and to what extent another body is looking at an issue may be an appropriate factor for the IEC to consider when deciding penalties or sanctions, if any, but it is not grounds for dismissal.

**7 E 7:** This should be removed from the rules. An IEC investigation and criminal investigation will have different standards and different forms of relief. Article XXIX requires an investigation by the IEC and whether and to what extent a criminal tribunal is looking at an issue may be an appropriate factor for the IEC to consider when deciding penalties or sanctions, if any, but it is not grounds for dismissal.

**7 E 8:** This should be removed from the rules. The matter does not become moot because a person is no longer covered at the time a complaint is filed. The relevant inquiry is whether the person was covered under Article XXIX at the time of the alleged violation, not at the time the complaint is filed. For example, such a rule would invite conduct in violation of Article XXIX at the end of a covered individual's tenure. Further, such a rule would thwart the revolving door provisions in Article XXIX.

**7 E 9:** This should be removed from the rules. This standard is ambiguous and overly broad. The frivolous standard is the only standard that should warrant dismissal prior to an investigation.

**7 F:** Add language that the results and contents of such investigation shall be made available to both parties.

**7 G:** Instead of "until such time as a public hearing is set", the timeframe should be "until such time as a complaint is deemed non-frivolous".

**7 H 2:** In the first sentence, change "may" to "shall"; in the second sentence change "any" to "such". Requiring the covered individual to file a response will assist the IEC in framing the relevant issues for its investigation.

## **Section 8 – Hearings**

With respect to ethics complaints, a major purpose of the IEC is to serve as the tribunal to conduct public hearings on such complaints. Although we appreciate the IEC's desire for flexibility in conducting hearings and pre-hearing discovery, Common Cause strongly believes that this process must allow for the parties to obtain adequate evidence to present their case at hearing. Thus, hearings should be scheduled to occur after completion of the IEC investigation and the results and contents of its investigation should be provided to the parties for use at hearing. In addition, additional discovery should be allowed upon a showing of good cause. Thus, Common Cause respectfully suggests the following revisions to these subsections:

**8 C:** Add language from section 4 (A & C) to clarify that all hearings require full public notice.

**8 C 1:** Add "upon completion of the investigation" to the end of the first sentence.

**8 D 2:** Replace existing text with, "Discovery – Discovery by a party is permitted at the discretion of the IEC upon showing of good cause, after the parties receive disclosures and the results and contents of the IEC's completed investigation."

**8 D 3:** Change "after the IEC sends out a notice of hearing" to "after a response is filed".

## **Section 11 – General**

**11 C:** We respectfully propose revising this rule to say: “The IEC will treat as confidential all matters filed with the IEC in accordance with Colorado law.”

Thank you for your consideration of these comments.

Sincerely,

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