

State of Colorado



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Independent Ethics Commission
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Dino Ioannides, *Executive Director*

September 16, 2016

Dianne E. Ray, CPA
State Auditor
Colorado Office of the State Auditor
1525 Sherman St., 7th Floor
Denver, CO 80203

Dear Auditor Ray:

In response to your request, we have prepared an updated status report regarding the implementation of audit recommendations contained in the 2016 Performance Audit of the Colorado Independent Ethics Commission. The attached report provides a brief explanation of the actions taken by the IEC to implement each recommendation.

If you have any questions, please do not hesitate to contact me at (720) 625-5697 or by email at iecinfo@state.co.us.

Sincerely,

Dino Ioannides
Executive Director

AUDIT RECOMMENDATION STATUS REPORT

AUDIT NAME: Independent Ethics Commission

AUDIT NUMBER: 1553P

DEPARTMENT: Judicial Branch

DATE OF STATUS REPORT: September 16, 2016

SUMMARY INFORMATION

Rec. Number	Agency's Response	Original Implementation Date	Implementation Status	Revised Implementation Date (If applicable)
1a	Agree	September 2016	Implemented	
1b	Agree	September 2016	Implemented	
1c	Agree	September 2016	Implemented	
2a	Agree	September 2016	Implemented	
2b	Agree	September 2016	Implemented	
3a	Agree	September 2016	Implemented	
3b	Agree	September 2016	Implemented	
3c	Agree	September 2016	Implemented	
4	Agree	September 2016	Implemented and Ongoing	
5a	Agree	September 2016	Partially Implemented	March 2017
5b	Agree	September 2016	Implemented and Ongoing	
6	Agree	October 2016	Implemented	
7	Agree	December 2016	Implemented and Ongoing	
8a	Agree	May 2017	Implemented and Ongoing	
8b	Agree	May 2017	Implemented and Ongoing	

DETAIL OF IMPLEMENTATION STATUS

Note: The Commission agreed with all of the audit recommendations.

Recommendation No. 1:

The Independent Ethics Commission (IEC) should improve its complaint process by:

- A. Revising its complaint form to (1) include a place for a complainant to sign, indicating that all the facts and allegations presented are true to the best of the complainant's knowledge; (2) remove language requesting that the complainant identify the remedy he or she is seeking or clearly explain the remedies available; and (3) require the complainant to provide the date of the alleged violations.

Current Implementation Status for Rec. 1, part a: Implemented.

Agency's Update:

The IEC has revised its complaint form to include all elements required by Part A. of Recommendation 1. The new complaint form (1) requires an attestation and signature; (2) permits only two discrete remedies (public admonishment and fines); and (3) requires the complainant to provide the dates of the alleged violations.

- B. Implementing a process to date-stamp complaints when received by the IEC.

Current Implementation Status for Rec. 1, part b: Implemented.

Agency's Update:

The IEC date stamps all complaints received, whether received in hard copy or electronically.

- C. Improving the instructions provided to the public on how to file a complaint, including consolidating key information on the IEC's jurisdiction, requirements for completing the form, the types of evidence needed by the IEC to adequately review the merits of the complaint, and remedies available from the IEC into a single source, such as the IEC website.

Current Implementation Status for Rec. 1, part c: Implemented.

Agency's Update:

The new complaint form is available on the IEC website (www.colorado.gov/iec/complaint-form-download). A complainant may complete the form manually or electronically. The first page of the new complaint form contains instructions for filing a complaint, and serves as a single consolidated reference source for links to the IEC's rules, handbook, and frequently asked questions. Together with the complaint form instruction page, these linked sources address the IEC's complaint jurisdiction, requirements for completing the complaint form, the types of

evidence needed by the IEC to adequately review the merits of the complaint, and remedies available to a complainant.

Recommendation No. 2:

The Independent Ethics Commission (IEC) should improve its process for advisory opinion and letter ruling requests by:

- A. Providing more detailed instructions for submitting requests, including guidance on information and documentation commonly needed by the IEC in order to consider requests.

Current Implementation Status for Rec. 2a: Implemented.

Agency's Update:

The IEC instructions for submitting requests for advisory opinions and letter rulings include updated guidance about the information and documentation commonly needed to process the requests. Written sources for these instructions include the IEC's rules, frequently asked questions (FAQs), and prior decisions organized topically. The executive director answers questions for and provides guidance to requestors, both prior to and after submission of requests. Due to the case-specific nature of requests for advisory opinions and letter rulings, the IEC and/or its executive director will ask for supplemental information as needed. The IEC always gives the requester the opportunity to appear during consideration of the request to present relevant information and updated facts and answer commissioners' questions.

- B. Either enforcing the rule requiring request forms be signed, or revising its rules to eliminate the requirement.

Current Implementation Status for Rec. 2b: Implemented.

Agency's Update:

The IEC is enforcing the requirement that requests for advisory opinions and letter rulings must be signed.

Recommendation No. 3:

The Independent Ethics Commission (IEC) should establish procedures to ensure that:

- A. Parties to the complaint receive notice of the specific ethical standards the IEC plans to consider at the hearing, to determine whether an ethical violation has occurred.

Current Implementation Status for Rec. 3a: Implemented.

Agency’s Update:

The IEC has implemented a process to issue a Notice of Grounds for Hearing to respondents. The Notice specifies the ethical standards the IEC plans to consider at hearing. The IEC intends to continue using this process. An example Notice used in an actual case may be found at: www.colorado.gov/pacific/sites/default/files/Notice%20of%20Grounds%20for%20Hearing.pdf

- B. IEC staff document the steps taken to provide the notice provided in PART A.

Current Implementation Status for Rec. 3b: Implemented.

Agency’s Update:

A Notice of Grounds for Hearing appends a Certificate of Service that documents how and when the Notice is served on the parties to a complaint. The Notice is maintained in the IEC’s files and placed on the IEC website, as shown by the link given in the IEC’s update to Part A., above.

- C. IEC staff have clear guidelines regarding the scope and contents of its investigative reports.

Current Implementation Status for Rec. 3c: Implemented.

Agency’s Update:

The IEC provides clear, specific, oral guidelines to its staff regarding the expected scope and content of each investigative report on a case-specific basis. The IEC has adopted a resolution codifying this practice and the IEC’s written procedures parallel the resolution.

Recommendation No. 4:

The Independent Ethics Commission (IEC) should provide information to the public explaining its interpretation and application of Article 29 of the State Constitution as providing it with authority to hear complaints beyond the limitations of Section 24-18.5-101(5), C.R.S.

Current Implementation Status for Rec. 4: Implemented and Ongoing.

Agency’s Update:

The IEC has updated its website to explain its interpretation and application of the jurisdictional aspects of Article XXIX as compared to § 24-18.5-101(5), C.R.S. In addition to the website update, the IEC is considering issuance of a Position Statement in light of recently released and expected decisions from the Colorado Supreme Court. See, e.g., Colo. Ethics Watch v. IEC, 2016 CO 21, which is more specifically discussed in the IEC’s response to Recommendation 8.B. In addition, the Colorado Supreme Court has granted certiorari in Gessler v. IEC, 2015SC462, and the Court will consider, inter alia, “whether the phrase ‘other standards of conduct’ in Colo. Const. art. XXIX, section (5)(1) is unconstitutionally vague.”

Recommendation No. 5:

To ensure the adequate retention and management of its records the Independent Ethics Commission (IEC) should:

- A. Work with the State Archives to establish an approved records management policy and retention schedule in accordance with statute.

Current Implementation Status for Rec. 5a: Partially Implemented.

Agency's Update:

The IEC has met with a representative of the State Archives, but has not completed the full requirements of Part A. of Recommendation 5. The IEC estimates that this recommendation will be completed by March of 2017.

- B. Establish written procedures regarding the specific methods used by the IEC Director to manage complaint files and ensure consistent organization, retention, and posting of records.

Current Implementation Status for Rec. 5b: Implemented and Ongoing.

Agency's Update:

Written procedures have been established to guide the executive director in the specific methods to manage complaint files and ensure consistent organization, retention, and posting. Procedures will be updated in accordance with the retention schedule approved pursuant to the implementation of Recommendation 5.A., above.

Recommendation No. 6:

The Independent Ethics Commission should implement a written policy regarding its standards and procedures for handling real and apparent conflicts of interest among commissioners, its Director, and Attorney General's Office counsel. These standards should be made available to the public.

Current Implementation Status for Rec. 6: Implemented.

Agency's Update:

The IEC adopted a Code of Conduct, which includes both policies and procedures. The Code of Conduct was adopted and became effective on August 10, 2016. The Code of Conduct is available to the public on the IEC's website at www.colorado.gov/pacific/sites/default/files/Code%20of%20Conduct%20Policy.pdf.

Recommendation No. 7:

The Independent Ethics Commission (IEC) should adopt written policies and procedures for IEC staff to ensure that its staff consistently administer the IEC's functions.

Current Implementation Status for Rec. 7: Implemented and Ongoing.

Agency's Update:

The IEC has adopted written policies and procedures to ensure consistent administration of IEC functions. This Recommendation 7 encompasses other recommendations in this report, such as Recommendation 5, which will need additional time for implementation. As such, the IEC will continue to monitor and update any already implemented aspects of this recommendation.

Recommendation No. 8:

The Independent Ethics Commission (IEC) should evaluate Article 29 of the Colorado Constitution (Article 29), statute, relevant court decisions, and its rules to determine whether:

- A. Providing additional support to complainants by increasing its staffing, changing the role of its staff, or both would improve its effectiveness. If it determines that such changes would improve its effectiveness, the IEC should change its rules and seek legislative changes as necessary.

Current Implementation Status for Rec. 8a: Implemented and Ongoing.

Agency's Update:

The IEC has considered the extent to which it should increase staffing and/or change the role of its staff. The IEC has determined that it will not pursue any staffing changes at this time. However, the IEC's determination is tempered by ongoing consideration of the matter, partly due to last year's legislative effort to change the IEC's staffing (see HB16-1216) and partly due to current funding restrictions. House Bill 16-1216 contained provisions that would have restructured the IEC's legal staffing, requiring the use of independent legal counsel. Though this legislation was postponed indefinitely, the IEC nevertheless intends to submit a budget request that would fulfill the spirit of HB16-1216. If funding can be secured, restructuring of the IEC's legal resources could become a reality. Regardless of the ability to secure such resources, the IEC will continue to periodically explore other viable staffing alternatives to improve the IEC's effectiveness.

- B. Opportunities exist to increase the transparency of its process for dismissing complaints as frivolous by providing more information to complainants, clarifying its rules, and/or seeking legislation to clarify the information it can provide under Article 29.

Current Implementation Status for Rec. 8b: Implemented and Ongoing.

Agency's Update:

The IEC has implemented this Recommendation 8.B. by evaluating Article XXIX, the statutes, relevant court decisions, and its rules to determine whether opportunities exist to increase the transparency of its process for dismissing complaints as frivolous. Having completed this evaluation, the IEC has determined to continue its current process. This determination is supported by the Colorado Supreme Court's recent decision in Colo. Ethics Watch v. IEC, 2016 CO 21. In considering whether the courts may judicially review "frivolity dismissals", the Supreme Court held that (1) the General Assembly may not encroach upon IEC's decisions not to enforce; (2) the judicial review provisions of section 24-18.5-101(9) do not apply to frivolity dismissals; and (3) that the IEC's decision to dismiss a complaint as frivolous is not subject to judicial review. In coming to this conclusion, the Court several times referenced the constitutional provision prohibiting the IEC from disclosing confidential information in a complaint. The Court did not limit its ruling to the complaints themselves, but extended the mandatory confidentiality protections even to the documents created by the IEC in determining whether a complaint is frivolous.
