

COLORADO INDEPENDENT ETHICS COMMISSION

FY 2015 STRATEGIC PLAN AND BUDGET REQUEST



Matt Smith, Chair

Rosemary Marshall, Vice Chair

Jane T. Feldman, Executive Director

Independent Ethics Commission Strategic Plan and Budget Request FY 2014

I. Mission Statement

The mission of the Colorado Independent Ethics Commission is to encourage and enforce ethical conduct by public officials and employees, and to maintain and improve the public's confidence in the integrity of Colorado governments.

II. Agency Overview:

The Colorado Independent Ethics Commission ("Commission" or "IEC") was created in 2006 pursuant to a voter-initiated amendment to the Colorado Constitution. See, Article XXIX. The General Assembly thereafter passed enabling legislation, C.R.S. §24-18.5-101 *et seq.* The Commission held its first meeting in December, 2007, promulgated procedural rules in July 2008, and issued its first opinion in October 2008.

Pursuant to the Constitution and the enabling statute, the IEC is tasked to "hear complaints, issue findings and assess penalties, and also to issue advisory opinions on ethics issues arising under article XXIX and other standards of conduct and reporting requirements as provided by law." Article XXIX, section 5(1). The Commission also issues letter rulings, which are provided for in C.R.S. §24-18.5-101(4)(a) and (b). In addition, the IEC "shall conduct an investigation, hold a public hearing, and render findings on each non frivolous complaint pursuant to written rules adopted by the Commission." Article XXIX, section 5(c).

The Commission consists of five members appointed as follows, one each by the Governor, the Speaker of the House, the President of the Senate, the Chief Justice of the Supreme Court, and one selected by the other four Commissioners. The fifth member must be a local government employee or official. No more than two members of the Commission may be from the same political party. The current members of the Commission are: Matt Smith, chair; Rosemary Marshall, vice-chair, Bob Bacon, William Leone, and Bill Pinkham.

The Commission has jurisdiction over all state legislative branch employees and elected officials, all state executive branch elected officials and employees, as well as employees and elected officials of all counties and municipalities in the state, unless they are employed by a home-rule county or municipality which has promulgated an ethics code or ordinance.

The Commission is an independent agency within the Judicial Department. The Supreme Court Administrator's Office ("SCAO") provides all "back-office functions" including payroll and employment services, budget assistance, accounting services, and computer support at no cost to the Commission. The Commission's offices are located on the second floor of the Ralph Carr Justice Center ("Carr Building") with the Office of Attorney Regulation, the Commission on Judicial Performance and the Commission on Judicial Discipline. The Commission's lease for space is appropriated through SCAO.

The IEC has one employee: the Executive Director, who provides staff support to the all-volunteer Commission. The Commission plans to fill a vacant FTE as soon as possible.

III. Evaluation of Performance

In almost six years the Commission has issued 73 opinions, processed 56 complaints (10 public hearings on complaints) and promulgated and revised its Procedural Rules. The Commission has also searched for, and appointed a local government representative (the "Fifth Commissioner") on two occasions. It has responded to 60 requests under the Colorado Open Records Act, C.R.S. §24-72-101 *et seq.* ("CORA"). In the past year the Commission has successfully reduced the time in which non-frivolous complaint determinations are made by the Commission. Two complaints which were filed in the fall of 2012 were concluded in 4 months and 7 months, respectively.¹

A chart summarizing the Commission activities since 2008 is attached as Appendix A.

IV. Other Activities:

The Commission remains committed to an outreach and training program for all employees and officials under its jurisdiction. The Commission issued a Handbook available for all government employees and officials in 2011, and substantially revised that document in 2013. The revised Handbook has been provided to all of the members of the General Assembly, employees of state agencies, and county and municipal employees and officials through Colorado Counties, Inc. and the Colorado Municipal League. The Handbook is also available on the Commission's web site.

The Commission believes that training of covered individuals remains the most efficient and cost-effective way to ensure that public officials and employees understand and appreciate the ethical obligations required by their service.

¹ These data contain information from July 2008 through June 2013.

V. Five Year Strategic Plan

The Commission's overall goal is to improve the ethical awareness and practices of individuals within its jurisdiction through education and outreach, issuing advisory opinions, letter rulings and position statements, investigating complaints and conducting hearings on ethical matters. The Commission's five-year objectives are as follows:

- Continue to provide outreach and education so that all covered individuals will receive training soon after their initial employment and on a regular basis; and thereafter, to create an ethical culture in government and perhaps reduce the work load of the Commission.
- Continue the practice of responding to advisory opinions in a timely manner and when possible issue general guidance to covered individuals through position statements.
- Process frivolous and non-frivolous complaints in a timely manner.
- Reduce the burden on citizens who pursue complaints and/or respond to complaints without the assistance of counsel.

These issues are described more fully below:

A. Outreach and Education:

The Commission believes that outreach and education are essential to its core mission. Section 1 of Article XXIX Purposes and findings states 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." IEC staff has learned from its trainings that many state and local employees are still not aware that Article XXIX is in force (many think that it was declared unconstitutional) and/or they do not realize that the proscriptions apply to them. Most employees do not understand the gift ban provisions contained in the Article or how those provisions have been interpreted. Unless there is systematic training of public employees and officials, the public will not have the confidence that these rules are followed, and employees and officials will inadvertently break the rules possibly resulting in a complaint being filed. The Commission also believes that training will result in a greater understanding of the rules, so that ultimately, the workload of the Commission may be reduced.

Of the 41 states with ethics commissions, all but one offers education. In 27 states this training is mandatory for all new employees, and several states also require refresher courses every 2 or 3 years. The Commission plans to continue its state employee training program and has been expanding its outreach to local government employees

under its jurisdiction through organizations such as Colorado Counties, Inc. and the Colorado Municipal League, the Colorado District Attorneys Council and the Colorado County Attorneys Associations. So far, the Commission has been able to fulfill training requests within the Denver metropolitan area. IEC staff is exploring technologies such as video conferencing and webinars to enable staff to conduct trainings for officials and employees in other parts of the State. The Commission hopes that in the future there will be a formal training program required for all state and local employees and officials within its jurisdiction, so that everyone covered by Article XXIX is knowledgeable about the rules and processes of the Commission.

B. Respond to Requests for Advisory Opinions in a Timely Manner and Provide Guidance to Covered Individuals in Position Statements:

The Commission has streamlined its process for issuing advisory opinions. When the Commission was first formed, requestors waited months for a response. Now most requests are resolved in 30 to 60 days. Delays do occur, but this generally occurs either when the request submitted does not contain sufficient information, or because the request concerns complex or novel issues. The Commission will continue to respond to requests in a timely manner. The Commission also would like to be proactive in issuing position statements that may assist answering common issues of general application which affect public employees and officials, whenever possible.

C. Process Frivolous and Non-Frivolous Complaints in a Timely Manner:

While the Commission has made progress in timely addressing frivolous complaints, and processing complaints once determined to be “non-frivolous”, the Commission must remain mindful of the rights of parties to participate in the complaint process. The Commission may explore the use of electronic equipment or software to facilitate the participation of parties and witnesses. The Commission may also re-evaluate its rules of procedure to determine whether more summary proceedings would facilitate a timely and ethical resolution of matters brought to the Commission by complaint.

D. Complaints without the Assistance of Counsel.:

The Commission is aware that the filing and prosecution of a complaint or defense against a complaint without the assistance of an attorney may prove challenging. The Commission intends to seek guidance from the Judicial Department and others involved in the “Pro Se Project” to gain insight on how an individual may participate in the Commission complaint process without the assistance of an attorney.

V. Commission's Goals:

Goal 1: Increasing awareness of the Commission's opinions through increased and improved outreach and education.

The Commission was not able to do as much training in 2012-13 as in previous years due to the IEC's heavy workload. Several requests for training could not be accommodated. With the addition of an additional staff member, the Commission hopes to be able to do more outreach.

The Commission is in the process of updating its website with the assistance of the Statewide Internet Portal Authority and its contractor, Colorado Interactive, Inc. The Commission hopes that the improved website will have features which will improve the Commission's ability to do long distance training. The new website was expected to be operational by the summer of 2013, but there were delays in the start of the State's new web site management system. The Commission does not know when the revised website will be operational, but hopes that the website, when active, will provide additional, low-cost training opportunities.

Goal 2: Respond to requests for opinions in a timely manner.

In calendar 2012, the Commission resolved 81 % of its advisory requests within 60 days of the request being complete. A request is considered complete when no additional information is required. In the first six months of 2013, all but one of its requests was issued within that time frame. Two advisory opinion requests were pending for several months because additional information from the requestor and/or additional research needed to be done. One request has been withdrawn, and the other may be addressed more generally by the Commission as a position statement.

With respect to advisory opinions, some requests concern issues which the Commission has considered before, and the issuance of opinions is fairly routine. Other requests concern novel issues and require the Commission staff to perform extensive factual research and/or counsel to provide legal research. It is therefore difficult to issue deadlines for resolution of advisory opinions.

The Commission will continue to issue position statements on issues which affect a large number of public officials and employees. The Commission's ability to meet this goal was curtailed over the past year because of the Commission's heavy workload.

Goal 3: Response to complaints in a timely manner.

In calendar 2012, and through the first six months of 2013, the Commission processed

100% of its complaints within 12 months. This includes the complaints which were found to be non-frivolous. This is a significant improvement over previous years in which non-frivolous complaints took a year or more to be resolved.

The Commission remains focused on trying to act on complaints as timely as possible, and preserving the rights of parties involved in the complaint process. The Commission may look to mechanical or electronic means to assist the participation of parties and witnesses. The Commission may further review its rules of procedure concerning complaints to analyze whether summary or abbreviated proceedings may speed the complaint process.

Goal 4: Revise the complaint process.

The Commission is aware that the filing and prosecution of a complaint or defense against a complaint without the assistance of an attorney may prove challenging. The Commission intends to seek guidance from the Judicial Department and others involved in the "Pro Se Project" to gain insight on how an individual may participate in the Commission complaint process without the assistance of an attorney.

The lessons potentially learned from the "Pro Se Project" may have direct or indirect application to individuals participating in complaints before the Commission. The Commission hopes to first gain insight from the project, before attempting to modify its complaint process. The Commission hopes that lessons learned in review of the "Pro Se Project" may offer the Commission cost-effective alternatives to better serve the pro-se parties that appear before the Commission.

VI. Additional Issues:

A. Adjustments to Budget:

In FY 2013, for the first time since its inception, the IEC went over its budgetary appropriations in its legal services and operating lines. The IEC was able to move funds from its personal services line to cover these unexpected expenditures in its operating and legal services lines. The Commission used \$6420 to cover over-expenditures in its legal services line, and \$3107 to cover overexpenditures in its operating line. The Commission reverted \$6742 from its personal services line to the General Fund.

The Commission spent \$6210, or approximately 40% of its operating budget on Commissioner travel and related expenses. The rest of the Commission's budget is

spent on office supplies, computer equipment, dues and memberships, and travel for in-state training for public employees.

The Commission's legal services budget was also strained in FY 2013 due to litigation costs. One of its decision's is currently on appeal in Denver District Court, and the Commission anticipates that the litigation will continue through FY 2014 and into FY 2015. The Commission seeks an increase in its legal service budget from 900 hours per year to 1080 hours FTE for FY 2015 because of the continuing need for legal services and the extensive litigation anticipated to enforce its prior determinations.

B. Clerical Assistance:

While the IEC was located on same floor as the SCAO in the Denver Newspaper Agency, the Commission staff was able to use clerical assistance for reception, copying materials and other assistance. The move to the Ralph Carr Building has made that more difficult. The other independent agencies do have a shared administrative assistant, but due to her workload and the source of the funding of her position, she is not available to help the Commission. The IEC therefore has decided to use the additional FTE for administrative assistance.

C. Salary Adjustments

As discussed in previous budget requests, the Commission may adjust the salary of the Executive Director based on the analysis of comparable positions in the Judicial Department which was completed in 2010. The Commission will do so within exiting expenditures.

The Commission also asks that its personal services line be adjusted by the same salary survey and pay for performance adjustments as requested by the Judicial Branch. As of October 2013, that anticipated rate is 1.5% for salary survey and 1.5% for pay for performance.

V. Conclusion:

For FY 2015, the Commission seeks an increase in its legal services budget from 900 hours to 1080 hours or an additional \$16, 394 at the current legal services blended rate for FY 2014.

APPENDIX A - Independent Ethics Commission Yearly Activities Report

Year	Mtgs.	Opinions			Complaints	Complaint Hearings	CORA Requests	Trainings	Informal advice calls
		AO	LR	PS					
2008	24			3	4	0	4	2	57
2009	25	9	5	7	14	1	8	6	@175
2010	20	16	2	1	9	3	12	7	@150
2011	13	12		1	12	1	9	34	82
2012	13	9	1	2	7	2	13	14	75
2013 (to 6/30/13)	13	8			10	3	14	1	47
Total	108	54	8	11	56	10	60	64	586

LEGEND:

AO = Advisory Opinion

LR = Letter Ruling

PS = Position Statement

*Total Opinions do not reflect opinions withdrawn by the requestor (1 in 2012 and 1 in 2013)

Meetings include all in person meetings and telephonic meetings

@ = estimated calls - official records not maintained



COLORADO JUDICIAL BRANCH

*FY 2014-15 Funding Request
November 1, 2013*

Chief Justice Michael L. Bender

Gerald Marroney
State Court Administrator

Department Priority: 1

Request Title: Independent Ethics Commission - Legal Services

Summary of Incremental Funding Change for FY 2014-15	Total Funds	General Fund
TOTAL REQUEST (All Lines)	16,394	16,394
Independent Ethics Commission		
Total Program:	16,394	16,394
Legal Services	16,394	16,394

Request Summary:

The Colorado Independent Ethics Commission ("IEC") requests \$16,380 of general funds for an additional 180 hours of legal services.

Anticipated Outcomes:

Due to the number of cases investigated, including some resulting in litigation, the IEC exceeded the FY2013 legal services appropriation by approximately 56 hours. The IEC was able to cover the over-expenditure by transferring funds from the personal services line item. The Attorney General's Office has informed the Commission that litigation on one particular case will continue through FY2014 and into FY2015. While there were excess personal services funds in FY2013, the Commission plans to fill both of the FTE in FY2014 and does not anticipate having excess personal services funds in FY2015; therefore, the IEC is requesting an additional 180 hours of legal services hours for FY2015.

Assumptions for Calculations:

Legal Services:	Hours	Amount
Current Appropriation	900	\$1,972
FY2015 Additional Request	180	\$3,801
Total FY2015 Request	1,080	\$5,773

Consequences If Not Funded:

The IEC needs for legal services hours will likely exceed the funded number of hours. It is not anticipated that there will be excess funds in other line items; therefore, the Attorney General's Office would not be able to proceed with pending litigation.

Current Statutory Authority or Needed Statutory Change:

Colorado Constitution Article XXIX and C.R.S. §24-18.5-101 *et seq.* No statutory change needed.

Independent Ethics Commission
Schedule 3

FY 2015 Budget Request

ITEMS		ACTUAL FY2012		ACTUAL FY 2013		REQUEST FY 2014		ESTIMATE FY 2014		REQUEST FY2015	
		Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
INDEPENDENT ETHICS COMMISSION PROGRAM											
PERSONAL SERVICES											
Position Detail:											
Executive Director		94,627	1.0	96,000	1.0			99,559	1.0	99,559	1.0
Director								64,133	1.0	64,133	1.0
Assistant				2,625							
Continuation Salary Subtotal		94,627	1.0	98,625	1.0			163,692	2.0	163,692	2.0
Pera on Continuation Sub-Total		8,607		9,699				16,615		16,615	
Medicare on Continuation Subtotal		1,631		1,414				2,374		2,374	
Other Personal Services:											
Retirement/Termination Payouts		6,048		3,980							
Professional Services				3,881				4,000		10,059	
Unemployment		3,500		2,500				2,500			
Total Personal Services (GF)		114,414	1.0	120,099	1.0	189,180	2.0	189,180	2.0	192,739	2.0
General Fund		114,414	1.0	120,099	1.0	189,180	2.0	189,180	2.0	192,739	2.0
OPERATING EXPENDITURES											
2510 - In-State Travel				66				300		300	
2511 - In-State Common Carrier Fares		22									
2513 - In-State Pers Vehicle Reimbursement		76		199				500		500	
2520 - In-State Travel/Non-Employee		1,087		1,033				1,500		1,500	
2522 - IS/Non-Employee - Pers Per Diem		8									
2523 - IS/Non-Employee Vehicle Reimbursement		4,255		4,087				4,450		4,450	
2530 - Out-of-State Travel		656		590				650		650	
2531 - OS Common Carrier Fares		578		339				550		550	
2532 - OS Personal Travel Per Diem		202		222				250		250	
2551 - OC Common Carrier Fares				628						0	
2610 - Advertising				150				150		150	
2680 - Printing and Reproduction Services		437		1,741				1,800		1,800	
2681 - Photocopy Reimbursement				103				100		100	
3110 - Other Supplies & Materials				2,764				3,627		3,627	
3118 - Food and Food Service Supplies		1,118		1,091				1,100		1,100	
3121 - Office Supplies		132									
3123 - Postage		20		142				150		150	
3124 - Printing/Copy Supplies		71									

**Independent Ethics Commission
Schedule 3**

FY 2015 Budget Request

ITEMS	ACTUAL FY2012		ACTUAL FY 2013		REQUEST FY 2014		ESTIMATE FY 2014		REQUEST FY2015	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
3128 - Noncapitalized Equipment			150						0	0
3132 - Noncap Office Furn/Office Systems			148						0	0
4100- Other Operating Expenses			87				100		100	
4140 - Dues and Memberships	740		963				1,000		1,000	
4220 - Registration Fees	530		530				530		530	
Total Operating Expenditures (GF)	9,932		15,033		16,757		16,757		16,757	
General Fund	9,932		15,033		16,757		16,757		16,757	
LEGAL SERVICES										
Continuation Legal Services	54,315		75,945		81,972		81,972		81,972	
FY2015 Decision Items:										
#1 Legal Services									16,380	
Total Legal Services (GF)	54,315		75,945		81,972		81,972		98,352	
General Fund	54,315		75,945		81,972		81,972		98,352	
Total Independent Ethics Commission Program	178,660	1.0	211,076	1.0	287,909	2.0	287,909	2.0	307,848	2.0
General Fund	178,660	1.0	211,076	1.0	287,909	2.0	287,909	2.0	307,848	2.0
INDEPENDENT ETHICS COMMISSION PROGRAM RECONCILIATION										
Prior Year Long Bill Appropriation	259,448	2.0	213,773	1.0			215,159	1.0	287,909	2.0
Prior Year Salary Survey									1,964	
Prior Year Merit									1,595	
Pot Allocations										
July 1st Long Bill Appropriation	259,448	2.0	213,773	1.0			215,159	1.0	291,468	2.0
Supplemental Funding:										
FY2012 JBC Budget-Balancing Action	(45,675)	(1.0)								
FY2013 JBC Figure-Setting Adjustment - legal services			1,386							
FY2014 Budget Amendment							72,750	1.0		
Special Bills:										
SB11-076 - PERA Reduction Bill	(4,028)									
FY2015 Decision Items:										
#1 Legal Services									16,394	
TOTAL APPROPRIATION/REQUEST	209,745	1.0	215,159	1.0			287,909	2.0	307,862	2.0

Independent Ethics Commission
Schedule 3

FY 2015 Budget Request

ITEMS	ACTUAL FY2012		ACTUAL FY 2013		REQUEST FY 2014		ESTIMATE FY 2014		REQUEST FY2015	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Over/Under Expenditures										
Year-End Transfer - to pots lines	0		0							
Reversion	(31,085)		(4,083)							
TOTAL IEC RECONCILIATION	178,660	1.0	211,076	1.0	n/a		287,909	2.0	307,862	2.0
IEC SALARY POTS/BENEFITS										
HEALTH, LIFE & DENTAL (HLD)										
Base Request	6,090		5,216		12,249		12,249		12,249	
FY2015 Adjustment									(2,202)	
Total HLD (GF)	6,090		5,216		12,249		12,249		10,047	
General Fund	6,090		5,216		12,249		12,249		10,047	
SHORT-TERM DISABILITY (STD)										
Base Request	167		166		328		328		328	
FY2015 Adjustment									(8)	
Total STD (GF)	167		166		328		328		320	
General Fund	167		166		328		328		320	
AMORTIZATION EQUALIZATION DISBURSEMENT (AED)										
Base Request	3,070		3,094		6,160		6,160		6,160	
FY2015 Adjustment									535	
Total AED (GF)	3,070		3,094		6,160		6,160		6,695	
General Fund	3,070		3,094		6,160		6,160		6,695	
SUPPLEMENTAL AMORTIZATION EQUALIZATION DISBURSI										
Base Request	2,431		2,648		5,542		5,542		5,542	
FY2015 Adjustment									715	
Total SAED (GF)	2,431		2,648		5,542		5,542		6,257	
SALARY SURVEY										
Base Request					1,964		1,964		1,964	
FY2015 Adjustment									491	
Total SALARY SURVEY (GF)	0		0		1,964		1,964		2,455	

Independent Ethics Commission
Schedule 3

FY 2015 Budget Request

ITEMS	ACTUAL FY2012		ACTUAL FY 2013		REQUEST FY 2014		ESTIMATE FY 2014		REQUEST FY2015	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
MERIT										
Base Request					1,595		1,595		1,595	
FY2015 Adjustment									897	
Total MERIT (GF)	0	0	0	0	1,595		1,595		2,492	
Total IEC Salary Pots/Benefits	11,758		11,124		27,838		27,838		28,266	
General Fund	11,758		11,124		27,838		27,838		28,266	
IEC SALARY POTS/BENEFITS RECONCILIATION										
Long Bill Appropriation	12,738		12,738				27,838			
HLD										
STD										
AED										
SAED										
JBC Adjustment/Common Policy Decision Item Funding										
July 1st Long Bill Appropriation	12,738		12,738				27,838			
TOTAL APPROPRIATION/REQUEST	12,738		12,738				27,838			
Over/Under Expenditures - Xfr from Operating										
Year-End Transfer										
Transfer from DPA										
Reversion	(980)		(1,614)							
TOTAL IEC SALARY POTS/BENEFITS RECONCILIATION	11,758		11,124		n/a		27,838		n/a	
TOTAL INDEPENDENT ETHICS COMMISSION	190,418	1.0	222,201	1.0	315,747	2.0	315,747	2.0	336,114	2.0
General Fund	190,418	1.0	222,201	1.0	315,747	2.0	315,747	2.0	336,114	2.0