



November 13, 2008

Jane Feldman, Esq.  
Executive Director  
Independent Ethics Commission  
633 17th Street, 13th floor  
Denver, CO 80202

**VIA HAND DELIVERY**

**Re: No. 08-01, Ethics Watch Complaint against Secretary of State Mike Coffman**

Dear Ms. Feldman:

Colorado Ethics Watch (“Ethics Watch”), by and through its undersigned counsel, respectfully submit the following objections to the Procedural Determination issued by the Independent Ethics Commission (“IEC”) on November 3, 2008.

With respect to the IEC’s advisement regarding the scope of its investigation in this matter, Ethics Watch submits that the IEC wholly failed to perform its constitutionally mandated obligation to conduct an investigation. Colo. Const. art. XXIX, § 5 (3)(c), states that 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.” Pursuant to IEC rule 8.C(3), Ethics Watch requested to inspect IEC documents pertaining to the complaint. These documents and follow up conversations between you and Ethics Watch Senior Counsel Luis Toro, unequivocally demonstrate that the IEC did not in fact conduct any investigation. The commission did not conduct any interviews, not even of the respondent, did not invoke its subpoena powers or garner any documents or other evidence. Ms. Feldman’s handwritten comments and questions on a copy of the complaint are woefully inadequate to satisfy the IEC’s obligation to conduct an investigation. Moreover, the Constitution clearly requires the IEC to investigate complaints that have been determined not to be frivolous; a review of the allegations of the complaint to determine that the complaint is not frivolous cannot, as a matter of law, satisfy the IEC’s obligation to investigate non-frivolous complaints.

The IEC’s discretion under Rule 7.G to determine the nature and scope of any investigation does not give the IEC the discretion to entirely bypass the investigation process by conducting no investigation at all. And yet, the IEC stated in the Procedural Determination that “no further investigation of the complaint will be undertaken....”

The IEC based its decision, at least in part, on the belief “that material necessary for each party to present its side is available to the respective parties without further investigation by the IEC” through Colorado Open Records Act and other provisions of law. That is actually not the case. For example, Ethics Watch is not entitled to obtain through open records the state auditor’s file regarding Secretary Coffman’s failure to ensure compliance with mandates related to the outside employment and possible conflicts of interest of his staff. See Letter from Deputy Attorney General Maurice G. Knaizer to Ethics Watch Director Chantell Taylor dated August 1, 2007 (attached as Exhibit A). The state auditor’s November 2007 performance audit reported that Secretary Coffman was aware in at least two instances that employees had outside businesses but the report does not reveal the names of those employees. One basis for Ethics Watch’s complaint is that Secretary Coffman was aware that Dan Kopelman was operating an outside partisan consulting business. The auditor’s file will prove whether that is the case and evince whether Secretary Coffman lied about his knowledge.

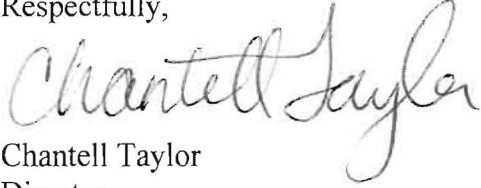
As another example, Ethics Watch cannot obtain through open records requests information from Secretary Coffman regarding private contracts he entered with Phaseline Strategies or other matters related to his federal congressional campaign. See Letter from Assistant Attorney General Melody Mirbaba to Ethics Watch Director Chantell Taylor date February 22, 2008 (attached as Exhibit B). These records are relevant to the issue of Secretary Coffman’s conflicts of interest with Premier/Diebold.

In light of the foregoing and unless the IEC reconsiders its position, Ethics Watch hereby reserves the right to appeal any final decision rendered by the IEC in this matter based on the IEC’s failure to perform its investigative duties.

Finally, Ethics Watch objects to the IEC’s refusal to reschedule the deadline for the parties to submit pre-hearing statements. According to IEC Rule D.4, prehearing statements are due no later than twenty (20) days prior to the hearing. When the IEC reschedule the hearing to January 14, 2009, it should have adjusted the prehearing statement deadline accordingly to December 25, 2008 (or presumably, to December 26, the next business day after the holiday). As currently scheduled, prehearing statements are due one month earlier on November 24, 2008. Not only does this schedule conflict with the IEC’s own rules but the period of only six business days between the deadline to exchange initial disclosures and the deadline to file prehearing statements significantly inhibits the parties’ ability to complete discovery and prepare a meaningful prehearing statement, without conferring any benefit whatsoever on the IEC. Please adjust the deadline to comply with Rule D.4 and enable the parties to duly prepare.

Thank you in advance for your prompt attention to these matters. Due to the timely nature of our requests we ask that this letter be considered at the IEC’s next meeting on Monday, November 17.

Respectfully,

A handwritten signature in cursive script that reads "Chantell Taylor". The signature is written in black ink and is positioned to the right of the typed name.

Chantell Taylor  
Director

cc: Doug Friednash, Esq.  
Counsel for Secretary of State Mike Coffman