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MEMORANDUM

March 3, 2014

TO: Chris Forsyth and Laurie Forsyth

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #78, concerning Duties of the Independent Ethics Commission

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2013-2014 #55, was the subject of a memorandum dated January 3, 2014. Proposed initiative 2013-2014 #55 was discussed at a public meeting on January 7, 2014. The comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To repeal the commission on judicial discipline and transfer the functions of the commission on judicial discipline to the independent ethics commission.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. What is the single subject of the proposed initiative?
2. In section 1 of the proposed initiative it states that “any person may file a written complaint with the independent ethics commission, asking whether a justice or judge has failed to comply with the code of judicial conduct”. Then in section 2, subsection (3) (d) of the proposed initiative, it states “the independent ethics commission has sole jurisdiction over whether a justice or judge has violated a canon or rule of the Colorado code of judicial conduct or whether a justice or judge may be retired for disability.” May a person also file a written complaint alleging a justice or judge should be retired for disability? If not, how would the independent ethics commission consider a case alleging a justice or judge should be retired for disability?
3. In section 2, subsection (3) (c) of the proposed initiative appears to limit the prohibition on compensating members of the independent ethics commission for their work on cases of judicial misconduct and discipline. Is that the proponents’ intent? If so, how would the members of the independent ethics commission be compensated for cases that do not involve judicial misconduct or discipline?