

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

January 3, 2014

TO: Chris Forsyth and Laurie Forsyth

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #55, 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.

### Purposes

The purpose of the proposed amendment to the Colorado constitution appears to be:

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

### Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. In subsection (3) (g) of section 3 of the measure, the initiative states, "Subsequent actions by the commission or subsequent hearings in the disciplinary process shall be public." Actions and hearings by the commission cannot have a duty, so it should read, "Subsequent actions by the commission or subsequent hearings in the disciplinary process must be public."
2. In the amending clause for section 4 of the measure, "**Effective date - applicability.**" should be removed.

### Substantive Comments and Questions

The substance of the proposed initiative raises the following questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What is the effective date of the measure?
3. In section 1 of the measure, judges and justices are added to the definition of "public officer". The effect is to have all justices and judges of the state subject to all provisions of article XXIX of the Colorado constitution. But, the intent of sections 2, 3, and 4 of the measure seems to be that only section 5 of article XXIX applies to justices and judges. What is the proponents' intent?
4. In subsection (3) (d) of section 3 of the measure, it strikes the phrase "of any court of record in this state". What is the intent in striking that phrase?
5. In subsection (3) (f) of section 3 of the measure, the Supreme Court must accept a commission recommendation if the recommendation is supported by substantial evidence. What constitutes substantial evidence? Would the proponents consider defining substantial evidence?
6. Section 4 of the measure gives the independent ethics commission the authority to investigate and pursue discipline based on complaints that were previously dismissed by the Colorado commission on judicial discipline. This retroactive application implicates ex post facto and due process concerns. How do the proponents expect the provision to work considering those issues?