DISTRICT COURT, CITY & COUNTY OF DENVER, STATE OF COLORADO

Court Address: 1437 Bannock St.
Denver, Colorado 80202

Plaintiffs:

Center for Independent Media, a District of Columbia nonprofit corporation doing business as *The Colorado Independent*; and,

Wendy Norris, a citizen of Colorado,

v.

Defendants:

Independent Ethics Commission of the State of Colorado, a constitutionally enacted state commission and body politic; and,

Jane T. Feldman, in her official capacity as executive director of the Independent Ethics Commission of the State of Colorado.

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Case No.: **2009 CV 5109**

Ctrm./Div.: **6**

PLAINTIFF'S HEARING BRIEF FOR HEARING ON ORDER TO SHOW CAUSE

Plaintiff Center for Independent Media, doing business as *The Colorado Independent*, through its undersigned attorneys at Levine Sullivan Koch & Schulz, L.L.P., submits this Hearing Brief in advance of the Show Cause Hearing set for July 31, 2009 at 9 a.m. on the Court's Order to Show Cause entered July 2, 2009, so as to apprise the Court of the factual and legal issues likely to arise during the hearing:

Introduction

The Show Cause Hearing in this civil action provides Defendants Independent Ethics Commission of the State of Colorado and Jane T. Feldman (collectively here, "the Commission") with an opportunity to respond to the Order to Show Cause issued by the Court upon the application of Plaintiff in the Complaint. Under the Show Cause Order, the Commission must establish why its denial of access to the records requested by the Plaintiff, relating to the Commission's closed door meetings during the first five months of 2009, was proper. (*See* Order Granting Appl. for Order to Show Cause, entered July 2, 2009.)

This scope for the hearing necessarily will require the Court to evaluate the basis of the Commission's denial of the Plaintiff's request for access to those records. That basis was the Commission's contention that the records requested by Plaintiff – the electronic recordings, written minutes, and any handwritten notes of the Commission's closed-door meetings – all pertained to "executive session" meetings under the Colorado Open Meetings Law ("COML"), and the COML explicitly mandates that records of "executive session" meetings are not subject to disclosure under the Colorado Open Records Act ("CORA"). *See* § 24-6-402(2)(d.5)(I)(D), C.R.S.

This rationale for non-disclosure, however, is legally sufficient only if the closed-door meetings at issue here were indeed proper "executive sessions" under the statute. Colorado law is well-settled that if a public body fails to "strictly comply" with the requirements under the COML for closing a public body's meeting, that failure will render the records of the improperly closed meetings subject to disclosure as ordinary public records. *See Gumina v. City of Sterling*, 119 P.3d 527, 532 (Colo. App. 2004) ("[W]e conclude that if a local public body fails ***strictly to comply*** with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session exception.") (emphasis added); *Zubeck v. El Paso County Ret. Plan*, 961 P.2d 597, 601 (Colo. App. 1998) (requiring disclosure of minutes of meetings not properly closed); *see also Barbour v. Hanover Sch. Dist. No. 28*¸ 148 P.3d 268, 273 (Colo. App. 2006) (noting that strict compliance is required with the COML's mandates), *aff'd in pertinent part*, 171 P.3d 223 (Colo. 2007); *WorldWest LLC v. Steamboat Springs Sch. Dist. RE-2 Bd. of Educ.*, Case No. 07-CA-1104, 37 Media L. Rep. 1663, 1668-69 (Colo. App. Mar. 26, 2009) (same).

This so-called *Gumina-Zubeck* doctrine divests a public body of the privilege of keeping the records of its closed-door meetings confidential if the public body has failed to follow the rigorous procedural requirements that provide the very narrow, and exclusive, exception to the otherwise controlling rule under the COML that "the formation of public policy is public business and may not be conducted in secret." *See* § 24-6-401, C.R.S.

In light of this framework for the public records request here, the Show Cause Hearing necessarily will test whether the Commission properly complied with the procedural requirements for invoking a closed-door "executive session" meeting under the COML. If the

Commission is able to show that its closed meetings during the first five months of 2009 complied with the COML's strictures for closed meetings, then the Commission's denial of access to the records of those meetings necessarily must be upheld. *See* § 24-6-402(2)(d.5)(I)(D), C.R.S. On the other hand, however, if the Commission cannot show that it "strictly complied" with each and every one of those requirements, then its closed meetings were improper and the records of those meetings must be released in their entirety. *See Gumina*, 119 P.3d at 532; *Zubeck*, 961 P.2d at 601.

As is discussed more fully below, Plaintiff believes the evidence will demonstrate that the Commission failed to strictly comply with the COML's requirements for convening a proper "executive session" in the following ways: (1) the Commission always failed to identify "the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized"; (2) the statutory citations relied upon by the Commission do not fully "authorize[e] the body to meet in an executive session"; (3) in all but the last meeting at issue here, the Commission failed to obtain "the affirmative vote of two-thirds of the entire membership of the body" on whether to conduct the discussion behind closed doors; and, (4) in three instances, the Commission failed to convene the closed meeting from within a properly open public meeting. *See* § 24-6-402(3)(a), C.R.S. Each of these violations in its own right is sufficient to divest any privilege from the requested records of the closed meetings under the *Gumina-Zubeck* doctrine, but the persistent presence of most all of these violations throughout all of the Commission's closed meetings during the first five months of 2009 demonstrates that the Commission simply has no excuse for not releasing the requested records.

With this framework in mind, the Court must avoid the temptation to be diverted toward considerations that are not germane to the show cause issues. In particular, the Court should not waste its judicial resources on an *in camera* review of the recordings of the closed meetings that the Commission submitted to the Court *sua sponte* before any order for *in camera* review has been entered, let alone taken up by the Court. There is no need to review the content of these recordings because under the *Gumina-Zubeck* doctrine, the content of an illegally closed meeting is entirely immaterial to the question of whether the closed meeting was properly convened. *See Zubeck*, 961 P.2d at 601. Thus, at the Show Cause Hearing, because the public records access issue under the CORA is controlled by the resolution of the whether the Commission strictly complied with the procedural requirements for "executive sessions" under the COML, whatever was actually discussed behind closed doors is irrelevant. *See WorldWest*, 37 Media L. Rep. at 1668-69 (requiring disclosure of the content of even an attorney-client conference because the public body failed to strictly comply with the procedural requirements for convening an executive session).[1]

Scope of Records at Issue during the Hearing

As set out in the Complaint, Plaintiff has alleged that twelve different closed meetings of the Commission during the first five months of 2009 violated the COML in a variety of ways,

[1] Plaintiff notes that to the extent the Court does not order disclosure of the requested records of the close-door meetings under the *Gumina-Zubeck* doctrine, Plaintiffs still have a right to seek an *in camera* review of the recordings of those closed-door meetings, and those recordings could still be ordered disclosed by the Court if its review of the content of the recordings were to find that the Commission had engaged in a substantial discussion of a non-exempt discussion, or if the Commission had adopted a proposed position or policy or otherwise engaged in decision-making behind closed doors. *See* § 24-72-204(5.5)(a), C.R.S. Such issues arising from an *in camera*

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including, but not necessarily only, through failures to strictly comply with the procedural requirements for convening an "executive session." (*See* Compl., ¶¶ 81-163.) For the Court's convenience, the following chart summarizes the specific closed meetings of the Commission for which the Plaintiff is seeking access to any recordings, minutes, or notes of the Commission's discussions:

Claim	Meetings/Records at Issue	Rationale for Disclosure
I.	**Jan. 14, 2009** – Recording and minutes of 4 hour, 25 minute closed meeting of Commission *(Six recordings were lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
II.	**Jan. 23, 2009** – Recording and minutes of 1 hour, 35 minute closed meeting of Commission *(One recording was lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
III.	**Feb. 2, 2009** – Recording and minutes of two closed meetings of Commission, one for 2 hours, 20 minutes, the second for 2 hours, 48 minutes *(Three recordings were lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.

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review, however, need only be considered if the Court determines that it will not order disclosure of the requested records under the *Gumina-Zubeck* doctrine.

Claim	Meetings/Records at Issue	Rationale for Disclosure
IV.	**Feb. 20, 2009** – Recording and minutes of two closed meetings of Commission, one for 2 hours, 50 minutes, the second for 4 hours, 20 minutes *(No recordings were lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
V.	**Mar. 18, 2009** – Any notes or other records of approximately 6 hour closed meeting of Commission *(No recordings were lodged by Defendants for in camera review)*	• Failure to commence meeting in open session. • Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
VI.	**Mar. 19, 2009** – Recording and minutes of two closed meetings of Commission, one for 10 minutes, the second for 4 hours, 10 minutes *(Four recordings were lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
VII.	**Mar. 31, 2009** – Any notes or other records of approximately 2 hour closed meeting of Commission *(No recordings were lodged by Defendants for in camera review)*	• Failure to commence meeting in open session. • Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
VIII.	**Apr. 6, 2009** – Recording and minutes of 4 hour, 20 minute closed meeting of Commission *(One recording was lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.

Claim	Meetings/Records at Issue	Rationale for Disclosure
IX.	**Apr. 13, 2009** – Any notes or other records of approximately 1 hour closed meeting of Commission *(No recordings were lodged by Defendants for in camera review)*	• Failure to commence meeting in open session. • Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
X.	**Apr. 16, 2009** – Recording and minutes of 20 minute closed meeting of Commission *(No recordings were lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
XI.	**Apr. 21, 2009** – Recording and minutes of 4 hour, 40 minute closed meeting of Commission *(Six recordings were lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Failure to vote to conduct closed meeting. • Ineffective statutory citations.
XII.	**May 6, 2009** – Recording and minutes of 4 hour closed meeting of Commission *(Five recordings were lodged by Defendants for in camera review)*	• Inadequate announcement of particular matter to be discussed. • Ineffective statutory citations.

Evidentiary Basis for Finding Non-Compliance

Ultimately, in light of the procedural posture for the Show Cause Hearing, the Commission bears the evidentiary burden of proof to establish that it strictly complied with the COML's requirement. *See Zubeck*, 961 P.2d at 601. In attempting to meet this evidentiary burden, the Commission necessarily will confront the record already established in the Complaint, where Plaintiff has set out the agendas and, where available, the minutes for each of the meetings at issue here. (*See* Compl., Exs. B and C.) For the Court's convenience, those

agendas and minutes have been packaged here, in sequence, for each of the twelve meetings at issue in this proceeding, running from **Exhibit 1** for the agenda and minutes of the Commission's meeting on January 14, 2009, through to **Exhibit 12** for the agenda and minutes of the Commission's meeting on May 6, 2009. (*See* Exs. 1 through 12, attached hereto.)

Each of these agenda notices (Exs. 1a through 12a) contains the only public identification of the particular matters to be discussed behind closed doors that the Commission ever provided for each of the twelve closed meetings, and each of those descriptions abjectly fails to the describe the "particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized." *See* § 24-6-402(3)(a), C.R.S. These agenda notices similarly contain the only public identification of the statutory citations upon which the Commission relied for authorization to close these meetings, but in each case, the cited provisions fail to provide effective authorization for the closures. *See id.* The minutes for the public meetings from which many of the closed meetings were convened (Exs. 1b through 11b) also reveal a remarkable pattern of failing to comply with the most basic, and straightforward requirement of obtaining an affirmative two-thirds vote of the entire membership of the Commission before retiring to the closed-door discussion. *See id.*

In light of the incontrovertible evidence from the Commission's own agenda notices and meeting minutes, the Commission will be hard pressed to establish an evidentiary foundation for its assertion that its closed meetings strictly complied with the COML.

Legal Argument on Procedural COML Violations

1. The Court must construe the COML broadly in favor of public access and construe all exemptions narrowly.

The issues raised in this case require the Court to construe various provisions of the COML, and in particular, the requirements pertaining to when a state public body's meetings may be closed to the public. In discharging that obligation, the Court necessarily must be guided by Colorado's canons of statutory construction, as well as the well-settled proposition that the COML is to be construed broadly in favor of its purpose of providing the maximum extent possible of public access to the meetings of governmental bodies. *See Cole v. State*, 673 P.2d 345, 349 (Colo. 1983) ("As a rule, [the Open Meetings Law] should be interpreted most favorably to protect the ultimate beneficiary, the public."); *Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 653 (1978) (noting that the statute "reflects the considered judgment of the Colorado electorate that democratic government best serves the commonwealth if its decisional processes are open to public scrutiny"); *Bagby v. School Dist. No. 1, Denver*, 186 Colo. 428, 434, 528 P.2d 1299, 1302 (1974) (same, because the COML was "designed ***precisely*** to prevent the abuse of secret or 'star chamber' sessions of public bodies") (citation omitted) (emphasis in original).

In that vein, the Court must bear in mind what Colorado Court of Appeals said nearly a decade ago about the COML, that its "underlying intent" is to ensure that the public is not "deprived of the discussions, the motivations, the policy arguments and other considerations which led to the discretion exercised by the [public body]." *Van Alstyne v. Housing Auth.*, 985 P.2d 97, 101 (Colo. App. 1998); *see also Hanover Sch. Dist. No. 28 v. Barbour*, 171 P.3d 223,

227 (Colo. 2007); *Walsenburg Sand & Gravel Co. v. City Council,* 160 P.3d 297, 299 (Colo. App. 2007).

2. <u>The Commission's identification of the particular matters to be discussed was not as detailed as possible.</u>

During the 2001 session of the Colorado General Assembly, legislators substantially amended the COML, including to ensure that public bodies do not abuse the statute's narrow authorization to conduct certain discussions behind closed doors. *See* Colo. Sess. Laws 2001, ch. 286, §§ 1-5, at 1069-76 (June 5, 2001), codified at § 24-6-402, C.R.S., and § 24-72-204, C.R.S. Of particular importance to this case, the 2001 legislation imposed the new requirement on all public bodies that they must identify the particular matter to be discussed behind closed doors with far greater specificity than was previously required. *See id.*

The specific legislative provision amending § 24-6-402(3)(a), C.R.S., established the following new topic-announcement requirement:

> The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, INCLUDING SPECIFIC CITATION TO THE PROVISION OF THIS SUBSECTION (3) AUTHORIZING THE BODY TO MEET IN AN EXECUTIVE SESSION ***AND IDENTIFICATION OF THE PARTICULAR MATTER TO BE DISCUSSED IN AS MUCH DETAIL AS POSSIBLE WITHOUT COMPROMISING THE PURPOSE FOR WHICH THE EXECUTIVE SESSION IS AUTHORIZED***, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters. . .

Colo. Sess. Laws 2001, ch. 286, § 2 (amending § 24-6-402(3)(a), C.R.S.) (emphasis added).

Thus, this legislation imposed the new requirement of identifying the "particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized." *Id.* Because the prior statutory language already required a public body to announce the "topic" of a closed meeting, the new statutory provision obviously was meant to provide more specificity than a mere cursory announcement of a generic "topic." *See id.* Indeed, as the Colorado Court of Appeals held in the *Gumina* case, mere recitation of the statutory language for an exemption is not sufficient to strictly comply with the requirement that the particular matter be identified in as much detail as possible without compromising the purpose for which the executive session is authorized. *Gumina*, 119 P.3d at 530.

Because this statute is directed at providing greater public access and public oversight of governmental bodies, this Court should construe the COML to implement that purpose, imposing an obligation on the Commission to provide as clear and specific an identification of the particular matter to be discussed in a closed-door meeting as is possible without undermining the purpose for conducting the discussion behind closed doors. *See Cole*, 673 P.2d at 349.

In this regard, then, the Commission's persistent identification of the matters to be discussed as "requests for advisory opinions and complaints filed with the Commission" does not come anywhere close to the level of specificity required by the statute. At a minimum, the Commission could have – without compromising the purpose for the executive session, and therefore, should have – identified the particular case numbers of any complaints, advisory opinions, letter rulings or position statements that the Commission was considering. It could also have disclosed the general nature of the topics under discussion, such as "travel expenses from a nonprofit entity" or "acceptance of a fellowship from a nonprofit entity" or the like. And in

those cases where the Commission had concluded that a complaint was not frivolous, the Commission most certainly should have identified the nature of the complaint under discussion, and any procedural events in the case that it was considering.

None of this specificity in the announcement of the matters to be discussed would have undermined the purpose for convening the executive session because all of these details would inevitably become public through the disclosure of the Commission's public decisions on the non-frivolous complaints, as well as the letter rulings, advisory opinions and position statements.

3. <u>The Commission's statutory bases for closing its meetings did not authorize such closures.</u>

As revealed in the set of agenda notices for the twelve meetings at issue here (Exs. 1a through 12a), the Commission consistently invoked the same four statutory bases for its closed meetings: § 24-6-402(3)(a)(III), C.R.S., § 13-90-107(1)(b), C.R.S., § 24-18.5-101, C.R.S., and Article XXXIX of the Colorado Constitution. These provisions, however, are not fully effective as authorizations for closing the Commission's meetings.

The first of these provisions is simply the COML's exemption for discussions of "[m]atters required to be kept confidential by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices." *See* § 24-6-402(3)(a)(III), C.R.. Thus, this provision is not itself a free-standing basis for closing a public meeting, but rather is simply an authorization to close a meeting if a federal or state law otherwise requires that the matter to be discussed be kept confidential.

It is likely that the Commission will attempt to argue that the attorney-client privilege statute set out at § 13-90-107(1)(b), C.R.S., is the "state statute" which requires the matters being

discussed to be kept confidential. Such an argument, however, ignores the plain text of the cited statutory provision, which does not in its own right require that the privilege-holder, *i.e.*, the client, keep an attorney-client communication confidential. *See* § 13-90-107(1)(b), C.R.S. Indeed, there can be no dispute that the attorney-client privilege can be waived by the privilege-holder by virtue of intentional disclosures of the contents of the attorney-client communication, or a negligent failure to maintain the confidentiality of the communication. *See Lanari v. People*, 827 P.2d 495, 499 (Colo.1992); *In re Marriage of Amich & Adiutori*, 192 P.3d 422, 424 (Colo. App. 2007). Fundamentally, Colorado's attorney-client privilege statute at § 13-90-107(1)(b), C.R.S. is not a "state statute" which "requires" that the matters being discussed be kept confidential; rather, the statute allows such confidentiality, but it does not require it. *See Stone v. Satriana*, 41 P.3d 705, 710 (Colo. 2002).

The next provision the Commission relies upon is its facilitating legislation, enacted by the General Assembly after the voters added Article XXIX to the Colorado Constitution. *See* § 24-18.5-101, C.R.S. This "state statute" can be read to require that the Commission keep confidential the names or identifying information of persons requesting "letter rulings" from the Commission. *See* § 24-18.5-101(4)(b)(III), C.R.S. This provision, however, does not require the Commission to maintain the entirety of the request for a letter ruling as confidential, and as a result, this provision cannot authorize the complete closure of all discussions of any request for a letter ruling, let along the substance of the letter ruling that the Commission intends to issue. *See id.*

The final provision the Commission relies upon as authorization for its closed meetings is the actual establishing provision in the Colorado Constitution, *i.e.*, Article XXIX, but this

provision as well fails to impose a broad requirement for keeping matters confidential. The only portion of Article XXIX that relates in any way to a confidentiality obligation is Section 5. *See* Colo. Const., Art. XXIX, § 5, cl. (3)(b). ("The commission may dismiss frivolous complaints without conducting a public hearing. Complaints dismissed as frivolous shall be maintained confidential by the commission."). Although this constitutional provision certainly requires confidentiality for frivolous complaints, it does not require confidentiality for non-frivolous complaints, or any of the other activities of the Commission. This District Court has already concluded in a separate case involving the Commission that records related to non-frivolous complaints, as well as records related to requests for advisory opinions and letter rulings, are all public records subject to disclosure. *See Colo. Ethics Watch v. Colorado Independent Ethics Comm'n*, No. 2008-cv-7995, slip op. at 5, ¶ 6 ("Findings of Fact, Conclusions of Law, Order and Judgment") (Colo. Dist. Ct. – Denver May 14, 2009). As a result, although this constitutional provision may be used under the COML to conduct closed-door discussions of complaints that are deemed frivolous, it provides no other authorization for the closure of the Commission's meetings.

4. <u>The Commission failed to obtain affirmative two-thirds votes for conducting the closed meetings.</u>

The Commission's failure – in the first eleven meetings at issue here – to obtain an affirmative two-thirds votes of the entire membership of the Commission on closing the Commission's discussions to the public, *see* § 24-6-402(3)(a), C.R.S., puts this case squarely within the rule established by the Colorado Court of Appeals in *Zubeck*. *See* 961 P.2d at 601. In that case, the *Colorado Springs Gazette* newspaper had sought, among other records, the minutes of the meetings of the board of the El Paso County Retirement Plan, but the board had refused to

release its minutes. The Court of Appeals ordered those records to be disclosed, including the minutes of the discussions that could have been held behind closed doors as "executive sessions," because the retirement board had never actually voted to conduct an executive session: "the Plan did not follow statutory requirements for calling an executive session, and the meetings were not held in an executive session. Therefore, we conclude that the district court erred in permitting the redaction of the minutes of the Plan's meetings that were not conducted in an executive session." *See id.*

Thus, the failure to conduct a vote to go into an "executive session" necessarily means, under *Zubeck*, that there was no "executive session" in the first place, and the minutes and other records of the Commission's un-voted closed meetings must be made public.

5. <u>The Commission's three failures to convene proper public meetings prior to going into closed sessions also violated the COML.</u>

On three occasions at issue here, *i.e.*, March 18 and 31, and April 13, 2009, the Commission conducted freestanding closed meetings without first assembling in public session. (*See* Exs 5a, 7a, and 9a.) Because the COML permits an executive session to be convened only from the midst of a properly noticed public meeting that is open to the public, *see* § 24-6-402(3)(a), C.R.S., the Commission's meetings that were entirely secret from the outset constitute the same kind of egregious violation of the requirements for convening an executive session as was condemned in *Zubeck*. *See* 961 P.2d at 601. Indeed, because to COML prohibits a public body from approving any kind of substantive action during a closed meeting, *see* § 24-6-402(3)(a), C.R.S., the Commission simply could not legally conduct the necessary two-thirds affirmative vote during these entirely secret meetings. As a result, there is no basis upon which the Commission may somehow argue that these three entirely secret meetings were proper.

Conclusion

In light of the foregoing, Plaintiff submits that upon a full presentation of the evidence at the Show Cause Hearing, the record will be replete with evidence that the Commission failed to strictly comply with the requirements under the COML for convening an "executive session." As a result, under the *Gumina-Zubeck* doctrine, these failures to strictly comply with the COML necessitate that the records of the improperly closed meetings must be made available to Plaintiff and the public. Thus, the Commission's denial of Plaintiff's requests for access to these public records was improper, and the Show Cause Order should be made absolute, requiring the Commission to disclose the requested public records.

Respectfully submitted this 29th day of July, 2009,

By */s Christopher P. Beall*
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THIS HEARING BRIEF WAS FILED WITH THE COURT THROUGH THE LEXIS/NEXIS FILE-AND-SERVE ELECTRONIC FILING PROCEDURES, UNDER C.R.C.P. 121(C), § 1-26. AS REQUIRED BY THOSE RULES, THE ORIGINAL SIGNED COPY OF THIS PLEADING IS ON FILE WITH LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2009, a true and correct copy of the foregoing **PLAINTIFF'S HEARING BRIEF FOR HEARING ON ORDER TO SHOW CAUSE** was served on the following counsel of record through the Lexis File-and-Serve system:

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