

# State of Colorado



Matt Smith, *Chairperson*  
Roy V. Wood, *Vice-Chairperson*  
Dan Grossman, *Commissioner*  
Sally H. Hopper, *Commissioner*  
Larry R. Lasha, *Commissioner*

Jane T. Feldman, *Executive Director*

## INDEPENDENT ETHICS COMMISSION

633 17<sup>th</sup> St., Ste. 1300, Denver, CO 80202

Ph.: 303/866-5727

Fax: 303/866-3777

E-mail: [jane.feldman@state.co.us](mailto:jane.feldman@state.co.us)  
[www.colorado.gov/ethicscommission](http://www.colorado.gov/ethicscommission)

July 24, 2009

Ms. Christine Small  
1035 S. Jamaica St., #205  
Aurora, CO 80012

Re: Complaint 09-07

Dear Ms. Small:

The Independent Ethics Commission met on July 21, 2009 to discuss the Complaint you filed with the Commission. The Commission determined that your complaint does not allege a violation of "Article XXIX or any other standards of conduct or reporting requirements under the jurisdiction of the IEC." See, IEC Rules 7.D.1., 3. The Commission therefore dismissed the Complaint.

For the Commission,

Jane T. Feldman  
Executive Director

Compl. 09-07

**BEFORE THE INDEPENDENT ETHICS COMMISSION  
STATE OF COLORADO**

IN THE MATTER OF

CHRISTINE SMALL,  
Complainant,

v.

Steven Chavez  
John Sandoval  
Jamie Sharp  
Brenda Cueto  
Penny Pearson,  
Respondents,  
COLORADO CIVIL RIGHTS DIVISION.

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**FORMAL COMPLAINT**

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Complainant hereby submits this complaint, and in support thereof, respectfully states the following:

**Background**

Complainant's decision to submit this complaint to your office has been given a great deal of thought. There has been a continuous course of unethical and inappropriate treatment perpetrated against Complainant, by the staff at Colorado Civil Rights Division ("CCRD"). This situation has become unbearable. The propensities and unprofessionalism exhibited are manifestly inconsistent with the expectations of responsibility associated with CCRD. Complainant has a tumultuous history with CCRD due to her previously filed complaints against certain employees and officials at that office. Complainant believes that due to these complaints, CCRD has a personal vendetta against her, which has led to retaliation.

CCRD is responsible for investigating claims of alleged discrimination. As a result, Complainant sought assistance from CCRD regarding alleged discrimination against certain entities. Please kindly note, Complainant is *not* requesting that your office review the decisions issued by CCRD in connection with her allegations of discrimination, but rather, she requests an investigation of unethical conduct during her interaction with the above referenced individuals.

## Issues

### I. Refusal to grant Complainant a reasonable extension

1. Rule 10.7 of CCRD's regulations explains the standards for granting extensions of time. Specifically, it states:

*"C) Standards for Granting Extensions.*

*In determining whether good cause has been shown for approving a motion for extension of time, the commission, a commissioner, or administrative law judge shall consider all relevant factors including, but not limited to, whether the failure to grant an extension would jeopardize the rights of any party, whether there have been administrative delays which would adversely affect the rights of any party, whether there are other factors outside the control of any party which caused delays in the administrative process and whether the rights of any party would be unduly prejudiced by the granting of an extension." Rule 10.7 (B) (2) also states, "Extensions of time shall not exceed a total of 90 days to all charging parties and 90 days to all respondents or a total period of 180 days."*

Complainant filed a charge of discrimination against City of Aurora, Charge Number E20090123. On November 28, 2008 Complainant requested a reasonable of extension of 30 days to provide a rebuttal statement, for the following reasons:

- (a) Homelessness;
- (b) The use of a new psychotropic medication that created negative side effects;
- (c) Frequent trips to the medical doctor; and
- (d) Complainant's final receipt of Respondent's discovery materials from CCRD on via email dated November 26, 2008.

However, Complainant's request was met with utter resistance by the so-called EEO investigator, Brenda Cueto. Complainant then contacted Cueto's supervisor, Penny Pearson for an extension. Although, Complainant received email confirmation that Pearson had indeed read her email request, she failed to acknowledge or respond to Complainant's request. As a result of Pearson's negligence in responding, Complainant submitted a request to Steven Chavez, Director at CCRD.

On December 11, 2008, Complainant received an email from Jamie Sharp, who was responding on behalf of Chavez. Sharp denied Complainant's request for an extension, and her email rambled on and on about the reasons for her denial, much of which were based on lies and self-serving statements. As a result, Complainant did not have a fair opportunity to provide a rebuttal. Further, Complainant believes she was legally entitled to a reasonable extension of 30 days given her personal circumstances.

Specifically, Sharp indicated that *"the record indicates that the Respondent's Position Statement was mailed to you on October 29, 2008 and you were given 30 days to respond, which*

is the standard amount of time provided to all parties.” While this is true, Complainant did not receive City of Aurora’s discovery in its entirety, until November 26, 2008. After reviewing the voluminous discovery, and given Complainant’s imminent homelessness and medical condition, Complainant thought it was in her best interest to request a 30-day extension pursuant to Rule 10.7.

In support of her denial, Sharp placed the blame on Complainant for the tardy delivery of the discovery materials. In fact, Sharp went as far as to say that Complainant placed “*defined restrictions on the size of the documents*”, an apparent reference to her email box. When, in truth and in fact, Complainant had no control over the email limitations imposed by Outlook. The size limitations are actually set by the email provider themselves.

Complainant received an email from Cueto on November 11, 2008, that stated “*Clean your mailbox*”, as “*I was only able to send you a few attachments.*” Complainant responded that she had only a few emails in her Inbox. Since Outlook would not accept emails with large attachments, Complainant signed up for an e-fax service that was capable of receiving large faxes via email, which had to be accessed from a special website.

A further review of Complainant’s emails, shows that Cueto did in fact attempt to submit a fax, three days later, on November 14, 2008, but failed to inform Complainant, which resulted in Complainant not knowing that a fax was waiting at the e-fax provider. After not hearing from Cueto, Complainant followed up with Cueto on November 18, 2008 and was told for the first time that she had sent a fax to the e-fax provider. From that time going forward, Complainant frequently checked the e-fax provider’s website but there was no evidence of a fax. Complainant contacted the e-fax provider on November 21, 2008 and was told that “if a fax was sent, it may have been deleted because of non-activity.”

Cueto then suggested a Yahoo email account. As a result, Complainant signed up for a Yahoo mail account for the sole purpose of receiving the discovery. On November 26, 2008 Complainant finally received Respondent’s discovery materials. Cueto submitted a total of 642 pages, contrary to Sharp’s exaggerated misrepresentation of “1,000+” pages. Complainant believes that her request for a reasonable extension should have been granted.

## **II. A timely filed charge was unjustifiably rejected by CCRD**

The State Personnel Board (“SPB”) mailed a referral notice to Complainant at her former address on or about June 19, 2008.<sup>1</sup>

Consistent with the forwarding order which Complainant filed with the U.S. Postal Service, the referral was forwarded to Complainant’s new address on June 24, 2008. The referral notice explicitly states, “*A written charge of discrimination must be filed within 15 calendar days of the date you RECEIVE this notice.*” The operative word here is “*receive*”. Further, a review of *Board Rules R-8-30* explicitly states, “*If the employee wants CCRD to investigate the*

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<sup>1</sup> Complainant had previously notified both SPB and CCRD of her new address (13727 E. 4<sup>th</sup> Ave. in Aurora), on or about May 31, 2008.

*discrimination claim, the employee must file a discrimination charge with the CCRD within 15 days of receipt of the notice of referral.*” The deadline for submission of a charge of discrimination began upon *receipt* of the Notice of Referral and ran for 15 calendar days thereafter.

Since June 24, 2008 is the controlling date because it is the date upon which Complainant received the referral notice, the deadline for submitting said charge was July 9, 2008. Complainant filed a timely charge of discrimination with CCRD on July 8, 2008 via fax. See copy of fax transmission report identified as Exhibit A. Complainant also explicitly noted in her fax transmission that she had received SPB’s June 19, 2008 correspondence on June 24, 2008, despite notifying that office of her current address. See SPB’s Certificate of Mailing identified as Exhibit B, which shows the incorrect address. By contrast, CCRD’s undated rejection letter clearly shows an updated address other than the one listed on SPB’s Certificate of Mailing dated June 19, 2008. Ex. C.

In response to Complainant’s timely fax submission dated July 8, 2008, Complainant received the attached correspondence (Ex. C) on July 23, 2008 from Sandoval, a “manager” at CCRD. His letter stated in pertinent part, “*significantly more than fifteen days have lapsed and therefore, we are unable to draft a charge...*” Further, Sandoval incorrectly stated, “the referral notes that you have fifteen days to file a charge with the CCRD *after date of notice.*” The referral made NO such statement. It was clear he was attempting to rewrite the statute governing timeliness to justify Complainant’s timely filed charge of discrimination, possibly because of his personal vendetta against Complainant.

Further, the attached undated rejection letter, Ex. C, signed by Steven Chavez, Director, sought to give the impression that he “reviewed the staff communications” with Complainant, when no such event occurred. Essentially, it was a blatant lie.

As stated previously, the referral unequivocally stated, 15 days from “*receipt.*” It is inconceivable that a “manager” who is entrusted with the fiduciary responsibility of upholding civil rights laws, would purposely reject a timely filed charge of discrimination based on his own self-serving, twisted perception of Board rules and personal hostility.

WHEREFORE, Complainant respectfully requests an investigation of this matter.

Respectfully Submitted,



Christine Small  
Complainant  
13727 E. 4<sup>th</sup> Ave., # 7-104  
Aurora, CO 80011

June 1, 2009

07/08/2008 14:41

Lexmark 5400 Series

NO. 1	DATE 07/08/2008	START TIME 14:39	SENT TO 3038947830	SCANNED/SENT 6/6	RESULT OK
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# KINKO'S

# FAX

<b>To:</b> CCRD	<b>From:</b> Christine Small
<b>Fax:</b> (303) 894-7830	<b>Pages:</b> 6 incl. cover page
<b>Phone:</b>	<b>Date:</b> 7/8/2008
<b>Re:</b>	<b>cc:</b>

Urgent   
 For Review   
 Please Comment   
 Please Reply   
 Please Recycle

● **Comments:**

PLEASE NOTE I RECEIVED THE BOARD'S 6/19/08 CORRESPONDENCE ON ON 6/24/08, WHICH WAS SENT TO MY FORMER ADDRESS. THE BOARD WAS NOTIFIED BY LETTER DATED MAY 31, 2008 OF MY NEW ADDRESS.

*[Handwritten scribbles]*

*[Handwritten scribbles]*

EX-A

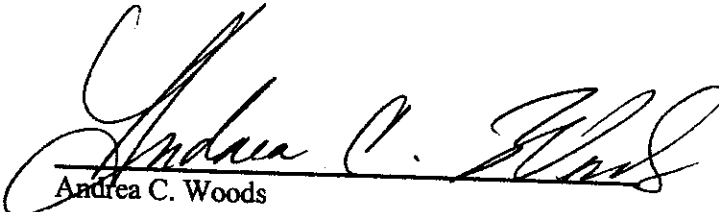
**CERTIFICATE OF MAILING**

This is to certify that on the 19<sup>th</sup> day of June 2008, I placed true and correct copies of the foregoing **REFERRAL TO COLORADO CIVIL RIGHTS DIVISION ("CCRD") FOR INVESTIGATION; NOTICE OF RIGHT TO WAIVE CCRD INVESTIGATION** in the United States mail, postage prepaid, addressed as follows:

Christine Small  
976 South Ivory Circle #E  
Aurora, Colorado 80017

Vincent Morscher  
First Assistant Attorney General  
Employment Law Section, 5<sup>th</sup> Floor  
1525 Sherman Street  
Denver, Colorado 80203

Janet Porter  
Case Control Coordinator  
Colorado Civil Rights Division  
1560 Broadway, Suite 1050  
Denver, Colorado 80202

  
Andrea C. Woods

# STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES  
Division of Civil Rights

D. Rice Munn  
Executive Director

Steven Chavez  
Director

1560 Broadway, Suite 1350  
Denver, CO 80202-5143  
(303) 894-2997  
(303) 894-7830 (fax)  
800-262-4845 (outside Denver area)



Bill Ritter, Jr.  
Governor

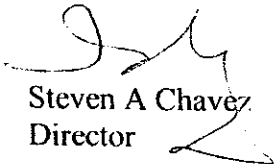
Christine Small  
13727 E. 4<sup>th</sup> Ave. #7-104  
Aurora, CO 80011

Ms. Small,

I have reviewed your recent letter regarding your attempt to file a charge against the State of Colorado Dept. of Transportation. I have reviewed the staff communications with you and have also reviewed the Intake processes. I am confident that your claim was properly handled. I understand that you did receive an extension from the State Personnel Board and your charge is currently being drafted by the intake staff of our office. You will be sent a final copy of the charge for your signature. Once the signed charge is received a copy of the charge will be served on the Department of Transportation along with a request for information. You will be provided with a copy of the Department's position statement once we are in receipt of it.

→ A blatant lie

Sincerely,

  
Steven A Chavez  
Director

8-5-08  
Date

EX-C