

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

**CASE NO. 21-18**

**CASE NO. 22-07**

**CASE NO. 22-22**

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**In the Matter of**

**Tina Peters**

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**PETITIONER'S BRIEF ON ISSUE OF EXTENSION OF STAY**

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Anne Landman (“Complainant”), through her undersigned counsel, submits this brief on the issue of whether the Commission’s stay of Case Nos. 21-18, 22-07, and 22-22 pending resolution of trial in Mesa County District Court case no. 2022CR371 (the “Criminal Matter”) should be extended through resolution of any appeals in that matter, and states:

1. Complainant has filed three complaints against Tina Peters (“Respondent”): Case No. 21-18 (filed August 27, 2021), Case No. 22-07 (filed January 13, 2022), and Case No. 22-22 (filed May 9, 2022) (collectively, the “Complaints”). The Commission has deemed each of the Complaints non-frivolous.

2. At its February 15, 2022 meeting the Commission granted Respondent’s Motion to Stay Case No. 21-18 pending a possible criminal indictment of Respondent. Once they were filed, the Commission held Case Nos. 22-07 and 22-22 in abeyance pending resolution of criminal proceedings against Respondent.

3. On March 9, 2022 a grand jury in Mesa County District Court indicted respondent in the Criminal Matter. On April 2, 2024, the Commission entered orders staying all three Complaints “pending resolution of the trial” of the Criminal Matter. Trial of the Criminal Matter concluded on August 12, 2024 with the conviction of Respondent on a number of counts.

4. At its August 20, 2024 meeting the Commission offered the parties the opportunity to submit briefs on the question of whether the stay of the Complaints should be extended through any appeals of Respondent’s conviction in the Criminal Matter.

5. The stay should not be extended. First, IEC Rule 5(G)(3) permits a stay when “[t]he subject matter of the complaint overlaps with *pending* criminal charges or a pending criminal investigation.” Trial of the Criminal Matter has concluded thus the criminal charges in that matter are no longer pending.

6. Second, the authority cited by the Commission in its Orders Regarding Motion to Stay does not support extending the stay. “A stay of a civil case to permit conclusion of a related criminal proceeding has been characterized as an extraordinary remedy.” *People v. Shifrin*, 342 p.3d 506, 513 (Colo. App. 2014) quoting *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 98-100 (2<sup>nd</sup> Cir. 2012). Here, the criminal proceeding has concluded and thus continuing the extraordinary remedy (the stay) is no longer warranted.

7. As the Court of Appeals explained in *Shifrin*, “[d]eciding whether a stay is appropriate ‘generally requires balancing the interests of the plaintiff in moving forward with the litigation against the interests of a defendant asserting Fifth Amendment rights who faces the choice of being prejudiced in the civil litigation if those rights are asserted or prejudiced in the criminal litigation if those rights are waived.’” *Shifrin, supra*, at 513, quoting *AIG Life Ins. Co. v. Phillips*, No. 07-cv-00500, 2007 U.S. Dist. LEXIS 52692, 2007 WL 2116383, at \*2 (D. Colo. July 20, 2007). As trial of the Criminal Matter has concluded, there is no longer a risk that Respondent’s testimony before the Commission could be used against her in the Criminal Matter. Accordingly, the balance has shifted and Complainant’s interest in moving forward before the Commission outweighs any remaining interests of Respondent.

8. It is possible that Respondent’s appeals in the Criminal Matter may result in a new trial. In that case, testimony before the Commission might be used against her. However, this risk is remote and simply does not justify further delay of Complainant’s cases which have already been delayed for years. See *Branaghan v. Sadeghi*, 2019 Colo. Dist. LEXIS 3363 (citing the *Shifrin* factors and holding that after trial of a criminal matter “[t]he indefinite nature of the pending appeal and other potential post-trial remedies weighs against granting a stay.”) The balance of interests has shifted and the extraordinary remedy (a stay) is no longer warranted.

9. One of the factors for determining whether a stay is appropriate, as articulated in *Shifrin*, is the extent to which the issues in the criminal case overlap with those presented in the civil case. *Shifrin, supra*, at 513. Here, there is no overlap. The Complaints concern Respondent accepting gifts far in excess of the limits a public official is permitted to take under Colorado law (both as gifts and as contributions to her legal defense). The Criminal Matter does not involve these issues at all. Again, the extraordinary remedy (a stay) is no longer warranted.

10. Another factor articulated in *Shifrin* is “the public interest.” *Id.* In this case, the public interest is not served by allowing a former elected official to avoid responsibility for serious violations of state ethics laws through years of delay on multiple complaints this Commission long ago determined to be non-frivolous. The public interests would be served by lifting the stay.

**For the foregoing reasons,** Complainant ask the Commission to lift the stay on the Complaints.

Respectfully submitted this 13th day of September, 2024.

**RECHT KORNFELD P.C.**

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**CERTIFICATE OF SERVICE**

I, Erin Mohr, hereby certify that on this 13th day of September, 2024, I transmitted via e-mail and first class mail, postage prepaid, the foregoing, **PETITIONER'S BRIEF ON ISSUE OF EXTENSION OF STAY** to the following:

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*s/ Erin Mohr*