



Notice of Proposed Permanent Rulemaking

Office of the Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

August 30, 2017

I. Hearing Notice

As required by the State Administrative Procedure Act,¹ the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for **October 3, 2017 from 9:30 a.m. - 12:00 p.m.** in the Aspen Conference Room on the 3rd floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

II. Subject

The Secretary is considering amendments to the rules concerning campaign and political finance² to improve the administration and enforcement of Colorado campaign finance law.³

Specifically, the Secretary proposes permanent adoption of temporary rules adopted on August 10, 2017. The Secretary may consider additional rule amendments include revisions necessary to ensure proper administration of legislation recently passed by the Colorado General Assembly; establish uniformity in the administration of current law; eliminate obsolete provisions; remove rules stricken by the courts; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Rulemaking authority

The Secretary proposes the rule revisions and amendments in accordance with the following statutory and constitutional provisions:

¹ Section 24-4-103(3)(a), C.R.S. (2017).

² 8 CCR 1505-CCR 6.

³ Article 45 of Title 1, C.R.S. (2017).

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to “promulgate rules related to filing in accordance with article 4 of title 24, C.R.S.”
- Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which requires the Secretary of State to “[p]romulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution].”
- Section 1-1-107(2)(a), C.R.S., (2017), which authorizes the Secretary of State “[t]o promulgate, publish, and distribute...such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”

IV. Copies of draft rules

A preliminary draft of the proposed rules is posted on the Secretary of State’s rules and notices of rulemaking website at:

http://www.sos.state.co.us/pubs/rule_making/hearings/2017/CPFRulesHearing20171003.html

You may also contact our office to request a paper or editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,⁴ if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by September 28, 2017.

V. Opportunity to testify and submit written comments

The Secretary values your feedback in our rulemaking process and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comment concerning the rule amendments. To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

You may submit written comments by mail, email, or in person to our office any time before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as well. Additional opportunity to comment in writing may be announced at the conclusion of the hearing.

All written comments will be posted online at the Secretary of State website at: http://www.sos.state.co.us/pubs/rule_making/hearings/2017/CPFRulesHearing20171003.html.

We will redact contact information, including home address, email address, and telephone

⁴ Section 24-4-103(3)(a), C.R.S. (2017). “Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing.”

number(s), from submissions before posting the information online, unless otherwise directed by the contributor.

VI. Broadcast and audio recording of hearing

If you are unable to attend the hearing, you may listen to the live broadcast from the Aspen Conference Room online at www.sos.state.co.us/pubs/info_center/audioBroadcasts.html. After the hearing, visit the same website and click on “archived recordings” to access an audio recording of the hearing.

VII. Office contact

If you have any questions or would like to submit written comments, please contact Andrea Gyger with the Administration Division at SoS.Rulemaking@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 30th Day of August, 2017.



Suzanne Staiert
Deputy Secretary of State

For

Wayne W. Williams
Colorado Secretary of State



Draft Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

August 30, 2017

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State rules concerning campaign and political finance.¹ The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance law² as follows:

- Repeal of Rule 1.6 to ensure uniformity in the administration of current law.
- Renumbering of Rule 1.7.
- New Rule 1.7 to ensure uniformity in administration of current law and provide clear guidance to filers on registration requirements and the applicability of Colorado campaign finance law.
- Clarifying amendment to Rule 1.13 to remove an unnecessary word.
- Amendment to Rule 1.19 to ensure uniformity in administration of current law.
- New Rule 1.21 to ensure uniformity in administration of current law and provide clear guidance to filers on registration requirements and the applicability of Colorado campaign finance law.
- Amendment to Rule 2.2.4(c)(3) to ensure uniformity in the administration of current law.
- New Rule 2.4.5 to ensure uniformity in the administration of current law.
- New Rule 2.5 to ensure uniformity in the administration of current law.

¹ 8 CCR 1505-CCR 6.

² Article 45 of Title 1, C.R.S. (2017).

- New Rule 3.3 to ensure uniformity in administration of current law and provide clear guidance to filers on registration requirements and the applicability of Colorado campaign finance law.
- Technical amendments to Rule 4.4.3 to correct a citation.
- New Rule 4.5 to ensure uniformity in administration of current law and provide clear guidance to filers on registration requirements and the applicability of Colorado campaign finance law.
- New Rule 4.6 to ensure uniformity in the administration of current law.
- New Rule 10.1.3 to ensure uniformity in the administration of current law.
- Amendments to Rule 10.2.3 to ensure proper administration of House Bill 17-1155.
- New Rule 10.4.6 to ensure uniformity in administration of current law and provide clarity to filers.
- Technical amendments to Rule 10.11.3 to correct an incorrect capitalization.
- Amendments to Rule 12.4 to ensure uniformity in administration of current law.
- Formatting amendments to Rule 15.4 to correct indentation error.
- Amendments to Rule 18.2 to ensure proper administration of House Bill 17-1155.
- New Rule 18.4 to ensure uniformity in administration of current law.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

On August 10, 2017, the Secretary issued a request for public comment to help our office develop preliminary draft rules. The comments we received in anticipation of rulemaking are available online at: www.sos.state.co.us/pubs/rule_making/CPFRuleComments.html and are incorporated into the official rulemaking record.

II. Rulemaking Authority

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to “promulgate rules related to filing in accordance with article 4 of title 24, C.R.S.”
- Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which requires the Secretary of State to “[p]romulgate such rules, in accordance with article 4 of title

24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution].”

- Section 1-1-107(2)(a), C.R.S., (2017), which authorizes the Secretary of State “[t]o promulgate, publish, and distribute...such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”

Preliminary Draft of Proposed Rules

Office of the Colorado Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

August 30, 2017

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.¹

This is a preliminary draft of the proposed rules that may be revised before the October 3, 2017 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **September 28, 2017**.²

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>Italic blue font text</i>	Annotations

1 *Amendments to 8 CCR 1505-6:*

2 *Amendments to Rule 1 concerning definitions:*

3 *[No amendments to current Rules 1.1 through 1.5]*

4 ~~1.6 “Expenditures made, and obligations entered into” as used in section 1-45-108(1)(a)(I),~~
5 ~~C.R.S., means all committee related disbursements, including any agreement or~~
6 ~~acknowledgement of a liability to pay a certain amount.~~

7 ~~1.7-1.6~~ “Frequent filing schedule” means:

8 ~~1.7-1.6.1~~ For state candidates and committees, the filing schedule outlined in
9 sections 1-45-108 (2)(a)(I)(B), (2)(a)(I)(C), (2)(a)(I)(D), and (2)(a)(I)(E), C.R.S.;

10 ~~1.7-2-1.6.2~~ For a county, municipal, and special district candidate or committee, the
11 filing schedule outlined in section 1-45-108 (2)(a)(II), C.R.S.; and

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2017). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2017). “[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing.”

1 1.7.3-1.6.3 For political committees, small donor committees, independent
2 expenditure committees, and political organizations participating in a regular
3 biennial school election, the filing schedule outlined in sections 1-45-
4 108(2)(a)(I)(C), (2)(a)(I)(D), and (2)(a)(I)(E), C.R.S.

5 1.7 “INDEPENDENT EXPENDITURE COMMITTEE” HAS THE SAME MEANING AS SET FORTH IN
6 SECTION 1-45-103(11.5), C.R.S. AN INDEPENDENT EXPENDITURE COMMITTEE DIFFERS
7 FROM A POLITICAL COMMITTEE IN THAT AN INDEPENDENT EXPENDITURE COMMITTEE DOES
8 NOT COORDINATE WITH A CANDIDATE, CANDIDATE COMMITTEE, OR POLITICAL PARTY.

9 *[No amendments to current Rules 1.8 through 1.12]*

10 1.13 “Person”, for the purpose of Colo. Const. Article XXVIII, Section 7, ~~“person”~~ means any
11 natural person.

12 *[No amendments to current Rules 1.14 through 1.18]*

13 1.19 “Registered agent” is a natural person or candidate designated to receive mailings, ~~and~~ to
14 address concerns and questions regarding a committee, AND IS RESPONSIBLE FOR TIMELY
15 FILING CAMPAIGN FINANCE REPORTS. [Sections 1-45-108(3)(b) and 1-45-109(4)(b),
16 C.R.S.]

17 *[No amendments to current Rule 1.20. New Rule 1.21.]*

18 1.21 “SUPPORT OR OPPOSE”, FOR THE PURPOSE OF COLO. CONST. ARTICLE XXVIII, SECTION
19 2(12)(A), MEANS THAT THE ENTITY WHO DONATED OR CONTRIBUTED DID SO IN
20 COORDINATION WITH THE CANDIDATE OR CANDIDATE COMMITTEE. IF NO SUCH
21 COORDINATION EXISTS, THE ENTITY IS NOT A POLITICAL COMMITTEE.

22 *New Rule 2.2.4(c)(3) concerning candidates and candidate committees, managing unexpended*
23 *campaign contributions:*

24 (c) Candidates seeking election to a different office

25 (1) A candidate committee may transfer funds to a candidate
26 committee established by the same candidate for a different public
27 office, subject to the political party contribution limit, only if the
28 new office sought has contribution limits that are equal to or
29 greater than the current office, or the new office sought has no
30 contribution limits. [Colo. Const. Article XXVIII, Section 3]

31 (2) A candidate committee transferring funds to a candidate committee
32 for a different office must terminate within ten days of registering
33 the new candidate committee.

34 (3) A CANDIDATE SEEKING ELECTION TO A STATE, COUNTY, OR LOCAL
35 OFFICE MAY NOT TRANSFER FUNDS FROM A FEDERAL CANDIDATE
36 COMMITTEE TO A COLORADO CANDIDATE COMMITTEE THAT IS

1 SUBJECT TO THE PROVISIONS OF THE FAIR CAMPAIGN PRACTICES
2 ACT.

3 *New Rule 2.4.5 concerning personal financial disclosures:*

4 2.4.5 A PERSON WHO SITS ON A BOARD OR COMMITTEE NEED NOT DISCLOSE THE BOARD
5 OR COMMITTEE MEMBERSHIP ON A PERSONAL FINANCE DISCLOSURE IF THE PERSON
6 DOES NOT:

7 (A) RECEIVE COMPENSATION; OR

8 (B) INDIVIDUALLY CONTROL BOARD FUNDS.

9 *New Rule 2.5 concerning the special district election cycle:*

10 2.5 FOR SPECIAL DISTRICT CANDIDATES AND COMMITTEES, ELECTION CYCLE MEANS THE
11 PERIOD OF TIME BEGINNING THIRTY-ONE DAYS FOLLOWING THE SPECIAL DISTRICT
12 ELECTION FOR THE PARTICULAR OFFICE AND ENDING THIRTY DAYS FOLLOWING THE NEXT
13 SPECIAL DISTRICT ELECTION FOR THAT OFFICE.

14 *New Rule 3.3 concerning political committees and independent expenditure committees:*

15 3.3 TO QUALIFY AS A CONTRIBUTION OR EXPENDITURE MADE TO “SUPPORT OR OPPOSE” A
16 CANDIDATE, AS THOSE TERMS ARE USED IN THE DEFINITION OF “POLITICAL COMMITTEE” IN
17 SUBSECTION (12)(A) OF SECTION 2 OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION,
18 THE CONTRIBUTION OR EXPENDITURE MUST BE COORDINATED WITH A CANDIDATE OR
19 CANDIDATE COMMITTEE. WHERE THERE IS NO SUCH COORDINATION AND THE AGGREGATE
20 AMOUNT OF THE EXPENDITURES IS IN EXCESS OF ONE THOUSAND DOLLARS, THE ENTITY IS
21 AN INDEPENDENT EXPENDITURE COMMITTEE RATHER THAN A POLITICAL COMMITTEE. IF
22 THE PERSON OR GROUP MEETS THE REGISTRATION REQUIREMENTS OF AN INDEPENDENT
23 EXPENDITURE COMMITTEE, IT MUST REGISTER AS AN INDEPENDENT EXPENDITURE
24 COMMITTEE.

25 *Amendments to Rule 4.4.3 concerning issue committees:*

26 4.4.3 The disclosure report required by section 1-45-108(1.5)(c)(~~I~~)(I), C.R.S., must be
27 filed with the appropriate officer within five calendar days after notification to the
28 appropriate officer that the small-scale issue committee qualifies as an issue
29 committee under section 1-45-108(1.5)(c)(III), C.R.S.

30 *New Rules 4.5 and 4.6 concerning issue committees and small-scale issue committees:*

31 4.5 A MATTER BECOMES A BALLOT MEASURE REQUIRING A COMMITTEE TO REGISTER AS AN
32 ISSUE COMMITTEE OR SMALL-SCALE ISSUE COMMITTEE UNDER SECTION 1-45-108(7)(A)(I),
33 C.R.S., AFTER A TITLE HAS BEEN DESIGNATED AND FIXED AND ANY MOTION FOR
34 REHEARING HAS BEEN HEARD.

1 4.6 FOR ISSUE COMMITTEES AND SMALL-SCALE ISSUE COMMITTEES, THE ELECTION CYCLE IS A
2 CALENDAR YEAR, BEGINNING JANUARY 1 AND ENDING DECEMBER 31. THIS RULE DOES NOT
3 APPLY TO ISSUE COMMITTEES FORMED TO SUPPORT OR OPPOSE A RECALL.

4 *New Rule 10.1.3 concerning unexpended campaign contributions:*

5 10.1.3 UNEXPENDED CONTRIBUTIONS MAY NOT BE USED FOR PERSONAL PURPOSES.

6 *Amendments to Rule 10.2.3(b) regarding disclosure of occupation and employer:*

7 10.2.3 Disclosure of occupation and employer

8 (a) The requirement to disclose the occupation and employer of a contributor
9 in Colo. Const. Article XXVIII, Section 7 and section 1-45-108, C.R.S.,
10 applies to any one-time contribution of \$100 or more, and not to aggregate
11 contributions totaling \$100 or more.

12 (b) ~~IF~~ EXCEPT FOR A COMMITTEE EXERCISING ITS RIGHT TO CURE UNDER
13 SECTION 1-45-109(4)(C), IF a committee does not report occupation and
14 employer information for a contribution of \$100 or more, and the
15 committee is unable to gather the information within 30 days after receipt
16 of the contribution, the committee must return the contribution to the
17 contributor no later than the 31st day after receipt. [Colo. Const. Article
18 XXVIII, Section 7]

19 *New Rule 10.4.6 concerning managing contributions:*

20 10.4.6 IF A CANDIDATE OR COMMITTEE ACCEPTS A CONTRIBUTION OR DONATION FROM A
21 JOINT ACCOUNT AND THE CONTRIBUTOR OR DONOR IS NOT SPECIFIED, THE
22 CANDIDATE OR COMMITTEE MAY DETERMINE HOW TO APPORTION THE
23 CONTRIBUTION OR DONATION.

24 *Technical amendment to Rule 10.11.3:*

25 10.11.3 An ~~Immediate~~ IMMEDIATE reimbursement for committee expenses is not a
26 contribution.

27 [Section 1-45-108(1)(e), C.R.S.]

28 *Amendments to Rule 12.4 concerning changing or closing a committee:*

29 12.4 Administrative committee terminations. The appropriate officer may terminate a
30 standalone candidate or committee if the standalone candidate or committee fails to file
31 any required reports for six consecutive reporting periods or 18 months, whichever is
32 shorter, OR FILES "ZERO" REPORTS OR REPORTS WITH NO ACTIVITY FOR THE SAME TIME
33 PERIOD in accordance with the procedures set out in the State Administrative Procedure
34 Act. [Colo. Const. Article XXVIII, Section 2(3), and section 24-4-105, C.R.S.]

1 *Formatting amendments to Rule 15.4:*

2 15.4 The aggregate contribution limits specified for a general election in Colo. Const. Article
3 XXVIII, Section 3, as adjusted by these Rules, apply to the recall election with respect to
4 each successor candidate.

5 *Amendments to Rule 18.2 regarding campaign finance complaints:*

6 18.2 Written complaints.

7 18.2.1 A written complaint filed under Colo. Const. Article XXVIII, Section 9(2)(a)
8 must include the Secretary of State's complaint cover sheet, and must include the
9 following information:

10 (a) The name, address, EMAIL, and signature of the complainant (if the
11 complainant is represented by counsel, include the counsel's name,
12 address, and signature);

13 (b) The name~~and~~, address AND EMAIL of each person alleged to have
14 committed a violation; and

15 (c) THE PROVISION OF COLO. CONST. ARTICLE XXVIII, THE FAIR CAMPAIGN
16 PRACTICES ACT, OR THESE RULES VIOLATED AND ~~The~~THE particulars of the
17 violation.

18 18.2.2 ~~If an incomplete complaint is received, the date on which the originally filed~~
19 ~~complaint was received is considered the filed date for purposes of Colo. Const.~~
20 ~~Article XXVIII, Section 9(2)(a), if a complete copy is received within ten days of~~
21 ~~notification from the Secretary of State that the complaint was incomplete.~~

22 ~~18.2.3 Any person may submit a complaint by fax or electronic mail if a signed original~~
23 ~~is received by the Secretary of State no later than five calendar days thereafter.~~
24 ~~THE COMPLAINANT MUST DELIVER AN ORIGINAL, SIGNED COMPLAINT WITH THE~~
25 ~~REQUIRED COVER SHEET AND ANY APPLICABLE EXHIBITS TO THE SECRETARY OF~~
26 ~~STATE'S OFFICE. If the complaint is complete, the~~THE Secretary of State will
27 ~~promptly~~transmit the complaint to the Office of Administrative Courts in the
28 Department of Personnel and Administration for consideration by an
29 Administrative Law Judge WITHIN THREE BUSINESS DAYS, ~~which~~AND will notify
30 the respondents BY EMAIL of the filing of the complaint ~~and which will issue all~~
31 ~~other appropriate notices to the parties.~~ THE SECRETARY OF STATE WILL NOT
32 TRANSMIT ANY COMPLAINT THAT IS NOT COMPLETE. [Colo. Const. Article XXVIII,
33 Section 9(2)(a)]

34 18.2.3 IN DETERMINING WHETHER AN ENTITY SUBSTANTIALLY COMPLIED UNDER SECTION
35 1-45-109(4), C.R.S., THE APPROPRIATE OFFICER MUST CONSIDER:

36 (A) THE EXTENT OF THE RESPONDENT'S NONCOMPLIANCE;

- 1 (B) THE PURPOSE OF THE PROVISION VIOLATED AND WHETHER THAT PURPOSE
2 WAS SUBSTANTIALLY ACHIEVED DESPITE THE NONCOMPLIANCE;
- 3 (C) WHETHER THE RESPONDENT SOUGHT AND RECEIVED GUIDANCE FROM THE
4 SECRETARY OF STATE’S OFFICE REGARDING THE NONCOMPLIANCE; AND
- 5 (D) WHETHER IT CAN REASONABLY BE INFERRED THAT THE RESPONDENT MADE
6 A GOOD FAITH EFFORT TO COMPLY OR WHETHER THE NONCOMPLIANCE IS
7 MORE PROPERLY VIEWED AS THE PRODUCT OF AN INTENT TO MISLEAD THE
8 ELECTORATE.

9 18.2.4 IN DETERMINING WHETHER AN ENTITY REGISTERED OR DISCLOSED IN “GOOD
10 FAITH” AS THAT TERM IS USED IN SECTION 1-45-109(4), C.R.S., THE APPROPRIATE
11 OFFICER MUST DETERMINE WHETHER TEN PERCENT OR LESS OF THE ENTITY’S
12 DISCLOSURES OR REPORTED DOLLAR AMOUNTS ARE IN COMPLIANCE. IF SO, THE
13 ENTITY IS DEEMED TO HAVE ATTEMPTED TO COMPLY IN GOOD FAITH.

14 *New Rule 18.4 concerning collection of debt:*

15 18.4 IF THE SECRETARY OF STATE SENDS AN INVOICE TO THE STATE CONTROLLER FOR THE
16 COLLECTION OF A DEBT IN ACCORDANCE WITH COLO. CONST. ARTICLE XXVIII, SECTION
17 10 (2) (D), THE STATE CONTROLLER MAY NOT ATTEMPT TO COLLECT OR COLLECT THE DEBT
18 FROM A NON-CANDIDATE REGISTERED AGENT OR DESIGNATED FILING AGENT OF A
19 COMMITTEE.