

Revised Draft of Proposed Rules

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

September 28, 2017

Disclaimer:

The proposed draft rules have changed. This draft supersedes the Preliminary Draft that was issued with the Notice of Proposed Rulemaking on August 30, 2017. These revised proposed rules will be considered at the October 3, 2017 rulemaking hearing.

In accordance with the State Administrative Procedure Act, this revised copy of the proposed rules is made available to the public and posted on the Department of State's website.¹

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
Shading	Revisions to previous draft
<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 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 5.3 concerning municipal independent expenditure committees:*

5 5.3 AN INDEPENDENT EXPENDITURE COMMITTEE WITH THE PURPOSE OF SUPPORTING
6 MUNICIPAL CANDIDATES MUST FILE REPORTS WITH THE MUNICIPAL CLERK.

7 *[Current Rule 9.3 is relocated and recodified as New Rule 12.5]*

8 *New Rule 10.1.3 concerning unexpended campaign contributions:*

9 10.1.3 UNEXPENDED CONTRIBUTIONS MAY NOT BE USED FOR PERSONAL PURPOSES.

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

11 10.2.3 Disclosure of occupation and employer

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

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

23 *New Rule 10.4.6 concerning managing contributions:*

24 10.4.6 IF A CANDIDATE OR COMMITTEE ACCEPTS A CONTRIBUTION OR DONATION FROM A
25 JOINT ACCOUNT AND THE CONTRIBUTOR OR DONOR IS NOT SPECIFIED, THE
26 CANDIDATE OR COMMITTEE MAY DETERMINE HOW TO APPORTION THE
27 CONTRIBUTION OR DONATION.

28 *Technical amendment to Rule 10.11.3:*

29 10.11.3 An ~~Immediate~~ IMMEDIATE reimbursement for committee expenses is not a
30 contribution.

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

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

1 12.4 Administrative committee terminations. The appropriate officer may terminate a
2 standalone candidate or committee if the standalone candidate or committee fails to file
3 any required reports for six consecutive reporting periods or 18 months, whichever is
4 shorter, OR FILES “ZERO” REPORTS OR REPORTS WITH NO ACTIVITY FOR THE SAME TIME
5 PERIOD in accordance with the procedures set out in the State Administrative Procedure
6 Act. [Colo. Const. Article XXVIII, Section 2(3), and section 24-4-105, C.R.S.]

7 *Current Rule 9.3 is recodified as New Rule 12.5 with the following amendments:*

8 ~~9.3-12.5~~ In the case of a candidate who is the registered agent for a candidate committee, if
9 If the Secretary of State receives verifiable information in writing that the candidate is
10 deceased, the Secretary of State may immediately terminate the CANDIDATE’S candidate
11 committee in TRACER.

12 *Formatting amendments to Rule 15.4:*

13 15.4 The aggregate contribution limits specified for a general election in Colo. Const. Article
14 XXVIII, Section 3, as adjusted by these Rules, apply to the recall election with respect to
15 each successor candidate.

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

17 18.2 Written complaints.

18 18.2.1 A written complaint filed under Colo. Const. Article XXVIII, Section 9(2)(a)
19 must include the Secretary of State’s complaint cover sheet, and must include the
20 following information:

21 (a) The name, address, EMAIL, and signature of the complainant (if the
22 complainant is represented by counsel, include the counsel’s name,
23 address, and signature);

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

26 (c) THE PROVISION OF COLO. CONST. ARTICLE XXVIII, THE FAIR CAMPAIGN
27 PRACTICES ACT, OR THESE RULES VIOLATED AND ~~THE~~THE particulars of the
28 violation.

29 18.2.2 ~~If an incomplete complaint is received, the date on which the originally filed~~
30 ~~complaint was received is considered the filed date for purposes of Colo. Const.~~
31 ~~Article XXVIII, Section 9(2)(a), if a complete copy is received within ten days of~~
32 ~~notification from the Secretary of State that the complaint was incomplete.~~

33 18.2.3 ~~Any person may submit a complaint by fax or electronic mail if a signed original~~
34 ~~is received by the Secretary of State no later than five calendar days thereafter.~~
35 THE COMPLAINANT MUST DELIVER AN ORIGINAL, SIGNED COMPLAINT WITH THE
36 REQUIRED COVER SHEET AND ANY APPLICABLE EXHIBITS TO THE SECRETARY OF

1 STATE'S OFFICE. ~~If the complaint is complete, the~~ THE Secretary of State will
2 ~~promptly~~ transmit the complaint to the Office of Administrative Courts in the
3 Department of Personnel and Administration for consideration by an
4 Administrative Law Judge WITHIN THREE BUSINESS DAYS, ~~which~~ AND will notify
5 the respondents BY EMAIL of the filing of the complaint ~~and which will issue all~~
6 ~~other appropriate notices to the parties.~~ THE SECRETARY OF STATE WILL NOT
7 TRANSMIT ANY COMPLAINT THAT IS NOT COMPLETE. [Colo. Const. Article XXVIII,
8 Section 9(2)(a)]

9 18.2.3 IN DETERMINING WHETHER AN ENTITY SUBSTANTIALLY COMPLIED UNDER SECTION
10 1-45-109(4), C.R.S., THE APPROPRIATE OFFICER MUST CONSIDER:

- 11 (A) THE EXTENT OF THE RESPONDENT'S NONCOMPLIANCE;
- 12 (B) THE PURPOSE OF THE PROVISION VIOLATED AND WHETHER THAT PURPOSE
13 WAS SUBSTANTIALLY ACHIEVED DESPITE THE NONCOMPLIANCE;
- 14 (C) WHETHER THE RESPONDENT SOUGHT AND RECEIVED GUIDANCE FROM THE
15 SECRETARY OF STATE'S OFFICE REGARDING THE NONCOMPLIANCE; AND
- 16 (D) WHETHER IT CAN REASONABLY BE INFERRED THAT THE RESPONDENT MADE
17 A GOOD FAITH EFFORT TO COMPLY OR WHETHER THE NONCOMPLIANCE IS
18 MORE PROPERLY VIEWED AS THE PRODUCT OF AN INTENT TO MISLEAD THE
19 ELECTORATE.

20 18.2.4 IN DETERMINING WHETHER AN ENTITY REGISTERED OR DISCLOSED IN "GOOD
21 FAITH" AS THAT TERM IS USED IN SECTION 1-45-109(4), C.R.S., THE APPROPRIATE
22 OFFICER MUST DETERMINE WHETHER TEN PERCENT OR LESS OF THE ENTITY'S
23 DISCLOSURES OR REPORTED DOLLAR AMOUNTS ARE IN COMPLIANCE. IF SO, THE
24 ENTITY IS DEEMED TO HAVE ATTEMPTED TO COMPLY IN GOOD FAITH.

25 *New Rule 18.4 concerning collection of debt:*

26 18.4 IF THE SECRETARY OF STATE SENDS AN INVOICE TO THE STATE CONTROLLER FOR THE
27 COLLECTION OF A DEBT IN ACCORDANCE WITH COLO. CONST. ARTICLE XXVIII, SECTION
28 10 (2) (D), THE STATE CONTROLLER MAY NOT ATTEMPT TO COLLECT OR COLLECT THE DEBT
29 FROM A NON-CANDIDATE REGISTERED AGENT OR DESIGNATED FILING AGENT OF A
30 COMMITTEE.