

**Andrea Gyger**

---

**From:** Mary Eberle [REDACTED]  
**Sent:** Friday, January 22, 2016 5:01 PM  
**To:** SoS Rulemaking  
**Cc:** Colorado Voter Group  
**Subject:** comments on preliminary draft rules  
**Attachments:** 20151215ElectionsNoticeRulemaking\_prelim draft rules\_2\_Mary Eberle.pdf

Dear Secretary Williams,

Please consider my comments in the attached file. I appreciate the opportunity to comment.

With best regards,

Mary C. Eberle

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Among others including many associated with watchers- largely aimed at officially endorsing watching the signature verification process - we have these new rules for CVRs and election night reports. By the way these rules represent a huge victory for those of us who understand that CVRs are a key to better integrity in elections. The CVR is a machine and human readable voter intent content holder that exists for the purpose of checking the relationship between the contents of the paper ballots and the election outcome or in some cases the results totals. The cast vote records are not proof of the contents of any ballot until checked against the paper by human observers. HB 12/15/15

## Preliminary Draft of Proposed Rules

### Office of the Colorado Secretary of State Election Rules 8 CCR 1505-1

December 15, 2015

Note from Mary Eberle: I agree with the above statement by Harvie Branscomb, posted to Colorado Voter Group on December 15, 2015.

I have deleted from this document those rules with which I agree and those rules with which I do not wish to offer any suggestions. My input is in bright blue.

I have not always echoed agreement with Harvie Branscomb in this document, but I do agree on all his points. As everyone at the SOS's office and all the clerks and their staff members know, Harvie has much experience watching and other involvement in many Colorado jurisdictions, and his wisdom thus gained is trustworthy and beneficial to election integrity.

Margit Johansson similarly has become a subject matter expert on UOCAVA laws, rules, and procedures. She has provided input on how rules can be improved for the benefit of election integrity, and I hope her suggestions will be taken in the next rule-making process before our General Election.

I constantly hope for improvements in chain-of-custody of mail ballots and ballot delivery to central counting from drop-off boxes and Voter Service and Polling Centers. A count by paired election judges needs to be made at the point of origin, then the ballot envelopes sealed in a container, transported to central counting location, and recounted by paired election judges. If the count does not match, there is a problem that needs addressing.

Similarly, drop-off boxes should be equipped with internal scanners and made so that ballots must be inserted one at a time so that the barcodes can be captured. As Harvie Branscomb has stated, "It is extremely desirable on behalf of election integrity to provide evidence for casting of the ballot at election judge-monitored drop boxes—a capability to scan the barcode of envelopes at the time of casting should be provided." And by the way, "casting" is something only a voter can do. A clerk cannot cast a voter's ballot.

I like new Rule 7.8.7 requiring judges to sign off on final resolution and ballot disposition concerning discrepant signatures. Similarly, I would like a rule that requires election staff, judges, and watchers to wear name tags containing first and last names and hung or pinned chest high. I rarely know who is doing the work with only first names on badges and badges hanging from waists.

#### 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.<sup>1</sup>

This is a preliminary draft of the proposed rules that may be revised before the January 14, 2016 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 **January 8, 2016**.<sup>2</sup>

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
<del>Strikethrough</del>	Deletions

[snip]

*Amendments to Rule 6:*

**Rule 6. Election Judges**

[snip]

*[Current Rule 6.1.2 is amended and recodified as New Rule 6.2.1]*

~~6.1.3~~6.1.2 The county clerk must reasonably attempt to exhaust the UPDATED list provided by the major parties before supplementing with ADDITIONAL MAJOR PARTY JUDGES OR minor party or unaffiliated judges, ~~or staff~~. *[From Mary Eberle: For best election integrity, it is critical to prevent paid staff or the county clerk and recorder to whom the paid staff owes their livelihood from serving as election judges. This change is much needed. Election judges must be independent of the clerk and their partisanship much be balanced.]*

[snip]

*[Current Rules 6.2, 6.3, and 6.4 are amended and recodified as New Rules 6.5, 6.6, and 6.7.]*

6.2 ASSIGNMENT OF ELECTION JUDGES

~~6.1.2~~6.2.1 The county clerk may assign AN election ~~judges to positions~~ JUDGE based upon appropriate skill level and interest, EXCEPT THAT EACH MAJOR POLITICAL PARTY MAY DESIGNATE WHICH ELECTION JUDGES FROM ITS LIST WILL BE APPOINTED AS SIGNATURE VERIFICATION JUDGES. EACH SIGNATURE VERIFICATION JUDGE DESIGNATED BY THE PARTY IS SUBJECT TO RULES 6.2.2 AND 6.8. *[From Mary Eberle: For best election integrity, this change is much needed. Election judges must be independent of the clerk and their partisanship much be balanced. Excellent training will overcome any deficits a party-appointed judge may have. The clerks can help by communicating with party members about the skill sets and time commitments needed.]*

Peg Perl of Colorado Ethics Watch posted a negative comment about Proposed Rule 6.2.1. I wrote to Ms. Perl about her objection to it and offered alternative reasoning, which I present below. She also commented in this section of her letter against Proposed Rule 8.13. Her text is in black **except where I added red for emphasis**; mine is in blue. Both have yellow highlight.]

**I. Election Judges and Watchers in the Signature Verification Process**

We are concerned that the combined effect of a number of proposed changes affecting the signature verification process during mail ballot processing will introduce a harmful level of partisanship into the county election administration process. Specifically, **Proposed Rule 6.2.1** would authorize political parties to dictate which election judges on a list provided to the clerk are assigned to signature verification in that county. In addition, **Proposed Rule 8.13** allows watchers to “escalate” at least 10 signatures per hour. *Together these proposed rules make the signature verification step in any county ballot processing facility a target for partisan mischief.*

**Mary Eberle: Regarding the red-colored sentence above: Alternatively,**

without these rules, the political parties via the partisan clerk and the clerk's appointees make the signature verification step in any county ballot processing facility a target for partisan mischief.

In fact, the entire election process is an opportunity for partisan mischief from the registration of voters to the certification by the canvass board. When the party of the clerk totally dominates, who can say that mischief has not occurred?

James Madison said, "Let ambition counter ambition." With regard to elections, this means that all parties must have representatives watching a transparent process to assure election integrity.

First, both these proposed rules move beyond the Secretary's authority by contradicting the relevant statutes. C.R.S. § 1-6-103(2) gives the power to the county clerk and recorder to select election judges from the lists of potential judges submitted by the political parties. It is the clerk's discretion to select and assign election judges to positions. **Mary Eberle: In CRS 1-6-103(2), the county party chair recommends and gives an order of preference for election judges for each precinct; in our current process, signature verification stands in place of people showing their ID at their precinct polling place. Thus the rule makes a parallel approach for the sake of election integrity. Proposed Rule 6.2.1** contravenes this statutory provision by stating that political parties pick specific individuals on the list given to the clerks who *will* be appointed to signature verification positions. This removes the clerks' discretion in selecting and assigning judges authorized by statute. **Mary Eberle: I respectfully disagree with the preceding statement. CRS 1-6-103(2) provides that the county clerk "shall select election judges from each precinct list in the county chairperson's ... order of preference."** It seems to me that the proposed rule is in concert with statute. Similarly, C.R.S. § 1-9-207 governs any challenges that may be made by watchers – or any elector – during all stages of mail ballot processing. That statute requires a signed "challenge form" and certain notice procedures to the voter. **Proposed Rule 8.13** creates a new level of involvement for watchers that only applies to the signature verification step of ballot processing (an "escalation") that is not governed by these statutory procedures. It is unclear the Secretary has authority to create this intermediary step or to authorize a certain number of escalations per watcher per hour. **Mary Eberle: Again, this rule is attempting to create a parallel method in our current process to the challenge method that was effective in the precinct polling place. In the polling place, if a challenge was lodged by a watcher, the election judge would require the potential voter to answer a series of questions. The comparable situation is that the watcher asks that a given signature be subjected to a series of visual inspections by multiple judges. The Secretary of State, as I understand the role, has the authority to interpret the statutes; CRS 1-1-107(c) provides that one of the Secretary's duties is to make uniform interpretations of "this code"—meaning the "Uniform Election Code of 1992." The Watcher Panel convened last summer to consider aspects of watching offered the maximum of 10 escalations per hour as a compromise between no escalations and infinite escalations. On the basis of watching signatures being accepted at the rate of 1 every 1.8 seconds, I personally feel that more than 10 would have been appropriate and would have been in line with statutory watcher rights, but I am willing to see how this compromise works out.**

In addition to the problem of statutory authority, the combined practical effect of these proposals escalates partisan conflict within the signature verification room of each county. If political parties can dictate their own hand-picked partisans as signature verification election judges and partisan watchers can interrupt and "escalate" at least 10 signatures an hour, it is likely this step can make mail ballot processing grind to a halt. That is not an acceptable result in a Presidential election year with the vast majority of votes expected to be cast via mail ballot. Colorado's election rules should be striving to minimize partisanship in election administration, not encouraging it. **Mary Eberle: Though I**

**disagree with the preceding sentiment, I can understand it. Would that we could all “just get along.” But the results of an election are too important to trust to courtesy or partisan election officials. There needs to be a way to verify the processes involved. Watchers are part of the road to verification. I hark back to James Madison: “Let ambition counter ambition.”**

We urge the Secretary not to adopt either of these proposed rules.

[From Mary Eberle: For best election integrity, I support the proposed rules discussed here under Proposed Rule 6.2.1.]

[snip]

6.3 THE COUNTY CLERK MAY NOT PERSONALLY CONDUCT SIGNATURE VERIFICATION. [From Mary Eberle: For best election integrity, it is critical to prevent the county clerk and recorder from serving as an election judge. This change is much needed.]

6.4 EXCEPT FOR UOCAVA BALLOTS AND BALLOTS RECEIVED FOR COUNTING AFTER ELECTION DAY: [From Mary Eberle: For best election integrity, I disagree with these two exceptions. Call the election judges back in to finish the election work.]

6.4.1 ABSENT WRITTEN CONSENT BY EACH MAJOR PARTY COUNTY CHAIR, A COUNTY WITH MORE THAN 5,000 ACTIVE ELECTORS BY THE 90<sup>TH</sup> DAY BEFORE ELECTION DAY MAY NOT USE REGULAR STAFF AS SIGNATURE VERIFICATION JUDGES; AND [From Mary Eberle: For best election integrity, I disagree with this policy as stated for Rule 6.1.2. It would be better to use unaffiliated voters as judges than staff.]

6.4.2 A COUNTY WITH FEWER THAN 5,001 ACTIVE ELECTORS BY THE 90<sup>TH</sup> DAY BEFORE ELECTION DAY AND A COUNTY WITH MORE THAN 5,000 ACTIVE ELECTORS BY THE 90<sup>TH</sup> DAY BEFORE ELECTION DAY THAT HAS OBTAINED WRITTEN CONSENT BY EACH MAJOR PARTY COUNTY CHAIR MAY USE REGULAR COUNTY STAFF THAT ARE SWORN IN AS ELECTION JUDGES TO CONDUCT SIGNATURE VERIFICATION. [From Mary Eberle: For best election integrity, I disagree with this policy as stated for Rule 6.1.2. It would be better to use unaffiliated voters as judges than staff.]

[snip]

*Amendments to Rule 7.1:*

## **Rule 7. Elections Conducted by the County Clerk and Recorder**

7.1 Mail ballot plans

[snip]

*Amended Rule 7.2.6, concerning ballot return envelope:*

7.2.6 Effective January 1, 2016, each mail ballot return envelope must include the following STATEMENT: “I am voluntarily giving my ballot to (name and address) for delivery on my behalf.” IF THE VOTER LEAVES THE FILLABLE PORTION OF THE STATEMENT BLANK, THE COUNTY CLERK MUST ACCEPT THE BALLOT FOR COUNTING IF IT IS OTHERWISE VALID. [From Mary Eberle: For best election integrity, this new requirement helps voters. In conjunction with Rule 7.2.5 that informs voters and ballot collectors of the legal restrictions on ballot collecting, the new, clarified rule 7.2.6 is the best we can do.

I also suggest that Rule 7.2.5 be amended to match the wording of 7.2.9(c). Thus “drop off” should be changed to “receive” in Rule 7.2.5.]

[snip]

*Amendments to Rule 7.5.1(c), concerning receipt and processing of ballots:*

- (c) Signage at each drop-off location must inform voters that it is a violation of law FOR ANY PERSON TO ~~drop-off~~ RECEIVE **more than ten ballots from more than ten voters** [←From Mary Eberle: The wording suggested in boldface is informative to voters as well as to ballot collectors.] FOR MAILING OR DELIVERY in any election, AND THAT ELECTIONEERING IS PROHIBITED WITHIN 100 FEET OF ANY DROP-BOX. [←From Mary Eberle: I think this prohibition is based on a reasonable extension of the spirit of the law. I wrote to Peg Perl about her objection to it and offered alternative reasoning, which I present below. Her text is in black; mine is in blue. Both have yellow highlight.]

## **II. Electioneering within 100 feet of a 24-hour Ballot Drop Box**

We have similar concerns about the lack of authority for the Secretary to enact **Proposed Changes to Rule 7.5.1(c)**. C.R.S. § 1-13-714 prohibits electioneering within any “polling location” or any public street or area within 100 feet of any building in which a “polling location” is located. “Polling location” is defined in C.R.S. § 1-1-104(27.5) as a polling place or voter service and polling center, and does not include unmanned drop-boxes for mail ballots.

Therefore, the electioneering prohibitions do not necessarily apply to any unmanned drop-boxes which are not located inside of, or within 100 feet of, a polling location. However, **Proposed Changes to Rule 7.5.1(c)** require signs stating that electioneering within 100 feet of any drop-box is prohibited. **Mary Eberle: Again, this rule comes under the Secretary’s authority to interpret statutes and the attempt to provide voter protections similar to those of the precinct polling place. A voter deserves protection from electioneering when about to cast the voted ballot into a drop box just as when he or she is about to cast the voted ballot into a ballot box. Peace of mind needs to surround the ballot-casting process.**

In addition, there is a practical concern raised by this proposed expansion of the electioneering prohibition to all drop-boxes. In a commendable effort to facilitate voter use, some counties have placed unmanned drop-boxes in public spaces that have no other connection to voting or elections. For example, Denver has such a drop-box at the I-25/Broadway light rail station. Creating a no-electioneering zone (with violations subject to criminal fines and jail time) for the entire period of early voting in such a public space raises First Amendment concerns.

Patrons of the light rail station wearing a candidate’s logo on a baseball hat could violate this rule while simply waiting for the train to work. This creates the potential for entrapment by political opponents who could stake out a drop-box in such a public area and capture images of that individual for an election complaint. **Mary Eberle: This concern is real, and perhaps more public deference for the drop-box area can be requested by public service announcements, etc. It is equally important that a voter not be dissuaded from dropping off a ballot by one or more persons vociferously supporting the opposite party. A voter could conceivably not vote his or her conscience because of electioneering.**



There is not the same concern surrounding electioneering at a polling location swaying a voter's decision in this situation because a free-standing drop-box in that type of location will only be used by a voter who has already completed their ballot and is merely placing it in the box. **Mary Eberle: This statement is an assumption. In the fast-paced world we inhabit, voters may mark the ballot while riding to the light-rail station and finish marking it by placing it on the box to use as a writing surface.** Any fears of harassment of voters dropping off ballots would be addressed by C.R.S. § 1-13-112 which prohibits “unduly influence[.]” on mail ballot voters to vote in a particular way or to refrain from dropping that ballot in the box. **Mary Eberle: In the absence of election judges and the safety of the precinct polling place, a sign advising voters that they are legally protected from electioneering near the drop box and advising electioneers to cease and desist is a small price to pay.**

We understand that the General Assembly will be considering legislation this year regarding the drop-box provisions. Given the lack of clarity in the statutory electioneering prohibition and the complexity of the issues surrounding prohibiting free speech in a public non-election related location, the legislative process is a better way to address the question of electioneering at drop-boxes. We urge the Secretary to reject these **Proposed Changes to Rule 7.5.1(c).** **Mary Eberle: This is a possible backup plan, but bringing the rule to the clerks' attention now is valuable because the legislative process is slow and the primary will be upon us before we know it. I think a “belt and suspenders” approach is valuable: promulgate the rule and ask for a change in statute. If the distance to be protected is changed, a “taped-over” distance can be applied to correct the sign as a temporary measure.**

[snip]

#### *Amendments to Rule 7.8:*

#### 7.8 Signature verification procedures

*[Current Rule 7.8.1 is amended and recodified as New Rule 7.8.3]*

*[Current Rule 7.8.2 is amended and recodified as New Rules 7.8.4, 7.8.5, and 7.8.6]*

7.8.1 A SINGLE ELECTION JUDGE MAY CONDUCT THE FIRST LEVEL OF SIGNATURE VERIFICATION. *[From Mary Eberle: For best election integrity, I disagree with this policy. It would be better to use paired election judges of differing affiliation for all signature verification work.]*

7.8.2 IF THE ELECTOR'S SIGNATURE APPEARS ANYWHERE ON THE BACK OF THE BALLOT RETURN ENVELOPE, THE ELECTION JUDGE MUST REVIEW THE SIGNATURE. *[From Mary Eberle: As Harvie mentioned, some counties have voters sign the front of the envelope. In any case, it would be best for the signature to not be on the side of the envelope that shows the voter's affiliation.]*

~~7.8.17.8.3 The election judges~~ AN ELECTION JUDGE CONDUCTING SIGNATURE VERIFICATION must compare the signature on the self-affirmation on each BALLOT return envelope with the ELECTOR'S signature in SCORE. ~~The election judges must research the signature further if there is:~~ IN ACCORDANCE WITH THE SECRETARY OF STATE'S SIGNATURE VERIFICATION GUIDE. *[From Mary Eberle: I believe that allowing a single election judge to do anything alone allows possible reductions in election integrity. Please rethink this*

particular rule. We can do better when accepting ballots into our elections. Also as Harvie mentioned, it would be good to state in rule, here, that the ballot return envelope must be unopened during signature verification. Furthermore, letting the public participate in the writing of the signature verification guide would be beneficial.]

[snip]

~~7.8.37.8.7~~ If, AFTER BIPARTISAN REVIEW, the election judges ~~dispute the signature they~~ DETERMINE THAT A SIGNATURE IS DISCREPANT, THE JUDGES must document the discrepancy and the research steps taken in a log. THAT: [~~←From Mary Eberle: Punctuation glitch: no period after “log” here. Please give the log a name for ease of review under CORA.~~]

- (A) ~~The election judges must identify~~ IDENTIFIES the elector ONLY BY NAME AND VOTER IDENTIFICATION NUMBER. ~~in the log using a unique tracking number. The tracking number may THAT DOES not contain the elector’s social security number, Colorado driver’s license number, or the identification number issued by the Department of Revenue.~~
- (B) ~~The log may~~ DOES not contain the elector’s signature.
- (C) ~~The election judges must note~~ NOTES the final resolution and ballot disposition ~~on the research log.~~
- (D) IDENTIFIES THE ELECTION JUDGES RESPONSIBLE FOR FINAL RESOLUTION AND BALLOT DISPOSITION. [~~←From Mary Eberle: This is excellent.~~]

7.8.8 THE COUNTY CLERK MUST PERIODICALLY AUDIT SIGNATURE VERIFICATION JUDGES. IF A JUDGE OR TEAM OF JUDGES HAS AN UNEXPLAINED, IRREGULAR ACCEPTANCE OR REJECTION RATE, THE COUNTY CLERK MUST RETRAIN OR REMOVE THAT JUDGE OR TEAM OF JUDGES FROM CONDUCTING SIGNATURE VERIFICATION. [~~←From Mary Eberle: This is excellent. However, the retraining should be emphasized instead of removal, and it should match the secretary’s training. It should not be “goal oriented” such as speed or type of decision.~~]

[snip]

~~7.8.47.8.12~~ If a county uses a signature capture device to compare a ballot envelope signature to a signature maintained in SCORE, the system may display only one voter’s signature at a time.

7.8.13 FOLLOWING THE ELECTION, THE COUNTY CLERK MUST REPORT TO THE SECRETARY OF STATE IN WRITING THE NUMBER OF BALLOT RETURN ENVELOPES WITH DISCREPANT SIGNATURES THAT THE CLERK FORWARDED TO THE DISTRICT ATTORNEY FOR INVESTIGATION.

[From Mary Eberle: There another rule in the December 1, 2015, version. I liked 7.8.14, as follows:]

7.8.14 IF THE COUNTY CLERK CONDUCTS SIGNATURE VERIFICATION BEFORE ELECTION DAY, THE CLERK MUST SEND SIGNATURE DISCREPANCY LETTERS TO ELECTORS WITH DISCREPANT SIGNATURES AS SOON AS PRACTICABLE.

*Current Rule 7.8.9 is amended and recodified as New Rule 7.9.1(d):*

7.9 Voter service and polling centers



7.9.1 The county clerk must designate and open the minimum number of voter service and polling centers. The centers must be open during reasonable business hours for the minimum number of days outlined in section 1-5-102.9, C.R.S., for a general election and 1-7.5-107(4.5), C.R.S., for all other elections.

*[Current Rules 7.9.1(a-c) are retained, unaltered]*

~~7.8.9(D)~~ Signage at each voter service and polling center must ~~indicate that~~ **STATE THE FOLLOWING: “It is a violation of law FOR ANY PERSON to drop off-RECEIVE **BALLOTS FROM** more than ten **ballots VOTERS** FOR DELIVERY in any election.”** [From Mary Eberle: I suggest the wording shown in boldface here.]

[snip]

7.12.1 PROVIDE ALL SERVICES OUTLINED IN 1-5-102.9, C.R.S.;

~~(a)~~7.12.2 Use WebSCORE to register voters; update existing voter registrations; issue and replace mail ballots; and issue, spoil, and replace in-person ballots; and

~~(b)~~7.12.3 Offer an in-person voter the opportunity to obtain a replacement mail ballot, **MAIL BALLOT ENVELOPE, AND SECURITY SLEEVE** rather than a provisional ballot in the event the voter service and polling center loses connectivity to WebSCORE but retains connectivity to SCORE. [From Mary Eberle: I suggest the wording shown in boldface here.]

[snip]

*Amendments to Rule 8:*

**Rule 8. Watchers** [From Mary Eberle: In general, I very much like the new approaches to watchers, as indicated in my notes to Peg Perl added above.]

8.1 ~~Watchers must affirm that they are qualified under sections 1-1-104(51), 1-7-105, 1-7-106, 1-7-107, and 1-7-108(2), C.R.S., as applicable. Watchers must take the oath described in section 1-7-108(1), C.R.S. and, upon first entering the polling location, surrender the certificate of appointment to the supervisor judge at each location where the watcher is designated to observe. A WATCHER MUST AFFIRM THAT HE OR SHE IS QUALIFIED TO ACT AS A WATCHER UNDER COLORADO LAW. THE COUNTY CLERK MUST ACCEPT THE APPOINTMENT OF ALL ELIGIBLE WATCHERS DULY CERTIFIED BY A POLITICAL PARTY, CANDIDATE, OR ISSUE COMMITTEE UNDER SECTIONS 1-1-104(51), 1-7-105, 1-7-106, OR 1-7-107, C.R.S. [From Mary Eberle: “Must accept” leaves too much wiggle room; for example, there is no time frame given. “May not refuse” as suggested by Harvie Branscomb is much better.]~~

*[Stricken portions of Current Rule 8.1 are amended and recodified in Rule 8.1, New Rule 8.5,*

*[Current Rule 8.11 is amended and recodified as the last sentence of Rule 8.1]*

*[Current Rules 8.1.1, 8.1.2, and 8.1.3 are amended and recodified as New Rules 8.4.1, 8.4.2, and 8.4.3]*

8.1.1 THE REGISTERED AGENT OR DESIGNATED FILING AGENT FOR AN ISSUE COMMITTEE IS THE AUTHORIZED REPRESENTATIVE TO APPOINT WATCHERS FOR THE ISSUE COMMITTEE. [From Mary Eberle: too restrictive. Other committee members should also be able to sign. Please

make addition.]

- 8.1.2 THE COUNTY CLERK MUST CONFIRM A WATCHER'S ELIGIBILITY BEFORE ALLOWING THE WATCHER TO PERFORM HIS OR HER DUTIES. IF THE COUNTY CLERK IS UNABLE TO CONFIRM THE WATCHER'S ELIGIBILITY, HE OR SHE MUST PROMPTLY INFORM THE APPOINTING ENTITY. [From Mary Eberle: Again, Harvie's wording is much better.]
- 8.1.3 A WATCHER MAY PROVIDE HIS OR HER CURRENT REGISTRATION RECORD WITH THE CERTIFICATE OF APPOINTMENT TO SATISFY THE ELIGIBILITY-CONFIRMATION REQUIREMENT. [From Mary Eberle: Excellent—better for everyone.]
- 8.1.4 A WATCHER FOR AN ISSUE COMMITTEE MAY PROVIDE A TRACER PRINT-OUT OF THE ISSUE COMMITTEE REGISTRATION WITH THE CERTIFICATE OF APPOINTMENT TO SHOW THE PERSON APPOINTING THE WATCHER ON BEHALF OF THE COMMITTEE IS EITHER THE REGISTERED AGENT OR DESIGNATED FILING AGENT AS SHOWN IN TRACER AND TO SHOW THE COMMITTEE'S ELIGIBILITY TO APPOINT WATCHERS. [From Mary Eberle: Excellent—better for everyone.]
- 8.1.5 A WATCHER MUST COMPLETE A TRAINING PROVIDED BY OR APPROVED BY THE SECRETARY OF STATE BEFORE OBSERVING ELECTION ACTIVITIES WHERE CONFIDENTIAL OR PERSONALLY IDENTIFIABLE INFORMATION MAY BE WITHIN VIEW. [From Mary Eberle: Excellent—better for everyone.]
- ~~8.14~~ ~~8.2~~ ~~Watchers may be appointed~~ INTERESTED PARTIES MAY APPOINT AND CERTIFY WATCHERS to observe recall elections held under Article 12, Title I, C.R.S., ~~and must be certified~~ in accordance with sections 1-7-106 and 1-7-107, C.R.S.
- ~~8.28.3~~ A political party attorney may not be in the polling location unless he or she is a duly appointed watcher or is casting his or her ballot.
- ~~8.3~~ ~~The supervisor judge must provide to each watcher on request a list, log, check in card, or other similar information of voters appearing in the polling location to vote. The watcher may not remove the information or documents from the polling location. A watcher may maintain a list of eligible electors who have voted by using only information provided by the supervisor judge or a list of electors previously maintained by the watcher. [Section 1-7-108(3), C.R.S.]~~ [From Mary Eberle: I would have liked to see this rule modified to allow watchers to receive lists of voters whose signatures were about to be checked in a given batch. That would help with watching signatures being displayed on computer monitors.]
- ~~8.138.4~~ ~~Watchers~~ A WATCHER may be certified to observe more than one ~~polling~~ location [From Mary Eberle: Please define "location" to include separate rooms or pieces of equipment.] IN WHICH THE COUNTY IS CONDUCTING ELECTION ACTIVITIES. ~~See section 1-7-106, C.R.S.~~ A WATCHER MUST PRESENT A CERTIFICATE OF APPOINTMENT AT EACH LOCATION WHERE THE WATCHER IS DESIGNATED TO OBSERVE, UNLESS THE COUNTY CLERK HAS ESTABLISHED AN ALTERNATE PROCESS.
- ~~8.13.1~~ 8.4.1 If a watcher leaves a ~~polling~~ location but returns to the same location, another certificate of appointment is not necessary.
- ~~8.13.2~~ 8.4.2 A new watcher who is replacing an original watcher must provide HIS OR HER ~~an original~~ certificate of appointment for that polling location.
- ~~8.13.3~~ 8.4.3 A certificate of appointment as a watcher is not transferable to another individual.

8.5 A WATCHER MUST TAKE THE OATH DESCRIBED IN SECTION 1-7-108(1), C.R.S.

*[New Rule 8.5 is a recodified portion of current Rule 8.1]*

8.128.6 Removal of Watchers.

~~8.12.18.6.1~~ 8.6.1 A county clerk or his or her designee may remove a watcher upon finding that the watcher:

- (a) ~~Commits or encourages~~ COMMITTED OR ENCOURAGED fraud in connection with his or her duties;
- (b) ~~Violates~~ VIOLATED any of the limitations outlined in Rule ~~8.6~~ 8.15;
- (c) ~~Violates~~ VIOLATED his or her oath; or
- (d) ~~Is~~ WAS abusive or threatening toward election officials or voters.

~~8.12.28.6.2~~ 8.6.2 Upon removal of a watcher, the county clerk must inform the political party, candidate, or committee who appointed the watcher.

~~8.12.38.6.3~~ 8.6.3 A removed watcher may be replaced by an alternate watcher duly certified in accordance with sections 1-7-105, 1-7-106, or 1-7-107, C.R.S.

8.7 THE COUNTY CLERK MUST SUBMIT A WATCHER ACCOMMODATION PLAN TO THE SECRETARY OF STATE BY EMAIL USING THE APPROVED FORM NO LATER THAN 90 DAYS BEFORE AN ELECTION. *[From Mary Eberle: Excellent—better for everyone.]*

8.7.1 WATCHERS MAY BE PRESENT AT EACH STAGE OF THE CONDUCT OF THE ELECTION, WHEN ELECTORS ARE VOTING OR WHEN ELECTION JUDGES ARE PRESENT AND PERFORMING ELECTION ACTIVITIES. *[From Mary Eberle: Restricting this rule to electors voting OR election judges working is too limiting. Staff members do many things that need watching. Please revise this rule to take that into account.]*

8.7.2 THE COUNTY CLERK MUST PROVIDE, AND IDENTIFY IN SOME MANNER, AT LEAST ONE PRIMARY CONTACT FOR WATCHERS AT EACH LOCATION WHERE ELECTION ACTIVITIES ARE PERFORMED WHEN WATCHERS ARE PRESENT.

~~8.4.1~~ 8.7.3 ~~The~~ AT VOTER SERVICE AND POLLING CENTERS, THE designated election official must position the voting equipment, voting booths, and the ballot box so that they are in plain view of the election officials and watchers.

~~8.4.2(b)~~ 8.7.4 Watchers must remain outside the immediate voting area while an elector is voting. THE SIX-FOOT LIMIT IN RULE 1.1.26 APPLIES ONLY TO VOTING.

8.8 THE MINIMUM NUMBER OF WATCHERS THE COUNTY CLERK MUST ACCOMMODATE FOR EACH APPOINTING ENTITY IS AS FOLLOWS:

8.8.1 IN A CENTRAL COUNT FACILITY, ONE WATCHER PER CENTRAL COUNT PROCESS, BUT IN ANY CASE NO LESS THAN ONE WATCHER FOR EVERY TEN ELECTION JUDGES. *[From Mary Eberle: This may worry the clerks, but watchers cannot adequately watch 10 election judges, so I think the limitation is unfair and likely illegal.]*

8.8.2 DURING SIGNATURE VERIFICATION, ONE WATCHER FOR EVERY FOUR ELECTION JUDGES. *[From Mary Eberle: Same comment—one cannot watch four.]*

8.8.3 ~~AT EACH VOTER SERVICE AND POLLING CENTER, ONE WATCHER, OR~~ ONE WATCHER PER VOTER SERVICE AND POLLING CENTER PROCESS. [From Mary Eberle: As Harvie says, delete part marked out here for better sense.]

~~8.4.2(e)~~ 8.8.4 The number of watchers permitted in any room at one time is subject to SPACE LIMITATIONS AND local safety codes. [From Mary Eberle: However, there should be a corresponding rule that says that clerks must provide plenty of space for watchers; this approach has not been followed in Boulder County. Instead, the county provides copious space for stored machines, and almost none for watchers. To restrict watcher access, Boulder County even restricts election judge space. Wherever such steps have been taken, a rule should require changes.]

8.9 A WATCHER MAY OBSERVE ELECTION ACTIVITIES AT A GROUP RESIDENTIAL FACILITY, AS DEFINED IN SECTION 1-1-104(18.5), C.R.S., ONLY IF THE WATCHER CONTACTS THE COUNTY CLERK BEFOREHAND TO ARRANGE THE TIME AND LOCATION. WHILE AT A GROUP RESIDENTIAL FACILITY, A WATCHER MUST MAINTAIN AN ADEQUATE DISTANCE FROM THE ELECTOR SO THE ELECTOR MAY MARK OR RECEIVE ASSISTANCE MARKING HIS OR HER BALLOT IN PRIVATE. [From Mary Eberle: This rules makes for a good practice.]

8.4.8.10 Watchers are subject to the provisions of section 1-5-503, C.R.S.

~~8.4.3~~ 8.10.1 A watcher may witness and verify activities described in Title 1, C.R.S., ~~that are outside the immediate voting area, including ballot processing and counting.~~ If election officials are conducting ~~elections~~ ELECTION activities in separate rooms or areas of a building or buildings, the county clerk must allow additional watchers to observe and verify each separate activity in each room or area in the building or buildings.

~~8.4.2~~ 8.10.2 Watchers must be permitted access that would allow them to attest to the accuracy of election-related activities, ~~including recall elections.~~ This includes personal visual access at a reasonable proximity to read documents, writings or electronic screens and reasonable proximity to hear election-related discussions between election judges and electors. ~~Witness and verify means to personally observe actions of election officials in each step of the conduct of an election.~~ [From Mary Eberle: Include staff members, etc—not just judges and electors. And this rule seems to allow watchers to watch (effectively watch—not from many feet away) the reception of UOCAVA ballots via email or fax. Please address this issue.]

*[The last sentence of Current Rule 8.4.2 is recodified as New Rule 8.10.2(b)]*

(a) ~~Election-related activities include all activities in a polling location and ballot processing and counting, such as:~~

~~8.4.2(e)~~ (1) ~~Watchers may be present at each stage of the conduct of the election, including the setup~~ Setup and breakdown of ~~polling locations and ballot receipt and processing~~ VOTER SERVICE AND POLLING CENTERS.

~~(1)~~ (2) ~~Observing voter~~ VOTER check-in and registration activities.

(3) BALLOT RECEIPT AND PROCESSING.

*[A portion of Current Rule 8.4.2(c) is recodified as this New Rule 8.10.2(a)(3)]*

- ~~(2)(4) Witnessing the signature—SIGNATURE verification of mail ballot envelopes at close enough distance to verify or challenge the signature.~~
- ~~(3)(5) Witnessing ballot—BALLOT duplication to verify accuracy according to voter intent.~~

~~8.5.1(6) Observing the BALLOT tabulation, process or display screens of voting equipment at any time that an elector is not in the immediate voting area for purposes of voting or casting a ballot. [From Mary Eberle: This item should either be “Ballot scanning and tabulation” or just “Ballot scanning” and an additional item should be “Ballot tabulation” because these two processes are often—and should always be—separated.]~~

~~(4)~~

~~(5) Witnessing hand count tabulations as they are being conducted.~~

~~(6)(7) Observing all documents and materials during the LAT—THE LOGIC AND ACCURACY TEST and post-election audit.~~

*[Portions of Current Rule 8.4.2(d) are amended and recodified as New Rules 8.10.2(a)(8) and (9):]*

(8) PROVISIONAL BALLOT PROCESSING.

(9) UOCAVA BALLOT PROCESSING.

*[Current Rule 8.4.4 is amended and recodified as New Rule 8.10.2(a)(10)]*

(10) CANVASS.

*[Current Rule 10.11 is amended and recodified as New Rule 8.10.2(a)(11)]*

(11) RECOUNT.

*[The last sentence of Current Rule 8.4.2 is recodified as New Rule 8.10.2(b)]*

- (B) WITNESS AND VERIFY MEANS TO PERSONALLY OBSERVE ACTIONS OF ELECTION OFFICIALS IN EACH STEP OF THE CONDUCT OF AN ELECTION **AT A PROXIMITY SUFFICIENT TO BE ABLE TO TESTIFY TO THE PROCESS'S RESULTS.** [From Mary Eberle: Need to add something tangible.]

*[Current Rule 8.4.2(c) is recodified as New Rules 8.10.2(a)(1) and 8.10.2(a)(3)]*

- ~~(d) Watchers may be present during provisional ballot processing, signature verification, and UOCAVA ballot processing, but may not have access to confidential voter information.~~

*[A portion of Current Rule 8.4.2(d) is recodified as New Rule 8.10.2(a)(8)]*

*[Current Rule 8.4.2(e) is recodified as New Rule 8.8.4]*

8.10-8.11 ~~To assist Watchers in performing their tasks at a polling location, the~~ THE county clerk must provide a list of all voters who have ~~voted or returned~~ CAST a ballot in the county. ~~The~~ IF REQUESTED, THE county clerk must make the list available at least daily at the clerk's main office or provide the list electronically.

~~8.4.4~~ Watchers appointed under this Rule 8 may observe the canvass board while it performs its duties.

*[A portion of Current Rule 8.4.4 is recodified as New Rule 8.10.2(a)(10)]*

~~8.4.58.12~~ A watcher may track the names of electors who have cast ballots, challenge electors under section 1-9-203, C.R.S., and Rule 9, and submit written complaints in accordance with section 1-1.5-105, C.R.S., and Rule 13. ~~A watcher may observe all activities in a polling location and the processing and counting of ballots. A watcher may be present at each stage of the election including the receiving and bundling of the ballots.~~

8.13 UNLESS THE COUNTY CLERK AUTHORIZES A GREATER NUMBER, DURING INITIAL SIGNATURE REVIEW BY AN ELECTION JUDGE, A WATCHER MAY ESCALATE NO MORE THAN TEN BALLOT ENVELOPE SIGNATURES IN AN HOUR FOR A SECOND REVIEW BY A BIPARTISAN TEAM OF ELECTION JUDGES. *[From Mary Eberle: "By election judges" would be better if you can figure out a way to require paired judges for better election integrity. This process seems to be a good approach. It is quiet, and yet will be effective in getting the particular judges' attention in a timely way. I would like more than ten possibilities, but I am willing to try the experiment. I have seen wrongly accepted signatures "get away" while the watcher's judge was busy or distracted.]*

~~8.68.14~~ In addition to the oath required by section 1-7-108(1), C.R.S., a watcher must affirm that he or she will not:

~~8.6.18.14.1~~ Attempt to determine how any elector voted ~~or review confidential voter information;~~

~~8.6.28.14.2~~ Disclose or record any confidential voter information that he or she may observe; or

~~8.6.38.14.3~~ Disclose any results before the polls are closed.

~~8.78.15~~ A watcher may not:

~~8.7.18.15.1~~ Personally interrupt or disrupt the processing, verification, and counting of any ballots or any other stage of the election. *[From Mary Eberle: How does this rule affect watching signature verification? And I have been present when election judges went into a tizzy over something simple that my interruption of them allowed to be quickly straightened out. I don't think it helps the process to make this sort of rule so adversarial.]*

~~8.7.28.15.2~~ Write down any ballot numbers or any other PERSONALLY identifying information about the electors. *[From Mary Eberle: After "ballot numbers," add "placed on ballots before casting" so that Dominion's scanner-added numbers can be usefully employed. However, this restriction is not watcher friendly. Please delete entirely. The watcher needs a way to inform the supervisor judge of the specific problem. The ballot number should not be traceable back to the voter in any case. Even the voter's name or voter ID is personally identifying. What is the watcher to do under this rule as stated? Please revise or remove.]*

~~8.7.38.15.3~~ Touch or handle the official signature cards, ballots, mail ballot envelopes, provisional ballot envelopes, voting or counting machines, or machine components.

~~8.7.48.15.4~~ Interfere with the orderly conduct of any election process, including issuance of ballots, receiving of ballots, and voting or counting of ballots.

~~8.7.58.15.5~~ Interact with election judges ~~except for the supervisor judge~~ OTHER THAN A



DESIGNATED WATCHER CONTACT, EXCEPT AS PERMITTED IN RULE 8.13.

~~8.7.68.~~15.6 Use a mobile phone or other electronic device to make or receive a call in any polling location or other place election activities are conducted.

~~8.7.78.~~15.7 Use any electronic device to take or record pictures, video, or audio in any polling location or other place election activities are conducted. [From Mary Eberle: This rule is unnecessarily restrictive; one should be able to record in any way if the election official permits it for a given instance.]

~~8.7.8~~

~~8.7.98.~~15.8 Attempt to determine how any elector voted.

~~8.7.10~~ 8.15.9 Disclose or record any confidential voter information as defined in section 24-72-204(8), C.R.S., that he or she may observe.

~~8.7.118.~~15.10 Disclose any results before the polls have closed.

8.16 IF A WATCHER DISPUTES A DECISION MADE BY AN ELECTION JUDGE OR ALLEGES A DISCREPANCY, THE WATCHER MUST ALERT THE DESIGNATED WATCHER CONTACT.

~~8.78.~~17 The Secretary of State must approve Official Observers appointed by the federal government. Official observers are subject to Colorado law and these Rules ~~as they apply to Watchers~~. But an Official Observer is not required to be an eligible elector in the jurisdiction. This Rule does not apply to Official Observers appointed by the United States Department of Justice. Official Observers appointed by the Secretary of State are subject to the rules and regulations as prescribed by the Secretary of State. Official Observers must obtain a letter of authority from the Secretary of State and surrender the letter to the county clerk.

[snip]

#### *Amendments to Rule 10.5.2:*

10.5.2 A COUNTY MUST SUBMIT THE STATE PORTION OF THE ABSTRACT AND THE ENR UPLOAD REQUIRED BY RULE 11.10.5 TO THE SECRETARY OF STATE IN THE FORMAT APPROVED BY THE SECRETARY OF STATE. ~~The state portion of the abstract, which the county must use the format approved by the Secretary of State and transmit to the Secretary of State, must include:~~

~~(a) — The total number of active registered electors on election day;~~

~~(b) — The total number of registered electors (active and inactive) on election day;~~

(c) (A) The summary of votes cast for each state race and each ballot question or issue; [←From Mary Eberle: Harvie Branscomb suggests “counted in” instead of “cast for” and I agree with him. Also it would be good to add “question” after “issue.” Should “state” appear before “ballot” here? I.e., I think this rule would read better as follows: “The summary of votes counted in each state race and each state ballot question or issue question;” ....]

[snip]

in the test under Rule ~~10.12~~-10.11, the recount must be conducted in the same manner as the ballots were counted in the election except as outlined in this Rule. If there are unresolvable discrepancies in the test, the recount must be conducted as a hand count under Rule ~~10.13.5~~-10.12.5. [~~←From Mary Eberle: Harvie Branscomb states, “This rule and the underlying statute are not well advised and not consistent with best election integrity. This rule is not likely to provide sufficient accuracy for purposes of overcoming the errors inherent in the means of conducting the original count. The rule causes mistakes made during the original election count to be replicated and consequent errors in results reconfirmed.”~~ This rule actually is the first one that I became aware of long ago that made absolutely no sense to me then and my opinion has not changed. Recounts should be hand counts or use something like Clear Ballot to look at the actual voter marks. Doing the same thing over again and expecting that there is a possibility of a different result is the definition of crazy—right?]

[snip]

*Amendments to Rule 21.4.5(f) concerning voting system functional requirements:*

- (f) The election management system must ensure that an election setup RECORD may not be changed once ballots are printed and/or election media devices are downloaded without proper authorization and acknowledgement by the application administrative account. The application and database audit transaction logs must accurately reflect the name of the system operator making the change(s), AND the date and time of the change(s), ~~and~~. THE APPLICATION AND DATABASE AUDIT TRANSACTION LOGS MUST SUPPORT USER’S ABILITY TO EXAMINE the “old” and “new” values of the change(s). [~~←From Mary Eberle: Please adhere to Harvie Branscomb’s recommendation. We do not need any “black box” effects in our new election system(s).]~~

[snip]

*New Rules 21.4.14 and 21.4.15:* [~~←From Mary Eberle: Please adhere to Harvie Branscomb’s recommendations. They have been laboriously created after many years of election experience and election data work.]~~

[snip]

[end of comments by Mary Eberle]