



Notice of Temporary & Permanent Adoption

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

August 2, 2019

I. Adopted Rule Amendments

As authorized by the Colorado Constitution¹, Colorado campaign finance law², and the State Administrative Procedure Act³, the Colorado Secretary of State gives notice that the following amendments to rules concerning campaign and political finance⁴ are adopted on a temporary and permanent basis.

The rules were considered at the July 24, 2019 rulemaking hearing in accordance with the State Administrative Procedure Act⁵.

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 and publication notes

Amendments to 8 CCR 1505-6 follow:

[Amendments to Rule 1.4]

- 1.4 "Contribution" has the same meaning as set forth in Colo. Const. article XXVIII, section 2(5)(b) 2(5)(A), and section 1-45-103(6), C.R.S.
- 1.4.1 A contribution does not include an endorsement of a candidate or an issue by any person, or include interest earned in an interest-bearing bank account, dividend income from invested committee funds, earned income from commercially reasonable transactions, or transfers of money within a political party.

¹ Article XXVIII, Section 9(1)(b) of the Colorado Constitution.

² Article 45 of Title 1, C.R.S. (2018).

³ Section 24-4-103(3)(a), C.R.S. (2018).

⁴ 8 CCR 1505-6.

⁵ Section 24-4-103(3)(a), C.R.S. (2018).

1.4.2 Volunteer services

- (a) Time-based services volunteered by an individual are not considered a contribution if the individual receives no direct or indirect compensation for the time volunteered.
- (b) If an individual volunteers only a portion of his or her time-based services, the volunteered portion is not considered a contribution.
- (c) Any unpaid services that create a thing of value are not considered a contribution. If volunteer services yield a thing of value, "contribution" only includes the reasonable value of the materials involved, unless the value is de minimis.

1.4.3 "Contribution in support of the candidacy" as outlined in Colo. Const. Article XXVIII, Section 2(2), includes all contributions given directly to, or EXPENDITURES OR SPENDING coordinated with, a candidate for a specific public office, including those to a person who maintains a candidate committee after an election cycle.

[Amendments to Rules 1.6, 1.7, and 1.8]

1.6 "Frequent filing schedule" means:

- 1.6.1 For state and school district director candidates and committees, the filing schedule outlined in sections 1-45-108 (2)(a)(I)(B), (2)(a)(I)(C), (2)(a)(I)(D), and (2)(a)(I)(E), C.R.S.;
- 1.6.2 For a county, municipal, and special district candidate or committee, the filing schedule outlined in section 1-45-108 (2)(a)(II), C.R.S.; and
- 1.6.3 For political committees, small donor committees, independent expenditure committees, and political organizations participating in a regular biennial school election, the filing schedule outlined in sections 1-45-108(2)(a)(I)(C), (2)(a)(I)(D), and (2)(a)(I)(E), C.R.S.
- 1.6.4 FOR ISSUE COMMITTEES SUPPORTING OR OPPOSING A BALLOT MEASURE THAT ATTEMPTS ACCESS TO OR WILL APPEAR ON AN UPCOMING BALLOT, THE FILING SCHEDULE OUTLINED IN SECTIONS 1-45-108(1)(A)(I)(B), 1-45-108(2)(A)(I)(C), (2)(A)(I)(D), AND (2)(A)(I)(E), C.R.S.

1.7 "Independent expenditure committee" has the same meaning as set forth in section 1-45-103(11.5), C.R.S.

[The remainder of Current Rule 1.7, is not repealed; this content is recodified under New Rule 5.2.]

1.8 "Infrequent filing schedule" means:

- 1.8.1 For a state and school district director candidate or committee, the quarterly filing schedule outlined in section 1-45-108(2)(a)(I)(A), C.R.S.; and
- 1.8.2 For a county, municipal, or special district candidate or committee, the annual filing schedule outlined in section 1-45-108(2)(a)(II), C.R.S.
- 1.8.3 FOR ISSUE COMMITTEES SUPPORTING OR OPPOSING A BALLOT MEASURE THAT WILL NOT APPEAR ON AN UPCOMING BALLOT, THE FILING SCHEDULE OUTLINED IN SECTIONS 1-45-108(2)(A)(I)(A) AND (2)(A)(II) C.R.S.

[New Rule 1.23]

1.23 "TRANSFER" AS USED IN SECTION 1-45-107.5(14), C.R.S., MEANS THE DISPOSITION OF OR PARTING WITH FUNDS BY CHECK, ELECTRONIC TRANSFER, OR OTHER MEANS. IT DOES NOT INCLUDE PAYMENT TO A VENDOR OR PAYMENT OF A CONTRACT FOR GOODS OR SERVICES.

[Amendments to Rule 2.2.3 concerning Candidate committees]

2.2.3 A candidate committee may accept the contribution limit specified in Colo. Const. Article XXVIII, Section 3(1) AND SECTION 1-45-103.7(1.5), C.R.S. for the primary election even if the primary election is canceled under section 1-4-104.5(1), C.R.S. or the candidate is running unopposed.

[Amendments to Rule 2.2.4(b)(1) concerning managing unexpended campaign contributions]

(b) Candidates seeking re-election to the same office

(1) A candidate committee may retain contributions to use in a subsequent election cycle for the same public office, in an amount not to exceed the political party contribution limit in Colo. Const. Article XXVIII, Section 3(3) AND SECTION 1-45-103.7(1.5)(A)(III), C.R.S. (as adjusted by Rule 40-16 10.17).

[Amendments to Rule 2.4.3 concerning personal financial disclosures]

2.4.3 If a candidate withdraws his or her candidacy by submitting appropriate documentation before filing the disclosure statement required in section 1-45-110(2)(a), C.R.S., the candidate need not file a disclosure statement. Any fines that the candidate accrued before withdrawing may be waived by the Secretary of State-APPROPRIATE FILING OFFICE.

[Amendments to Rule 5]

Rule 5. Independent Expenditures and Independent Expenditure Committees

[Current Rule 5.1 is amended and recodified as New Rule 22]

5-2-5.1 An independent expenditure committee must report donations over twenty dollars given for the purpose of making an independent expenditure.

5-2-4-5.1.1 An independent expenditure committee must itemize donations of \$250 or more per year given for the purpose of making an independent expenditure and include the name and address of the donor.

5-2-2-5.1.2 If the committee is unable to gather the information required by section 1-45-107.5(4)(b)(II), or (III), C.R.S., within 30 days after receipt of the donation, the committee must return the donation to the donor no later than the 31st day after receipt.

5-2-3-5.1.3 An independent expenditure committee must itemize independent expenditures made in an aggregate amount of \$1,000 in any one calendar year and include the information required by section 1-45-107.5, C.R.S.

[A portion of Current Rule 1.7 is recodified under New Rule 5.2 as follows:]

5.2 An independent expenditure committee may not coordinate its campaign-related expenditures with a candidate, candidate committee, or political party. Nothing in these rules limits joint fundraising efforts or the transfer of funds raised through joint fundraising efforts by an independent expenditure committee or other committee as long as each committee pays its allocated share of joint fundraising expenses and no committee participating in the joint

fundraising activity receives more than its allocated share of funds raised in accordance with applicable contribution limits.

[Amendments to Rule 7.1.1 concerning Federal PACs]

7.1.1 A Federal PAC that qualifies as a political committee under Colo. Const. Article XXVIII, section 2(12), must register with the Secretary of State's office as a state political committee and follow all requirements for state political committees; EXCEPT THAT A FEDERAL PAC IS NOT REQUIRED TO FORM A SEPARATE BANK ACCOUNT FOR THE STATE POLITICAL COMMITTEE SO LONG AS THE FUNDS USED FOR THE STATE POLITICAL COMMITTEE CAN BE SEPARATELY IDENTIFIED. Nothing in this rule requires a Federal PAC to observe Colorado requirements for contributions, expenditures, or other campaign finance activity for federal elections or elections in states other than Colorado.

[Amendments to Rule 9.1 concerning registered agents]

9.1 The registered agent or a designated filing agent for any committee must sign the committee's registration form and all disclosure reports. For registration forms and reports filed by a candidate or candidate committee, the candidate must sign. ~~[Sections 1-45-108(3), (5), and (6), C.R.S.]~~ FOR PURPOSES OF THIS REQUIREMENT, AN ELECTRONIC LOGIN WILL FULFILL THE SIGNATURE REQUIREMENT.

[Amendments to Rule 10.1.3 concerning unexpended campaign contributions]

10.1.3 Unexpended contributions may not be used for personal purposes EXCEPT, ON OR AFTER SEPTEMBER 1, 2019, TO REIMBURSE A CANDIDATE FOR REASONABLE AND NECESSARY EXPENSES FOR THE CARE OF A CHILD OR A DEPENDENT AS ALLOWED UNDER SECTION 1-45-103.7(6.5), C.R.S.

[Amendments to Rule 10.2.3 (no changes to Rules 10.2.1 and 10.2.2)]

10.2 Except for independent expenditure committees and small-scale issue committees, committees must report contributions as follows:

10.2.3 Disclosure of occupation and employer

- (a) ~~The requirement to disclose the A CONTRIBUTOR'S OR DONOR'S occupation and employer of a contributor in Colo. Const. Article XXVIII, Section 7 and section 1-45-108, C.R.S., applies ONLY to any one-time contribution OR DONATION of \$100 or more, and not to THE PERSON'S aggregate contributions totaling \$100 or more CONTRIBUTIONS OR DONATIONS.~~
- (b) Except for a committee exercising its right to cure under section ~~1-45-109(4)(c)-1-45-111.7(4), C.R.S.,~~ if a committee does not report REQUIRED occupation and employer information ~~for a contribution of \$100 or more,~~ and the committee is unable to gather the information within 30 days after receipt of the contribution, the committee must return the contribution to the contributor no later than the 31st day after receipt. ~~[Colo. Const. Article XXVIII, Section 7]~~

[Amendments to Rules 10.4.1 through 10.4.3 (no changes to Rules 10.4.4 through 10.4.6)]

10.4 A contribution or donation is received on the date that it is accepted by the committee.

10.4.1 A contribution or donation by check OR MONEY ORDER is accepted, at the latest, on the date that the contribution or donation is deposited into the committee account. If a committee receives a donation by check OR MONEY ORDER at least five business days

before the end of a reporting period, the committee must deposit the check OR MONEY ORDER or return to the contributor before that reporting period closes.

10.4.2 A cash contribution or donation is accepted the date the cash is in the committee's possession.

10.4.3 A contribution or donation made by credit card, PayPal, or other payment intermediary service is accepted on the date the contributor or donor authorizes the payment, OR IF UNKNOWN, ON THE DATE THE PAYMENT INTERMEDIARY SERVICE ELECTRONICALLY TRANSFERS THE CONTRIBUTION OR DONATION.

[Amendments to Rules 10.5 and 10.6]

10.5 A committee must maintain all financial records for 180 days after any general election cycle in which the committee received contributions. If a complaint is filed against the committee, the committee must maintain financial records until final disposition of the complaint and any consequent litigation. The committee must maintain COVERED ORGANIZATION AND LLC affirmations for one year after the end of the election cycle. [~~Colo. Const. Article XXVIII, Section 3(9)~~]

10.6 If a committee receives a contribution in excess of the contribution limit, the committee must return the excess to the contributor within ten days of receipt or within three days after receiving notification from the ~~Secretary of State~~ APPROPRIATE FILING OFFICE, whichever is sooner, and will not be held liable.

[Amendments to Rule 10.16]

10.16 Disclosure of contributions by limited liability companies (LLCs) [Section 1-45-103.7(5), (6), (7), and (8), C.R.S.]

~~10.16.1~~ The written affirmation provided by an LLC in accordance with section 1-45-103.7, C.R.S., must include the names and addresses of all LLC members and describe how the contribution is to be attributed to the LLC members.

~~10.16.2~~ 10.16.1 The affirmation must include the occupation and employer of any member attributed with contributing \$100 or more.

~~10.16.3~~ 10.16.2 The affirmation provided by an LLC under section 1-45-103.7, C.R.S., must include the name and address of each LLC member, the amount attributed to each member, and, if more than \$100 is attributed to a member, the occupation and employer of that member. When reporting the contribution, the committee must select the "LLC" contributor type and include the name and address of the LLC, the name and address of each member, and the amount attributed to each member. Attribution is determined by the pro-rata share of ownership.

~~10.16.4~~ 10.16.3 A committee must return any contribution received from an LLC that does not comply with the affirmation requirements in section 1-45-103.7, C.R.S., and this rule to the contributor within 30 days.

~~10.16.5~~ 10.16.4 A committee must itemize each contribution received from an LLC on disclosure reports, regardless of the dollar amount.

~~10.16.6~~ 10.16.5 Any contribution from an LLC counts against contribution limits for both the individual members to whom the contribution is attributed and the LLC itself. [Colo. Const. Article XXVIII, Section 3(9)]. An LLC may not make a contribution that exceeds the limit for a "person" established in Colo. Const. Article XXVIII, Section 3, as adjusted by Rule 10, regardless of the amount attributed to each individual member.

[Proposed permanent adoption of temporary Rule 10.17.1 (initially adopted March 3, 2019 and readopted on June 28, 2019 to extend the rule until a permanent rule is adopted and effective) including additional amendments concerning county candidates]

10.17 Current adjusted limits

10.17.1 Adjusted limits made in the first quarter of 2019 and effective until the next adjustment is made in 2023:

- (a) There is no adjustment to the contribution limits on individual donations to small donor committees outlined in Article XXVIII, Section 2(14).
- (b) The aggregate limits on contributions from any person for a primary or a general election, described in Colo. Const. Article XXVIII, Section 3(1), are adjusted as follows:
 - (1) \$625 to any one:
 - (A) Governor candidate committee for the primary election, and Governor and Governor and Lieutenant Governor candidate committee, as joint candidates under section 1-1-104, C.R.S., or any successor section, for the general election;
 - (B) Secretary of State, State Treasurer, or Attorney General candidate committee.
 - (2) There is no adjustment to the limits on contributions to any one State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney candidate committee.
- (c) The aggregate limits on contributions from a small donor committee for a primary or a general election, described in Colo. Const. Article XXVIII, Section 3(2), are adjusted as follows:
 - (1) \$6,750 to any one:
 - (A) Governor candidate committee for the primary election, and Governor and Lieutenant Governor candidate committee, as joint candidates under section 1-1-104, C.R.S., or any successor section, for the general election;
 - (B) Secretary of State, State Treasurer, or Attorney General candidate committee; and
 - (2) \$2,675 to any one State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney candidate committee.
- (d) The aggregate limits on contributions from any person to a political party, described in Colo. Const. Article XXVIII, Section 3(3)(a), are adjusted as follows:
 - (1) \$4,025 per year at the state, county, district, and local level combined; and
 - (2) Of such, no more than \$3,350 at the state level.

(e) The aggregate limits on contributions from a small donor committee to a political party, described in Colo. Const. Article XXVIII, Section 3(3)(b), are adjusted as follows:

- (1) \$20,325 per year at the state, county, district, and local level combined; and
- (2) Of such, no more than \$16,925 at the state level.

(f) The aggregate limits on pro-rata contributions or dues made to political committees, described in Colo. Const. Article XXVIII, Section 3(5), are adjusted to \$625 per house of representatives election cycle.

(g) THE AGGREGATE LIMITS ON CONTRIBUTIONS TO A COUNTY CANDIDATE AS DEFINED IN SECTION 1-45-103.7(1.5)(A)(I), C.R.S. ARE AS FOLLOWS:

- (1) \$1,250 FOR A PRIMARY OR A GENERAL ELECTION FROM ANY PERSON OTHER THAN A SMALL DONOR COMMITTEE OR A POLITICAL PARTY;
- (2) \$12,500 FOR A PRIMARY OR A GENERAL ELECTION FROM ANY SMALL DONOR COMMITTEE; AND
- (3) \$22,125 FOR THE ELECTION CYCLE FROM A POLITICAL PARTY.

(g)-(H) This table contains the contribution limits listed in subsections (a)-(g).

Contributor:

Recipient	Natural Person	Person, other than a natural person	Political committee	Small donor committee	Political party
Political committee	\$625 per election cycle	\$625 per election cycle	\$625 per election cycle	\$625 per election cycle	\$625 per election cycle
Small donor committee	\$50 per year	Prohibited	Prohibited	Prohibited	Prohibited
Governor (governor & lt. governor)	\$625 per election cycle*	\$625 per election cycle*	\$625 per election cycle*	\$6,750 per election cycle*	\$679,025 per election cycle
Secretary of state, state treasurer, attorney general	\$625 per election cycle*	\$625 per election cycle*	\$625 per election cycle*	\$6,750 per election cycle*	\$135,775 per election cycle
State senate	\$200 per election cycle*	\$200 per election cycle*	\$200 per election cycle*	\$2,675 per election cycle*	\$24,425 per election cycle
State house of representatives, state board of education, regent of the University of Colorado, district attorney	\$200 per election cycle*	\$200 per election cycle*	\$200 per election cycle*	\$2,675 per election cycle*	\$17,625 per election cycle
Political party	\$4,025 (\$3,350 at the state level) per year	\$4,025 (\$3,350 at the state level) per year	\$4,025 (\$3,350 at the state level) per year	\$20,325 (\$16,925 at the state level) per year	Transfers within a party may be made without limitation.
COUNTY CANDIDATE	\$1,250 PER ELECTION CYCLE*	\$1,250 PER ELECTION CYCLE*	\$1,250 PER ELECTION CYCLE*	\$12,500 PER ELECTION CYCLE*	\$22,125 PER ELECTION CYCLE

* A candidate may accept the contribution limit for both the primary election and the general election.

(h)-(i) The voluntary spending limits for a candidate described in Colo. Const. Article XXVIII, Section 4(1), are adjusted as follows:

- (1) The spending limit for Governor, and Governor and Lieutenant Governor as joint candidates under section 1-1-104, C.R.S., or any successor section is adjusted to \$3,395,275.
- (2) The spending limit for a candidate for Secretary of State, Attorney General, or Treasurer is adjusted to \$679,025.
- (3) The spending limit for a candidate for State Senate is adjusted to \$122,200.

- (4) The spending limit for a candidate for State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney is adjusted to \$88,225.

Candidate	Voluntary Spending Limit
Governor, and Governor and Lieutenant Governor as joint candidates	\$3,395,275
Secretary of State, Attorney General, or State Treasurer	\$679,025
State Senate	\$122,200
State House of Representatives, State Board of Education, Regent of the University of Colorado, or District Attorney	\$88,225

[Amendments to Rule 11.5 concerning electioneering communications]

- 11.5 A committee need not file electioneering communication reports separate from regularly filed disclosure reports if the expenditure or spending subject to Colo. Const. Article XXVIII, Section 6 and Rule 11.4 is identified as an electioneering communication or regular biennial school electioneering communication. The disclosure of electioneering communication expenditures or spending on a regularly filed report must include the name of the candidate(s) referred to in the communication.

[Amendments to Rule 12.5 concerning changing or closing a committee]

- 12.5 If the ~~Secretary of State~~ APPROPRIATE FILING OFFICE receives verifiable information in writing that the candidate is deceased, the ~~Secretary of State~~ APPROPRIATE FILING OFFICE may immediately terminate the candidate's candidate committee in TRACER.

[Repeal of Current Rule 16.3, renumbering and additional amendments to Current Rule 16.4 concerning special districts]

- ~~16.3~~ If a candidate for a special district office fails to file a candidate affidavit, or the filed self-nomination and acceptance form or letter, or the affidavit of intent to be a write-in candidate does not contain the statement required by section 1-45-110(1), C.R.S., the Secretary of State will mail the special district a copy of the notification to the candidate regarding pending disqualification under section 1-45-110(3), C.R.S.

- 16.4-16.3 A special district candidate is not required to file disclosure reports if:

~~16.4.1~~ 16.3.1 The special district candidate affidavit, the self-nomination and acceptance form or letter, or the affidavit of intent to be a write-in candidate contains a statement substantially stating, "I will not, in my campaign for this office, receive contributions or make expenditures exceeding \$200 in the aggregate during the election cycle, however, if I do so, I will thereafter register and file all disclosure reports required under the Fair Campaign Practices Act;" and

~~16.4.2~~ 16.3.2 The candidate does not accept contributions or make expenditures exceeding \$200 in the aggregate during the election cycle.

[Colo. Const. Article XXVIII, Section 2(2) and section 1-45-108(1), C.R.S.]

[Amendments to Rule 17.2.4 concerning filing schedules]

- 17.2.4 An issue committee must notify the ~~Secretary of State~~ APPROPRIATE FILING OFFICE within ten days after deciding that it will support or oppose a ballot measure on an upcoming ballot.

- (a) Once an issue committee notifies the ~~Secretary of State~~ APPROPRIATE FILING OFFICE of its active status under this Rule, the ~~Secretary~~ APPROPRIATE FILING OFFICE will place the committee on a frequent filing schedule.
- (b) Once an issue committee has declared its committee filing status as frequent or infrequent in a particular year, the committee must follow the appropriate filing schedule for the remainder of that election cycle, except that an inactive committee may change its status to active at any time.

[Amendments to Rule 17.5.1(a)(1)]

17.5 Reports for former officeholders, persons not elected to office, and term-limited office holders

17.5.1 Annual reporting

- (a) A candidate committee for a candidate not elected to office, who was formerly in office, or who is term-limited may submit a written request to file only an annual report for each calendar year.
 - (1) Statewide AND SCHOOL DISTRICT candidate committees must file an annual report not later than January 15th of the following year.

[Amendments to Rules 18.1.1(c), 18.1.2, concerning requests for waiver or reduction of campaign finance penalties]

- 18.1.1 A request for waiver or reduction of campaign finance penalties imposed under Colo. Const. Article XXVIII, Section 10(2) must state the reason for the delinquency.

[No changes to (a) and (b)]

- (c) The ~~Secretary of State~~ APPROPRIATE FILING OFFICE will not consider a waiver request after a penalty has been paid.
- 18.1.2 Requests for waiver or reduction of campaign finance penalties imposed under Colo. Const. Article XXVIII, ~~Sections 9(2) or~~ SECTION 10(2) must be considered by the appropriate officer and ~~Administrative Law Judges~~ according to the following rules:

[Amendments to Rules 18.1.3]

- 18.1.3 The appropriate officer or ~~Administrative Law Judge~~ may consider any additional factors that establish good cause or may otherwise be relevant to the request for waiver or reduction of campaign finance penalties. In considering a request, the appropriate officer or ~~Administrative Law Judge~~ may request additional information, including but not limited to financial or other records maintained by the filer.

[Rule 18.2 repeals and amendments]

18.2 Complaints.

- 18.2.1 Any person who believes that a violation of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance has occurred may file a complaint with the ~~Secretary of State~~ UNDER SECTION 1-45-111.7, C.R.S.
- ~~18.2.2 Complaints must be filed no later than 90 days after the complainant knew or should have known by the exercise of reasonable diligence of the alleged violation.~~

~~18.2.3~~ Complaints must be filed in writing and signed by the complainant on the form provided by the Secretary of State. The complaint must identify the respondent or respondents and the complainant must provide the information required on the form.

~~18.2.4~~ Upon receipt of a complaint, the Secretary of State's elections division must notify the respondent of the complaint by email, or by mail if email is unavailable.

~~18.2.5~~ Complaints made against any candidate for Secretary of State will be forwarded to the attorney general's office for review in accordance with this Rule ~~18.2~~.

~~18.2.6~~ Initial review

~~(a)~~ The elections division will review the complaint to determine:

~~(1)~~ Whether the complaint was timely filed under Rule ~~18.2.2~~,

~~(2)~~ Whether the complainant has specifically identified one or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance, and

~~(3)~~ Whether the complainant has alleged sufficient facts to support a legal and factual basis for the complaint.

~~(b)~~ Within 10 business days of receiving the complaint, the elections division must take one or more of the following actions:

~~(1)~~ If the elections division determines that the complaint was not timely filed, has not specifically identified one or more violations, or that the complainant did not assert facts sufficient to support the alleged violations, the elections division will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The dismissal is a final agency action, and subject to review under section 24-4-106, C.R.S.

~~(2)~~ If the elections division determines that the complaint alleges one or more curable violations as described in Rule ~~18.2.7~~, the elections division will notify the respondent and provide an opportunity to cure.

~~(3)~~ If the elections division determines that the complaint alleges one or more violations that require a factual finding or legal interpretation, the elections division will conduct additional review under Rule ~~18.2.8~~ to determine whether to file a complaint with a hearing officer.

~~18.2.7~~ Curing violations

~~(a)~~ Upon the election division's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the elections division will notify the respondent by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.

~~(b)~~ The respondent has 10 business days from the date the notice is mailed to file an amendment to the relevant report or reports that cures any deficiencies specified in the notice.

- (c) — The respondent must provide the elections division with notice of its intent to cure on the form provided by the Secretary of State and include a copy of any amendments.
- (d) — The elections division may ask the respondent to provide additional information, and may grant an extension of time to file a notice of intent to cure in order to respond to such a request.
- (e) — After the period for cure, the elections division will determine whether the respondent cured the violations, and if so, whether the respondent substantially complied or acted in good faith under Rules 18.2.7(f) and 18.2.7(g).
 - (1) — If the elections division determines that the respondent substantially complied or acted in good faith, the elections division will dismiss the complaint.
 - (2) — If the elections division determines that the respondent neither substantially complied nor acted in good faith, the elections division will conduct additional review under Rule 18.2.6 to determine whether to file the complaint with a hearing officer.
 - (3) — The election division's determination under this subsection is a final agency action, subject to review under section 24-4-106, C.R.S.
- (f) — In determining whether an entity substantially complied as that term is used in Rule 18.2.7, the elections division must consider:
 - (1) — The extent of the respondent's noncompliance;
 - (2) — The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and
 - (3) — Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.
- (g) — In determining whether an entity registered or disclosed in "Good faith" as that term is used in Rule 18.2.7, the elections division may consider whether ten percent or less of either the entity's disclosures or, alternatively, the reported dollar amounts required on the report or appearing on the filed reports at issue in the complaint are out of compliance.
- (h) — If the elections division determines that respondent failed to cure any alleged deficiency, the elections division will conduct additional review under Rule 18.2.8 to determine whether to file the complaint with a hearing officer.

18.2.8 Investigation and enforcement

- (a) — The elections division must investigate each unresolved or uncured complaint to determine whether to file a complaint with the hearing officer described in Rule 18.2.9(b).
 - (1) — If the elections division determines that it will not file a complaint with a hearing officer because there is not sufficient information to support the allegations or for any other reason, it must dismiss the complaint within 30 days of the election division's initial determination under Rule 18.2.6(b).

- (2) — If the elections division files a complaint with a hearing officer, it must send notice, including a copy of the filing, by certified mail, return receipt requested, to the complainant and the respondent within one business day of referral.
- (b) — If the elections division files a complaint with a hearing officer under this rule, it is responsible for conducting such discovery as may be necessary for effectively prosecuting the complaint, supplementing or amending the complaint with such additional or alternate allegations as may be justified by the evidence, amending the complaint to strike allegations that are not justified by the evidence, and in all other respects, prosecuting the complaint.
- (c) — The complainant or any other non-respondent is not a party to the review, except that a complainant may seek permission from the hearing officer to file written legal arguments or factual documentation, or both, as a friend of the court. A person's status as a complainant is not sufficient to establish that he or she may be affected or aggrieved by the Secretary's action on the complaint. A complainant may also seek review of a final agency action under Rules 18.2.6(b)(1) and 18.2.9(c) under section 24-4-106, C.R.S.
- (d) — If the election division fails to file a complaint with the hearing officer within 30 days as outlined in Rule 18.2.8(a)(1), the complaint is deemed dismissed under Rule 18.2.6(b)(1).

18.2.9 Hearings

- (a) — The hearing officer must be an individual authorized under section 24-4-105(3), C.R.S.
- (b) — Hearings conducted by a hearing officer under Rule 18.2 must be in accordance with the provisions of section 24-4-105, C.R.S., except that a hearing officer must hold a hearing within 15 business days of the filing of the complaint, and must make a determination within 15 days of the hearing. The respondent must be granted an extension of up to 30 days upon respondent's motion, or longer upon a showing of good cause.
- (c) — Determinations made by the hearing officer must be made under section 24-4-105, C.R.S., and are subject to review under section 24-4-106, C.R.S.

18.2.10 Any person seeking guidance on the application of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance may request that the Secretary of State issue an advisory opinion regarding their specific activities.

- (a) — The Secretary of State will determine, at his or her discretion, whether to issue an advisory opinion. In making the determination, the Secretary will consider:
 - (1) — Whether the advisory opinion will terminate a controversy or remove uncertainties as to the application of the requestor of any law;
 - (2) — Whether the request involves a subject, question, or issue that concerns a formal or informal matter or investigation currently pending before the Secretary of State or a court; and
 - (3) — Whether the request seeks a ruling on a moot or hypothetical question.

~~(b) — A person may rely on the Secretary of State's advisory opinion as an affirmative defense to any complaint filed under this Rule.~~

~~18.2.11~~-18.2.2 The elections division will make documents related to a complaint publicly available as follows:

- (a) The original complaint, notice of initial review, final agency decision, and any complaint filed by the elections division with a hearing officer will be publicly available at the time the elections division provides the document to the respondent.
- (b) Any additional documentation related to the complaint, including a notice of intent to cure and supporting evidence, or documents related to the elections division's investigation, will be publicly available, SUBJECT TO THE RESTRICTIONS SET FORTH IN SECTION 1-45-111.7(5)(A), C.R.S. AND SECTION 1-45-107.5(14)(D)(IV)(c), C.R.S., at the time the elections division issues a final agency decision or files a complaint with a hearing officer.
- (c) The elections division may redact any document related to a complaint if it is necessary to protect any person's private or confidential information.
- (D) ANY DOCUMENT THE ELECTIONS DIVISION RECEIVES UNDER SECTION 1-45-111.7(5)(A)(III), C.R.S. WILL NOT BE RETAINED AFTER THE TIME NECESSARY TO REVIEW, INVESTIGATE, PROSECUTE A COMPLAINT, OR ANY APPEAL, AS APPLICABLE.

18.2.3 THE REVIEW BY THE DEPUTY SECRETARY OR THE DEPUTY SECRETARY'S DESIGNEE OF THE INITIAL DETERMINATION MADE BY A HEARING OFFICER UNDER SECTION 1-45-111.7(6)(B), C.R.S. MUST BE IN ACCORDANCE WITH THE PROCEDURES OUTLINED IN SECTIONS 24-4-105(14) AND 24-4-105(15), C.R.S.

~~18.2.12 The Office of Administrative Courts must remand back to the Secretary of State all pending complaints that were filed with the Secretary of State before June 19, 2018. Those complaints may be re-filed under this Rule 18.2 within 180 days of remand, even if the alleged violations fall outside the period for filing set forth in Rule 18.2.2.~~

[Amendments to Temporary Rule 18.2.13 adopted on June 28, 2019]

~~18.2.13~~-18.2.4 Rule 18.2 AS IT WAS ENACTED BETWEEN JUNE 19, 2018 AND AUGUST 1, 2019 applies to complaints filed before July 1, 2019. Complaints filed on or after July 1, 2019 must be filed under section 1-45-111.7, C.R.S., (2019).

~~18.3 — The Secretary of State may send to the state Controller for collection any outstanding debt resulting from a campaign finance penalty that the Secretary deems collectible.~~

~~18.4 — Complaints concerning municipal campaign finance matters must be filed with the municipal clerk.~~

[New Rule 21.2 concerning coordination]

21.2 PRE-CANDIDACY COORDINATION

21.2.1 FOR PURPOSES OF SECTION 1-45-103.7(11)(A), C.R.S., A PERSON ACTIVELY SOLICITS FUNDS FOR AN INDEPENDENT EXPENDITURE COMMITTEE WITH THE INTENT OF BENEFITTING HIS OR HER FUTURE CANDIDACY WHEN THE PERSON:

- (A) ORGANIZES, DIRECTS, OR PLANS A FUNDRAISING EVENT FOR THE INDEPENDENT EXPENDITURE COMMITTEE; OR ASKS FOR, ENCOURAGES, OR SUGGESTS A DONATION TO THE INDEPENDENT EXPENDITURE COMMITTEE; AND
- (B) KNOWS OR REASONABLY SHOULD KNOW THAT THE INDEPENDENT EXPENDITURE COMMITTEE WILL SUPPORT THE PERSON'S FUTURE CANDIDACY.

[Current Rule 5.1 is amended and recodified as New Rule 22 as follows:]

RULE 22. DISCLAIMER STATEMENTS

5.1-22.1 Disclaimer requirement for nonbroadcast independent expenditure communications, INCLUDING ONLINE COMMUNICATIONS.

5.1.1-22.1.1 Under section 1-45-107.5(5)(c), C.R.S., ~~any nonbroadcast communication that constitutes an independent expenditure~~ COMMUNICATIONS must contain a clear and conspicuous disclaimer that is clearly readable, printed in text that is no less than 15 percent of the size of the largest font used in the communication, or at least eight-point font, and includes:

- (a) The name of the person that paid for the communication; and
- (b) ~~A~~ IN THE CASE OF AN INDEPENDENT EXPENDITURE, A statement that the communication is not authorized by any candidate; AND
- (c) A NATURAL PERSON WHO IS THE REGISTERED AGENT IF THE PERSON IDENTIFIED IN SUBSECTION (A) ABOVE IS NOT A NATURAL PERSON.

5.1.2-22.1.2 These requirements do not apply to bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be reasonably printed.

22.1.3 IF THE SIZE, FORMAT, OR DISPLAY REQUIREMENTS OF AN ELECTRONIC OR ONLINE COMMUNICATION MAKE IT IMPRACTICABLE TO INCLUDE A DISCLAIMER STATEMENT ON THE COMMUNICATION, THE DISCLAIMER STATEMENT MUST BE AVAILABLE BY MEANS OF A DIRECT LINK FROM THE COMMUNICATION TO THE WEB PAGE OR APPLICATION SCREEN CONTAINING THE STATEMENT.

- (A) THE INFORMATION PROVIDED IN THE DIRECT LINK ARE SUBJECT TO ALL OF THE SIZE AND CONTENT REQUIREMENTS IN RULE 22.1.1.
- (B) THE INFORMATION PROVIDED IN THE DIRECT LINK MUST BE CLEARLY AND CONSPICUOUSLY DISPLAYED, AND MUST BE IMMEDIATELY APPARENT ON THE SCREEN WITHOUT RECEIVING OR VIEWING ANY ADDITIONAL MATERIAL.
- (C) IF THE COMMUNICATION IS A DIRECT OR INDIRECT ELECTRONIC MESSAGE TO A PERSON, INCLUDING BUT NOT LIMITED TO A TEXT MESSAGE, ONLY THE INITIAL COMMUNICATION MUST CONTAIN THE DIRECT LINK.
- (D) FOR PURPOSES OF THIS RULE, IT IS IMPRACTICABLE TO INCLUDE A DISCLAIMER STATEMENT IF IT WOULD SEVERELY INTERFERE WITH THE ABILITY TO CONVEY THE INTENDED MESSAGE.

II. Basis, Purpose, and Specific Statutory Authority

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

III. Statement of Justification and Reasons for Adoption of Temporary Rules

A statement of the Secretary of State's findings to justify the immediate adoption of these new and amended rules on a temporary basis follows this notice and is incorporated by reference.⁶

IV. Effective Date of Adopted Rules

These new and amended rules are immediately effective on a temporary basis. The rules will become permanently effective twenty days after publication in the Colorado Register.⁷

Dated this 2nd day of August, 2019,



Jenny Flanagan
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State

⁶ Section 24-4-103(6), C.R.S. (2018).

⁷ Section 24-4-103(5), C.R.S. (2018).



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 2, 2019

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:

- Amendments to Rule 1.4.3 are necessary establish uniformity in the administration of current law.
- New Rules 1.6.4 and 1.8.3 are necessary to establish uniformity in the administration of current law.
- A portion of Current Rule 1.7 is relocated to New Rule 5.2.
- New Rules 1.23 and 21.2.1, and amendments to Rule 10.5 are necessary to implement HB 19-1318.
- Amendments to Rules 2.2.3 and 2.2.4(b)(1) are necessary to implement HB 19-1007.
- Amendments to Rules 2.4.3, 10.6, 12.5, 17.2.4, 18.1.1, are necessary to clarify the use of the rules by appropriate filing offices other than the Secretary of State, such as municipal clerks.
- Amendments to Rule 7.1.1 are necessary to establish uniformity in the administration of current law.
- Amendments to Rule 9.1 are necessary to establish uniformity in the administration of current law.

¹ 8 CCR 1505-CCR 6.

² Article 45 of Title 1, C.R.S. (2018).

- Amendments to Rule 10.1.3 are necessary to implement SB 19-229.
- Amendments to Rule 10.2.3 are necessary to establish uniformity in the administration of current law.
- Amendments to Rule 10.4 are necessary to establish uniformity in the administration of current law.
- Repeal of Rule 10.16.1 is necessary to remove repetitive or obsolete provisions in the rules.
- Permanent adoption of amendments to Rule 10.17. Amendments were temporarily adopted on March 29, 2019 and readopted on June 28, 2019 to extend the rule until a permanent rule is adopted and effective.
- New Rule 10.17.1 (g) and the chart under (h) establish contribution limits for candidates for county offices in accordance with HB 19-1007.
- Amendments to Rule 11.5 to eliminate unnecessary cross-reference.
- Repeal of Rule 16.3 is necessary to repeal obsolete provisions.
- Amendments to Rule 17.5.1 are necessary to uniform administration of current law.
- Amendments to Rules 18.1.2, 18.1.3, repeal of Rules 18.2.2 through 18.2.10, 18.2.12, 18.3 and 18.4, and new Rule 18.2.3 are necessary to implement SB 19-232. Amendments to Current Rule 18.2.11, renumbered as Rule 18.2.2, are also necessary to implement SB19-232.
- Amendments to and permanent adoption of Temporary Rule 18.2.13 (renumbered as Rule 18.2.4), adopted on June 28, 2019.
- New Rule 22 establishes rules concerning disclaimer statements in accordance with HB 19-1318 (section 1-45-107.5, C.R.S.). Current Rule 5.1 is relocated and amended under the new rule.

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 May 31, 2019, 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., (2018), 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.”
- Section 1-45-111.5(1), C.R.S., (2018), which requires the Secretary of State to promulgate such rules “as may be necessary to enforce and administer any provision of” article 45 of title 1, C.R.S.
- Section 1-45-107.5(5)(c), C.R.S., (2018), which requires the Secretary of State to establish, by rule, the “size and placement requirements for the disclaimer statement.” (HB 19-1318)