

Preliminary Draft of Proposed Rules
Colorado Department of State
Rules Concerning Campaign and Political Finance
8 CCR 1505-6

July 31, 2024

Disclaimer:

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

This is a preliminary draft of the proposed rules that may be revised before the September 3, 2024 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 **August 29, 2024**.²

Please note the following formatting key:

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

Table 1 - Formatting Key

Amendments to 8 CCR 1505-6 are as follows:

Amendments to Rule 1 are as follows:

Amendments to Rule 1.1 to include Article 46 of Title 1, C.R.S., and removal of unnecessary language:

- 1.1 "Administrative complaint" means a complaint alleging that one or more violations of Colo. Const. Article XXVIII, Article 45, OR ARTICLE 46 of Title 1, C.R.S., such other constitutional or statutory provisions that are incorporated or referenced therein, or the rules has occurred and that is filed by the division, or its designee, with a hearing officer pursuant to sections 1-45-111.7(5) and (7), C.R.S.

Amendments to Rule 1.4 concerning removal of an unnecessary reference:

- 1.4 "Business activities" for purposes of Colo. Const. Article XXVIII:

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2023). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2023). "[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."

- 1.4.1 “Business activities” means providing goods or services that result in income or any other revenue-generating activity not expressly for political purposes.
- 1.4.2 “Cannot engage in business activities,” means that the articles of incorporation and bylaws, either expressly or implicitly, prohibit the corporation from engaging in any business activities.

~~[*McConnell v. Federal Elections Commission*, 540 U.S. 93 (2003)]~~

Amendments to Rule 1.13 concerning grammatical changes:

- 1.13 “Frequent filing schedule” means:
 - 1.13.1 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.;
 - 1.13.2 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~~
 - 1.13.3 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.;
AND
 - 1.13.4 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.

Amendments to Rule 1.17 concerning a grammatical change:

- 1.17 “Infrequent filing schedule” means:
 - 1.17.1 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~~
 - 1.17.2 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.; AND
 - 1.17.3 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.

Amendments to Rule 1.20 concerning a grammatical change:

- 1.20 “Issue committee” means a person or a group of people that meets both of the conditions in Colo. Const. Article XXVIII, Section 2(10)(a)(I) and 2(10)(a)(II). An “issue committee” does not include a married couple.

Amendments to Rule 1.23 concerning a statutory reference update and terminology update:

- 1.23 “Municipal campaign finance matter” as used in section 1-45-111.7(9)(b)(10), C.R.S., means any campaign finance matter exclusively related to a municipal campaign, including matters involving a candidate for a municipal office; a municipal ballot ~~issue or ballot question~~ MEASURE; and contributions or expenditures made by any person, committee, or group to support or oppose any candidate for municipal office, or municipal ballot ~~issue or ballot question~~ MEASURE. ~~This definition~~

is not limited to NOTWITHSTANDING home rule municipalities that have adopted their own campaign finance CHARTER PROVISIONS, ORDINANCES, rules or regulations, THIS DEFINITION but applies to all municipalities.

Repeal of Rule 1.26:

~~1.26~~ —“Person”, for the purpose of Colo. Const. Article XXVIII, Section 7, means any natural person.

[Not shown: current Rules 1.27 through 1.29 are renumbered to Rules 1.26 through 1.28.]

Amendments to current Rule 1.30, including renumbering to Rule 1.29, concerning a grammatical change:

~~1.30~~ 1.29 “Principal”, as used in section 1-45-105.5, C.R.S., means any person that employs, retains, engages, or uses, with or without compensation, a professional or volunteer lobbyist. A person serving as an officer, employee, member, shareholder, or partner of an organization or business entity that employs, retains, engages, or uses a lobbyist is not considered a principal.

[Not shown: current Rule 1.31 is renumbered to Rule 1.30.]

Amendments to current Rule 1.32, including renumbering to Rule 1.31, concerning a technical change:

~~1.32~~ 1.31 “Publicly announced an intention to seek election to public office or retention of a judicial office”, AS SET FORTH IN COLO. CONST. ARTICLE XXVIII, SECTION 2(2), means:

~~1.32~~ 1.31.1 Registering a candidate committee; or

~~1.32~~ 1.31.2 Announcing an intention to seek public office or retention of a judicial office through:

[Not shown: no change to sections (a) through (c).]

~~[Colo. Const. Article XXVIII, Section 2(2)]~~

Amendments to current Rule 1.33, including renumbering to Rule 1.32, concerning a technical change:

~~1.33~~ 1.32 “Registered agent”, AS SET FORTH IN SECTIONS 1-45-108(3)(B) AND 1-45-109(4)(B), C.R.S., is a natural person or candidate designated to receive mailings, to address concerns and questions regarding a committee, and is responsible for timely filing campaign finance reports. ~~[Sections 1-45-108(3)(b) and 1-45-109(4)(b), C.R.S.]~~

[Not shown: current Rules 1.34 through 1.37 are renumbered to Rules 1.33 and 1.36.]

Amendments to Rule 1.38, including renumbering to Rule 1.37, concerning a grammatical change:

~~1.38~~ 1.37 “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 are as follows:

Amendments to Rule 2.4.1 concerning the filing of personal financial disclosures. This includes repealing current section (e) and renumbering it to new section (d) with amendments, new sections of Rule 2.4.1, necessary grammatical changes and renumbering:

2.4.1 Filing of personal financial disclosures

- (a) A candidate WHO IS NOT AN INCUMBENT need not file a ~~new~~ personal financial disclosure statement if the candidate filed ~~either a full or amended~~ disclosure statement less than 90 days before filing a candidate affidavit. ~~[Section 1-45-110(2)(a) and (b), C.R.S.]~~
- ~~(b) An amended or updated disclosure statement satisfies the full disclosure statement requirement if all required amended statements have been filed since the filing of the full disclosure statement. [Sections 1-45-110 and 24-6-202, C.R.S.]~~
- ~~(c)~~(B) If a candidate withdraws ~~his or her~~ THEIR 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 delinquent filing fines that the candidate accrued before withdrawing may be waived by the appropriate filing office.
- (C) AN INCUMBENT MUST FILE FULL A PERSONAL FINANCIAL DISCLOSURE STATEMENT ANNUALLY. PERSONAL FINANCIAL DISCLOSURE STATEMENT UPDATE FORMS ARE NO LONGER ACCEPTED.
- (D) AN INCUMBENT SEEKING RE-ELECTION NEED NOT FILE A PERSONAL FINANCIAL DISCLOSURE STATEMENT IF THE INCUMBENT FILED A FULL DISCLOSURE STATEMENT LESS THAN 30 DAYS BEFORE FILING A CANDIDATE AFFIDAVIT.
- (E) ANY PERSONAL FINANCIAL DISCLOSURE STATEMENTS FILED BY INCUMBENTS MORE THAN 30 DAYS BEFORE JANUARY 10TH WILL NOT SATISFY THE REQUIREMENT TO FILE THE ANNUAL DISCLOSURE STATEMENT.
- (F) PERSONAL FINANCIAL DISCLOSURE STATEMENTS MUST BE AMENDED WITHIN 30 DAYS OF A SUBSTANTIAL CHANGE IN INTEREST. AMENDED PERSONAL FINANCIAL DISCLOSURE STATEMENTS MUST BE MADE ON THE FORM PROVIDED BY THE SECRETARY OF STATE.
- ~~(d)~~(G) All personal financial disclosure filings required under sections 1-45-110 and 24-6-202, C.R.S., must be filed electronically by 11:59 p.m. MT on the DUE date ~~due~~ and will be publicly available online.
- ~~(e) Incumbents seeking re-election need not file a new personal financial disclosure statement if they have already filed their annual personal financial disclosure statement. [Section 24-6-202(4)(b), C.R.S.]~~

New Rule 2.4.2 concerning income and debt ranges for required disclosures:

2.4.2 INCOME AND DEBT RANGES FOR REQUIRED DISCLOSURES:

- (A) RANGES FOR INCOME FROM ANY INDIVIDUAL SOURCE:
 - (I) LESS THAN \$999;

- (II) \$1,000 TO \$9,999;
- (III) \$10,000 TO \$24,999;
- (IV) 25,000 TO \$49,999;
- (V) \$50,000 TO \$74,999;
- (VI) \$75,000 TO \$99,999;
- (VII) \$100,000 TO \$149,999;
- (VIII) \$150,000 TO \$199,999;
- (IX) \$200,000 TO \$249,999;
- (X) \$250,000 TO \$499,999;
- (XI) \$500,000 TO \$749,999;
- (XII) \$750,000 TO \$999,999;
- (XIII) \$1,000,000 TO \$1,499,999;
- (XIV) \$1,500,000 TO \$ 1,999,999;
- (XV) \$2,000,000 TO \$4,999,999; AND
- (XVI) GREATER THAN \$5,000,000.

(B) RANGES OF DEBT:

- (I) LESS THAN \$1,000;
- (II) \$1,000 TO \$9,999;
- (III) \$10,000 TO \$24,999;
- (IV) 25,000 TO \$49,999;
- (V) \$50,000 TO \$74,999;
- (VI) \$75,000 TO \$99,999;
- (VII) \$100,000 TO \$149,999;
- (VIII) \$150,000 TO \$199,999;
- (IX) \$200,000 TO \$249,999;
- (X) \$250,000 TO \$499,999;
- (XI) \$500,000 TO \$749,999;

- (XII) \$750,000 TO \$999,999;
- (XVI) \$1,000,000 TO \$1,499,000;
- (XVII) \$1,500,000 TO \$1,999,999; AND
- (XVIII) GREATER THAN \$2,000,000.

Amendments to current Rule 2.4.2, including renumbering to Rule 2.4.3, concerning the statutory requirement to annually file complete personal financial disclosures and necessary renumbering:

~~2.4.22.4.3~~ Failure to file

- (A) ANY PERSON CAN FILE A COMPLAINT UNDER SECTION 1-45-111.7, C.R.S., CONCERNING THE COMPLETENESS, ACCURACY, OR TIMELINESS OF A CANDIDATE'S, INCLUDING AN INCUMBENT WHO IS ALSO A CANDIDATE, PERSONAL FINANCIAL DISCLOSURE FILED IN ACCORDANCE WITH A CANDIDATE AFFIDAVIT.
- (B) IN THE EVENT A COMPLAINT CONCERNING THE COMPLETENESS, ACCURACY, OR TIMELINESS OF AN INCUMBENT'S PERSONAL FINANCIAL DISCLOSURE IS FILED WITH THE DEPARTMENT WHEN SUCH INCUMBENT IS NOT A CANDIDATE, THE DEPARTMENT WILL TRANSMIT THE COMPLAINT TO THE APPROPRIATE BODY FOR CONSIDERING SUCH COMPLAINTS AS IS DESIGNATED UNDER SECTION 24-6-202(8). THE DEPARTMENT WILL NOTIFY BOTH THE COMPLAINANT AND THE INCUMBENT OF THE TRANSFER OF THE COMPLAINT. UPON SUCH TRANSFER, THE DEPARTMENT WILL TAKE NO FURTHER ACTION ON THE COMPLAINT UNLESS OR UNTIL THE PUBLIC BODY THAT RECEIVED THE TRANSFER REFERS THE MATTER BACK TO THE DEPARTMENT.
- ~~(a)~~(C) If a complaint is filed UNDER SECTION 1-45-111.7, C.R.S., alleging that the CANDIDATE'S personal financial disclosure was ~~incomplete~~, inaccurate OR AN AMENDED DISCLOSURE WAS NOT ACCURATE OR TIMELY FILED ~~or not updated~~, the division may consider the following responses from the candidate ~~or incumbent~~, without limitation, in determining whether the personal financial disclosure, OR amendment, ~~or update~~ meets statutory requirements:
 - (1) Documentation refuting the allegation of inaccuracy or incompleteness, including without limitation, for example:
 - (A) Federal tax returns;
 - (B) Banking, investment, or other financial statements;
 - (C) Deeds of trust or other property records;
 - (D) A financial manager's or auditor's certified statement of the candidate's ~~or incumbent's~~ financial holdings; or
 - (E) Other independently verifiable documentary evidence; or
 - (2) A signed affirmation under penalty of perjury from the candidate ~~or incumbent~~ attesting that the allegation of inaccuracy or incompleteness is not true and the substance of the personal financial disclosure, including amendments ~~and annual update~~, is complete and accurate.

[Not shown: current sections (b) and (c) renumbered to sections (d) and (e).]

Amendments to Rule 4 are as follows:

New Rule 4.3 concerning statewide issue committee reporting of contributions and expenditures:

- 4.3 A STATEWIDE ISSUE COMMITTEE MUST FILE REPORTS OF CONTRIBUTIONS AND EXPENDITURES FOR ALL OF THE ACTIVITY THAT QUALIFIES IT AS AN ISSUE COMMITTEE UNDER SECTION 1-45-103(12), C.R.S.

[Not shown: current Rule 4.3 is renumbered to Rule 4.4. This includes current Rules 4.3.1 through 4.3.4 being renumbered to Rules 4.4.1 through 4.4.4.]

Amendments to current Rule 4.4, including renumbering to Rule 4.5, concerning a terminology update:

- 4.44.5 Termination. An issue committee may file a termination report at any time if the following conditions are met:

- 4.4.14.5.1 The committee no longer has a major purpose of supporting or opposing a ballot measure and no longer intends to accept or make contributions or expenditures to support or oppose a ballot issue or ballot question MEASURE; and

[Not shown: current Rule 4.4.2 is renumbered to Rule 4.5.2.]

[Not shown: current Rule 4.5 is renumbered to Rule 4.6, including current Rules 4.5.1 through 4.5.6 being renumbered to Rules 4.6.1 through 4.6.6. Current Rule 4.6 is renumbered to Rule 4.7.]

Amendments to Rule 5 are as follows:

Amendments Rule 5.1.2 concerning the inclusion of a cure exception for independent expenditure committees:

- 5.1.2 EXCEPT FOR A COMMITTEE EXERCISING ITS RIGHT TO CURE UNDER SECTION 1-45-111.7(4), C.R.S., 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.

Amendments to Rule 10 are as follows:

Amendments to Rule 10.2.3 concerning clarification of the disclosure obligation when a contributor is not a natural person:

- 10.2.3 Disclosure of occupation and employer

[Not shown: no changes to sections (a) and (b).]

- (c) THE REQUIREMENT UNDER SECTION 1-45-108, C.R.S., TO DISCLOSE A CONTRIBUTOR'S OR DONOR'S OCCUPATION AND EMPLOYER APPLIES ONLY TO A CONTRIBUTOR WHO IS A NATURAL PERSON.

Amendments to Rule 10.11 concerning cost-sharing by candidates, standalone candidates, and candidate committees and necessary renumbering:

- 10.11 Cost-sharing by candidates-

- 10.11.1 Each CANDIDATE, STANDALONE CANDIDATE, AND candidate committee that shares ~~the~~ ANY cost OR EXPENSE INCLUDING ~~of~~ brochures, COMMUNICATIONS, ADVERTISEMENTS, office space, or other overhead must pay its proportionate share of the cost within 30 days of

~~the expenditure~~ DATE THE COST WAS INCURRED. ~~The reimbursing committee~~ THE COMMITTEE OR CANDIDATE THAT MADE THE EXPENSE must report the ENTIRE AMOUNT AS AN EXPENDITURE, THE COMMITTEE OR CANDIDATE REIMBURSING FOR THE EXPENSE MUST REIMBURSE WITHIN 30 DAYS AND REPORT THEIR PORTION OF THE EXPENSE AS AN EXPENDITURE, ~~payment as an expenditure~~ and the reimbursed committee OR CANDIDATE must report REIMBURSEMENT PAYMENTS ~~it~~ as a returned expenditure.

10.11.2 A committee NOR CANDIDATE need not report discounts resulting from shared expenses as contributions GIVEN BY A VENDOR OR OTHERS ON A PURCHASE SOLELY BECAUSE MORE THAN ONE COMMITTEE IS COST-SHARING WITH ANOTHER COMMITTEE.

10.11.3 IF A "PAID FOR BY" DISCLAIMER IS NEEDED FOR ANY SHARED COMMUNICATION, THE NAMES OF ALL OF THE COMMITTEES OR CANDIDATES MUST BE INCLUDED ON THE COMMUNICATION.

Amendments to Rule 10.19.1, repealing section (e) as the language is now in statute:

10.19.1 The disclosure report required by section 1-45-108(1)(a)(VI), C.R.S.

[Not shown: no changes to sections (a) through (e).]

~~(f) — Notwithstanding any other provision of law, a foreign government, foreign corporation, or natural person who is not a United States citizen may not make a direct ballot measure expenditure, and a person making a direct ballot measure expenditure may not knowingly accept funds from a foreign government, foreign corporation, or a natural person who is not a citizen of the United States for the purpose of making a direct ballot measure expenditure.~~

Amendments to Rule 11 are as follows:

Repeal of Rule 11.1 as it is an outdated reference to statute and necessary renumbering:

~~11.1 — As used in section 1-45-108(1)(a)(III), C.R.S., the term person includes a corporation or labor organization.~~

[Not shown: current Rules 11.2 through 11.5 are renumbered to Rules 11.1 through 11.4.]

Amendments to Rule 22 are as follows:

The title of Rule 22 is amended:

Rule 22. "PAID FOR BY" Disclaimer Statements

Amendments to Rule 22.1.1 concerning the type of disclaimer:

22.1.1 Under section 1-45-107.5(5)(c), C.R.S., nonbroadcast communications must contain a clear and conspicuous "PAID FOR BY" 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:

[Not shown: no changes to sections (a) through (c).]

22.1.2 These requirements do not apply to bumper stickers, pins, buttons, pens, and similar small items upon which the "PAID FOR BY" 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 “PAID FOR BY” 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.

[Not shown: no changes to sections (a) through (d).]

Amendments to Rule 23 are as follows:

Amendments to Rule 23.1.5 concerning an internal rule reference update:

- 23.1.5 Violations stemming from late or missing filings that have had a late filing penalty assigned or the assigned penalty has been waived under Rule 18 are not subject to additional monetary penalties under Rule ~~23.3~~23.4 for the late filing violation.

New Rule 23.1.6 concerning an adverse inference being established if a respondent fails to preserve potentially relevant information or records for reportable activity:

- 23.1.6 A RESPONDENT THAT FAILS TO PRESERVE POTENTIALLY RELEVANT INFORMATION OR RECORDS CONCERNING ITS CONTRIBUTIONS OR EXPENDITURES OR OTHERWISE REPORTABLE ACTIVITY UPON RECEIPT OF A COMPLAINT MAY BE SUBJECT TO AN ADVERSE INFERENCE ESTABLISHING THAT THE INFORMATION OR RECORDS THAT WERE NOT PRESERVED AFTER RECEIPT OF A COMPLAINT WOULD OTHERWISE ESTABLISH THE DISPUTED FACT. THIS ADVERSE INFERENCE IS SUBJECT TO THE EQUITABLE PRINCIPLES APPLICABLE UNDER THE COMMON LAW SPOILIATION DOCTRINE.

New Rule 23.2 concerning referral of municipal complaints:

23.2 REFERRAL OF MUNICIPAL COMPLAINTS

- 23.2.1 A MUNICIPAL COMPLAINT MAY NOT BE DIRECTLY FILED WITH THE DIVISION AND MUST BE REVIEWED BY THE MUNICIPAL CLERK AS REQUIRED BY SECTION 1-46-111.7(10)(A)-(B), C.R.S., BEFORE BEING REFERRED TO THE DIVISION.

- 23.2.2 A MUNICIPAL COMPLAINT MAY BE REFERRED TO THE DIVISION TO PROCESS AND INVESTIGATE IF THE COMPLAINT MEETS ALL OF THE FOLLOWING CONDITIONS:

- (A) A COMPLAINT MEETS THE GROUNDS FOR REFERRAL:
 - (1) FOR STATUTORY AND HOME RULE MUNICIPALITIES, THE COMPLAINT INVOLVES AN ACTUAL OR POTENTIAL CONFLICT OF INTEREST FOR THE MUNICIPAL CLERK OR THE CLERK’S STAFF; OR
 - (2) FOR STATUTORY MUNICIPALITIES, THE COUNTY HAS NOT ADOPTED A CAMPAIGN AND POLITICAL FINANCE COMPLAINT AND HEARING ENFORCEMENT PROCESS;
- (B) A LOCAL ORDINANCE MEETING THE CONDITIONS IN SECTION 1-45-111.7(10)(D), C.R.S., AND THIS RULE’S SUBSECTION (C) SPECIFICALLY ALLOWS COMPLAINTS TO BE REFERRED TO THE DIVISION DUE TO A CONFLICT OF INTEREST OR BECAUSE THERE IS NO LOCAL ENFORCEMENT PROCESS; AND
- (C) THE MUNICIPALITY HAS ADOPTED THE ORDINANCE AND PROVIDED A COPY TO THE DEPARTMENT 180 DAYS OR MORE PRIOR TO THE MUNICIPAL ELECTION AT ISSUE IN THE COMPLAINT.

23.2.3 A MUNICIPAL COMPLAINT REFERRED TO THE DIVISION MUST INCLUDE:

- (A) THE UNDERLYING COMPLAINT AND ANY DOCUMENTS ATTACHED TO THE COMPLAINT;
- (B) A MUNICIPAL COMPLAINT COVER SHEET, AVAILABLE ON THE SECRETARY OF STATE'S WEBSITE, WITH ALL THE REQUIRED INFORMATION PROVIDED;
- (C) THE NAME AND CONTACT INFORMATION FOR A PERSON WITHIN THE MUNICIPAL CLERK'S OFFICE WHO WILL ASSIST THE DIVISION WITH ANY QUESTIONS DURING THE PROCESSING OF THE COMPLAINT;
- (D) A COPY OF THE LOCAL ORDINANCE THAT ALLOWS REFERRAL; AND
- (E) ANY RELEVANT CAMPAIGN AND POLITICAL FINANCE FILINGS, DOCUMENTS, COPIES OF APPLICABLE LOCAL LAW, COMMUNICATIONS WITH COMPLAINANT OR RESPONDENT RELATED TO THE COMPLAINT, DETERMINATION OF THE CONFLICT OF INTEREST, EVIDENCE OF THE INITIAL REVIEW CONDUCTED UNDER SECTION 1-45-111.7(10), C.R.S., OR OTHER DOCUMENTS RELEVANT TO THE COMPLAINT.

23.2.4 TIMELINESS

- (A) A MUNICIPAL COMPLAINT MUST BE REFERRED TO THE DIVISION WITHIN 14 BUSINESS DAYS OF RECEIPT BY THE MUNICIPALITY AND WILL BE PROCESSED AND REVIEWED ACCORDING TO THE PROVISIONS OF SUBSECTIONS 1-45-111.7(3)-(10), C.R.S.
- (B) FOR PROCESSING DEADLINES UNDER SECTION 1-45-111.7, C.R.S., THE DIVISION WILL PROCESS THE COMPLAINT BASED ON THE DATE THE COMPLAINT WAS RECEIVED BY THE DIVISION FROM THE MUNICIPAL CLERK.
- (C) UNLESS LOCAL LAW PROVIDES FOR A DIFFERENT DATE, A MUNICIPAL COMPLAINT MUST BE FILED NO LATER THAN 180 DAYS AFTER THE DATE ON WHICH THE COMPLAINANT EITHER KNEW OR SHOULD HAVE KNOWN, BY THE EXERCISE OF REASONABLE DILIGENCE, OF THE ALLEGED VIOLATION. THE DETERMINATION OF TIMELINESS IS CALCULATED FROM THE DATE THE COMPLAINT IS FILED WITH THE MUNICIPALITY.

23.2.5 THE DIVISION MAY REJECT A REFERRAL OF A MUNICIPAL COMPLAINT IF THE CLERK DID NOT CONDUCT AN INITIAL REVIEW AS PROVIDED IN SECTION 1-45-111.7, C.R.S., THE COMPLAINT WAS NOT REFERRED TO THE DIVISION WITHIN 14 BUSINESS DAYS, OR THE MUNICIPALITY DID NOT HAVE AN ORDINANCE IN PLACE THAT ALLOWED REFERRAL OR OTHERWISE MET REFERRAL REQUIREMENTS.

23.2.6 THE DIVISION HAS NO JURISDICTION TO CONSIDER AN ALLEGATION AGAINST A MUNICIPALITY OR A MUNICIPAL CLERK THAT THE MUNICIPALITY OR CLERK IMPROPERLY FAILED TO REFER A MUNICIPAL CAMPAIGN FINANCE COMPLAINT TO THE DEPARTMENT. SUCH CLAIMS, IF ANY, MAY BE PURSUED AGAINST THE MUNICIPALITY OR THE CLERK IN THE DISTRICT COURT WHERE THE MUNICIPALITY IS LOCATED PURSUANT TO RULE 106(4) OF THE COLORADO RULES OF CIVIL PROCEDURE. THE DEPARTMENT HAS NO LIABILITY TO A COMPLAINANT OR ANY OTHER PERSON FOR THE FAILURE OF A MUNICIPALITY OR A MUNICIPAL CLERK TO REFER A MUNICIPAL CAMPAIGN FINANCE COMPLAINT TO THE DEPARTMENT.

[Not shown: current Rule 23.2 is renumbered to Rule 23.3. This includes current Rules 23.2.1 through 23.2.3 being renumbered to Rules 23.3.1 through 23.3.3.]

[Not shown: current Rule 23.3 is renumbered to Rule 24.4. This includes current Rule 23.3.1 being renumbered to Rule 23.4.1.]

Amendments to current Rule 23.3.2, including renumbering to Rule 23.4.2, concerning internal rule reference updates:

~~23.3.2~~23.4.2 In assessing a fine amount or approving a settlement, the deputy secretary of state or a hearing officer, as applicable, will consider all of the following factors:

- (a) Specific fine amounts outlined in Rule ~~23.3.3~~23.4.3;
- (b) Any appropriate specific action in Rule ~~23.3.4~~23.4.4;

[Not shown: no changes to sections (c) and (d).]

- (e) The mitigating and aggravating factors, including those listed in Rule ~~23.3.5~~23.4.5, to increase or decrease the monetary fine or terms.

Amendments to Rule 23.3.3, including renumbering to Rule 23.4.3, concerning the penalties outlined for failing to include a compliance disclosure and internal rule reference update and necessary grammatical changes:

~~23.3.3~~23.4.3 Fine amounts

[Not shown: no changes to sections (a) through (c).]

- (d) Disclaimer and electioneering communications
 - (1) If noncompliant communication is mitigated prior to the election: a fine of at least 5 percent cost of the noncompliant communication including cost to broadcast;~~or~~
 - (2) If noncompliant communication is not mitigated prior to the election: a fine of at least 10 percent of the cost of the communication including cost to broadcast~~;~~ OR
 - (3) For failure to include a compliant disclosure statement for a deepfake communication, the penalties are outlined under section 1-45-111.5(1.5)(c.5), C.R.S.

[Not shown: no changes to section (e).]

- (f) Other violations of campaign and political finance rules and regulations will be assessed penalties based on the circumstances of the violations and factors outlined in Rule ~~23.3.4~~23.4.4.

[Not shown: current Rules 23.3.4 and 23.3.5 are renumbered to Rules 23.4.4 and 23.4.5.]

Amendments to Rule 24 are as follows:

Amendment to Rule 24.8.5 concerning an internal rule reference update and grammatical change:

24.8.5 Either party may move to modify discovery deadlines and limitations in accordance with ~~P~~Pre-Hearing ~~P~~Procedures as set forth in Rule ~~24.4~~24.11.

Amendment to Rule 24.14.3 concerning internal rule reference updates:

24.14.3 The following factors shall be considered in arriving at a settlement agreement:

- (a) Specific fine amounts outlined in Rule ~~23.3.3~~23.4.3;
- (b) Any appropriate specific action in Rule ~~23.3.4~~23.4.4; and
- (c) The mitigating and aggravating factors in Rule ~~23.3.5~~23.4.5 to increase or decrease the monetary fine or terms, including the public interest in resolution of the complaint.

Amendment to Rule 24.14.4 concerning an internal rule reference update:

24.14.4 The settlement agreement is contingent upon approval by the deputy secretary, who must also consider the factors set forth in Rule ~~24.15.3~~24.14.3. If the deputy secretary does not approve the settlement agreement, none of the terms or recitals of the agreement are binding or enforceable by either party.

New Rule 25:

RULE 25. DEEPPAKE COMMUNICATIONS

New Rule 25.1 concerning deepfake communications:

25.1 DEEPPAKE COMMUNICATIONS

25.1.1 DEEPPAKES MUST INVOLVE A CANDIDATE AS THAT TERM IS DEFINED IN SECTION 1-46-102(2), C.R.S., WHICH INCLUDES CURRENT OFFICEHOLDERS, INCUMBENTS, AND CANDIDATES FOR FEDERAL OFFICES IN COLORADO, AND MUST BE DISSEMINATED TO AN AUDIENCE THAT INCLUDES COLORADO ELECTORS.

25.1.2 THERE IS A REBUTTABLE PRESUMPTION THAT THE ALLEGED DEEPPAKE COMMUNICATION WAS CREATED, EDITED, OR MODIFIED USING GENERATIVE A.I., IF:

- (A) A CAMPAIGN AND POLITICAL FINANCE COMPLAINT HAS BEEN FILED AND THE DIVISION INITIALLY DETERMINES UNDER SECTION 1-45-111.7(3), C.R.S., THAT THE COMPLAINT ALLEGES A POTENTIAL VIOLATION OF SECTION 1-46-103(1), C.R.S.; AND
- (B) THE RESPONDENT FAILS TO PROVIDE SUBSTANTIAL EVIDENCE, AS DEFINED IN RULE 1.35, REGARDING HOW THE COMMUNICATION WAS CREATED OR MODIFIED.

25.1.3 THIS PRESUMPTION WILL BE CONSIDERED SUFFICIENT INFORMATION TO SUPPORT THE FILING OF AN ADMINISTRATIVE COMPLAINT WITH A HEARING OFFICER UNDER SECTION 1-45-111.7(5), C.R.S. THE PRESUMPTION THAT A COMMUNICATION WAS CREATED, EDITED, OR MODIFIED USING GENERATIVE A.I. CAN BE REBUTTED BY THE RESPONDENT DURING THE ADMINISTRATIVE

COMPLAINT PROCESS. THE PRESUMPTION NO LONGER APPLIES ONCE THE RESPONDENT HAS APPEARED AND ANSWERED AN ADMINISTRATIVE COMPLAINT IN A HEARING BEFORE A HEARING OFFICER.

New Rule 25.2 concerning the disclosure statements for deepfake communications:

25.2 DISCLOSURE STATEMENTS

25.2.1 A DEEPPFAKE COMMUNICATION MUST INCLUDE A DISCLOSURE STATEMENT THAT MEETS THE REQUIREMENTS OF SUBSECTIONS 1-46-103(2), (3)(B) AND (3)(D), C.R.S. SUBSTANTIAL COMPLIANCE WITH THESE STATUTORY PROVISIONS MAY BE FOUND TO BE COMPLIANT.

25.2.2 IF A COMMUNICATION IS REQUIRED TO HAVE A "PAID FOR BY" DISCLAIMER UNDER SECTION 1-45-108.3, C.R.S., THE COMMUNICATION MUST INCLUDE BOTH A "PAID FOR BY" DISCLAIMER AND A DEEPPFAKE DISCLOSURE STATEMENT.