

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
COLORADO ETHICS WATCH; COLORADO COMMON CAUSE; DAVID PALADINO, et al., Plaintiffs, v. SCOTT GESSLER, as Secretary of State for the State of Colorado, Defendant.	
	Case No.: 2012CV2133 (consolidated with 2012CV2153) Courtroom: 280
ORDER	

THIS MATTER comes before the Court on Plaintiffs’ consolidated Complaints challenging a number of rules promulgated by the Defendant in his capacity as Colorado’s Secretary of State (“Secretary” or “Defendant”).

I. Introduction

In 2002, the people of the state of Colorado passed Amendment 27, declaring that . . . the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, providing for full and timely disclosure of campaign contributions, independent expenditures, and funding of electioneering communications, and strong enforcement of campaign finance requirements.

Colo. Const. Art. XXVIII § 1.

In November, 2011, the Secretary instituted a rulemaking process to promulgate new rules to administer and enforce Colorado’s campaign finance and election laws. The new rules became permanently effective on April 12, 2012.

Plaintiffs consist of numerous public interest groups, watchdog organizations, and individuals, all of whom have an interest in the new rules. Plaintiffs filed two separate

complaints, which were consolidated in this action, challenging the following rules implemented by the Secretary pursuant to the rulemaking process: 1.7; 1.10; 1.12; 1.18; 4.1; 4.2; 6.1; 6.2; 7.2; 14; and 18.1.8. The parties agree that in light of subsequent changes implemented by the Secretary, the challenges to Rules 6.1; 6.2 and 14 are moot. Defendant does not challenge Plaintiffs' standing to bring this action.

II. Standard of Review

Under the Colorado Administrative Procedure Act, C.R.S. § 24-4-101, *et seq.*, a challenged agency action must be held unlawful if the reviewing court finds:

that the agency action is arbitrary or capricious, a denial of statutory right, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, purposes, or limitations, not in accord with the procedures or procedural limitations of this article or as otherwise required by law, an abuse or clearly unwarranted exercise of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law

C.R.S. § 24-4-106(7). Upon such a finding, the court must “set aside the agency action and shall restrain enforcement of the order or rule under review . . . and afford such other relief as may be appropriate.” *Id.*

An adopted agency rule is presumed to be valid, and the burden to establish its invalidity rests on the party challenging the rule. *Colorado Ground Water Comm’n v. Eagle Peak Farms*, 919 P.2d 212, 217 (Colo. 1996). An agency is presumed to have expertise in the substantive arena in which it operates, and a court may give certain deference to the agency that adopts a rule pursuant to its authorizing statute. *Tivolino Teller House v. Fagan*, 926 P.2d 1208, 1215 (Colo. 1996).

The actual level of deference varies based upon the circumstances surrounding the enacted rule. Where rules are based on “judgmental or predictive facts,” “some deference to administrative expertise is appropriate.” *U.S. West Commc’ns, Inc. v. Colorado Public Util. Comm’n*, 978 P.2d 671, 675 (Colo. 1999). If a rule seeks to address the precise issue that the legislature – or the people acting pursuant to their reserved legislative power as specified in Article V, section 1 of the Colorado Constitution – has already addressed, the courts will “construe the statute accordingly and afford no deference to the agency’s interpretation.” *City of Boulder v. Colorado Public Util. Comm’n*, 996 P.2d 1270, 1277 (Colo. 2000) (citation omitted).

Legal interpretations of a rule, a statute, or a constitutional amendment are reviewed on a *de novo* basis. *Cerbo v. Protect Colo. Jobs, Inc.*, 240 P.3d 495, 500 (Colo. App. 2010) (citations omitted). Where an agency misconstrues or misapplies the law in executing in its regulatory

function, the courts have no cause to defer to the agency's approach. See *Sclavenitis v. Cherry Hills Village Bd. Of Adjustment & Appeals*, 751 P.2d 661, 664 (Colo. App. 1988). "An agency rule may not modify or contravene an existing statute, and any rule that is inconsistent with or contrary to a statute is void." *Independence Institute v. Gessler*, __ F. Supp. 3d __, 2012 WL 1439167 at *8 (D. Colo. April 26, 2012) (citing *Suetrack USA v. Indus. Claim Appeals Office*, 902 P.2d 854 (Colo. App. 1995)) (brackets omitted). Likewise, where an agency official reinterprets a statute in a way that is contrary to that of his predecessor, the new construction is owed no deference. *Common Cause v. Meyer*, 758 P.2d 153, 159 (Colo. 1988).

In promulgating rules, the Secretary cannot redefine a term already defined in the Constitution or statutes or in such a way that the definition imposes additional restrictions on a statute or constitutional provision. *Sanger v. Dennis*, 148 P.3d 404, 412 (Colo. App. 2006). Any rule must be reasonable and consistent with purposes of Article XXVIII. *Id.* at 412 – 13. In summary:

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. *First, always, is the question whether [the legislature] has directly spoken to the precise question at issue. If the intent of [the legislature] is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of [the legislature].* If, however, the court determines [the legislature] has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute If [the legislature] has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.

Wine & Spirits Wholesalers v. Colo. Dep't of Revenue, 919 P2d 894, 897 (Colo. App. 1996) (quoting *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)) (emphasis added).

III. Analysis

A. Rule 1.7, Definition of "Electioneering Communications."

Challenged Rule 1.7 provides as follows:

“Electioneering communication” is any communication that (1) meets the definition of electioneering communication in Article XXVIII, Section 2(7), and (2) is the functional equivalent of express advocacy. When determining whether a communication is the functional equivalent of express advocacy:

1.7.1 A communication is the functional equivalent of express advocacy only if it is subject to no reasonable interpretation other than an appeal to vote for or against a specific candidate.

1.7.2 In determining whether a communication is the functional equivalent of express advocacy, it shall be judged by its plain language, not by an “intent and effect” test, or other contextual factors.

1.7.3 A communication is not the functional equivalent of express advocacy if it:

- (a) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public,
- (b) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office, and
- (c) Merely urges a candidate to take a position with respect to an issue or urges the public to adopt a position and contact a candidate with respect to an issue.

Plaintiffs complain that this new rule adds a “functional equivalence” test that substantially narrows the definition of “electioneering communication” contained in Article XXVIII § 2(7), and therefore improperly restricts the universe of those who must make the required disclosures. Further, Plaintiffs argue that the cases upon which the rule is based (primarily *F.E.C. v. Wisconsin Right to Life*, 551 U.S. 449 (2007)) were rendered obsolete by *Citizens United v. F.E.C.*, 558 U.S. ___, 130 S. Ct. 876 (2010). In essence, Plaintiffs argue that *Citizen's United* placed few, if any, First Amendment restrictions on contribution disclosure requirements, and that therefore the application of *Wisconsin Right to Life* to disclosure requirements is unwarranted.

However, new Rule 1.7 is similar in most respects to the rule it replaces, former Rule 9.4. Former Rule 9.4 stated:

Pursuant to the decisions of the Colorado Court of Appeals in the case of *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962 (2006), and of the United States Supreme Court in the case of *F.E.C. v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007), a communication shall be deemed an electioneering communication only if it is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making this determination, (1) there can be no free-ranging intent-and-effect test; (2) there generally should be no

discovery or inquiry into contextual factors; (3) discussion of issues cannot be banned merely because the issues might be relevant to an election; (4) in a debatable case, the tie is resolved in favor of not deeming a matter to be an electioneering communication.

The new rule adds no substantive additional terms and imposes no additional restrictions over the old rule. While it may be that *Citizens United* renders both new and old rules obsolete, prior Rule 9.4 was in effect and unchallenged until it was superseded by Rule 1.7.

Plaintiffs rely on *In re Interrogatories Propounded by Governor Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Comm'n*, 558 U.S. ___ (2010) on Certain Provisions of Article XXVIII of The Constitution of the State of Colorado, 227 P.3d 892 (2010) (“*Interrogatories*”). There, the Colorado Supreme Court ruled that *Citizens United* invalidated Colorado Constitution Article XXVIII §§ 3(4) and 6(2); these sections made it unlawful for a corporation or labor organization to fund electioneering communications. Plaintiffs point out that *Interrogatories* left the disclosure requirements of Article XXVIII undisturbed. But Plaintiffs read too much into that decision. The Colorado Supreme Court was not asked about the disclosure requirements of Article XXVIII and therefore did not render a decision about corporate or union disclosures. Moreover, I agree with Defendant that *Colorado Ethics Watch v. Senate Majority Fund*, 269 P.3d 1248 (Colo. 2012) reaffirms *Wisconsin Right to Life’s* applicability to the Colorado Constitution’s definition of “Electioneering Communication.” *E.g.*, *Colorado Ethics Watch v. Senate Majority Fund*, 269 P.3d at 1257-58 and 1258 n.8.

Here, it appears that the Secretary did not modify or contravene an existing statute. *Independence Institute v. Gessler*, ___ F. Supp. 3d ___, 2012 WL 1439167 at *8 (D. Colo. April 26, 2012); *Sanger v. Dennis*, 148 P.3d 404, 412 (Colo. App. 2006). Further, the challenged rule is similar to the rule enacted by Defendant’s predecessor, and it therefore is entitled to deference. *Ingram v. Cooper*, 698 P.2d 1314 (Colo.1985). Accordingly, I conclude that the Secretary has acted within his authority under C.R.S. § 24-4-101 in promulgating Rule 1.7.

B. Rule 1.12, Reporting Threshold for Issue Committees

Among other things, Art. XXVIII § 2(10)(1)(I) defines an “issue committee” as a group that “has a major purpose of supporting or opposing any ballot issue or ballot question.”

Challenged Rule 1.12.3 relates to the phrase “major purpose,” and states as follows:

For purposes of determining whether an issue committee has “a major purpose” under Article XXVIII, Section 2(10)(a)(I) and section 1-45-103(12)(b)(II)(A), C.R.S., a demonstrated pattern of conduct is established by:

- (a) Annual expenditures in support of or opposition to ballot issues or ballot questions that exceed 30% of the organization’s total spending during the same period; or

(b) Production or funding of written or broadcast communications in support of or opposition to a ballot issue or ballot question, where the production or funding comprises more than 30% of the organization's total spending during a calendar year.

Plaintiffs challenge this rule arguing that the addition of a revenue percentage requirement (30%) is arbitrary, and that such a limitation is not provided for in C.R.S. § 1-45-103-12(b)(I)-(III) which already defines the term “major purpose” without resorting to an annual revenue percentage of any kind. The Defendant responds that he is providing a clear, bright line test that brings certainty to those groups which may qualify as issue committees.

C.R.S. § 1-45-103-12(b)(I)-(III) defines “major purpose.” Plaintiffs are correct that the statute does not include an annual income percentage in its definition. Prior to the enactment of the statute, two cases had already held that the term “major purpose” as used in Article XXVIII was not ambiguous. *Cerbo v. Protect Colo. Jobs, Inc.*, 240 P.3d 495 (Colo. App. 2010); *Independence Institute v. Coffman*, 209 P.3d 1130 (Colo. App. 2008). Subsequent to these cases, the legislature passed a statute essentially codifying the holding of these two cases. C.R.S. § 1-45-103(12)(b).

The additional 30% requirement adds a restriction not found in the statute and not supported by the record. The revenue requirement works further mischief in that it appears not to be income neutral. In other words, issue committees with very little income, which presumably spend most of that income on election-related matters, will be required to report. But large corporations or wealthy individuals could spend substantial sums of money on issues and yet not have to report because they are spending less than 30% of their revenue on these activities. Certainly this is contrary to the intent of the electorate, which has expressed an interest in compelling more disclosure, not less. Colo. Const. Art. XXVIII § 1.

Regardless of the consequences of the 30 percent requirement, its addition to the major purpose definition inappropriately modifies and contravenes an existing statute, C.R.S. § 1-45-103(12)(b). *Independence Institute v. Gessler*, __ F. Supp. 3d __, 2012 WL 1439167 at *8 (D. Colo. April 26, 2012). Moreover the revenue test clearly is at odds with the express intent of the legislature, which has enacted a definition without use of such a test. For these reasons, Rule 1.12.3 is invalid as it exceeds the Secretary's delegated authority under C.R.S. § 24-4-103(8)(a). *Wine & Spirits Wholesalers v. Colo. Dep't of Revenue*, 919 P.2d 894, 897 (Colo. App. 1996); *Sanger v. Dennis*, 148 P.3d 404, 412 (Colo. App. 2006).

C. Rule 1.18.2, Expenditure Threshold for “Political Committee”

Challenged Rule 1.18.2 defines “political committee” as follows:

“Political committee” includes only a person or group of persons that support or oppose the nomination or election of one or more candidates as its major purpose. For purposes of this Rule, major purpose means:

- (a) The organization specifically identifies supporting or opposing the nomination of one or more candidates for state or local public office as a primary objective in its organizing documents; or
- (b) Annual expenditures made to support or oppose the nomination or election of one or more candidates for state or local public office are a majority of the organization's total spending during the same period.

Plaintiffs object to this rule because it adds the further limitation that a “majority of the organization’s total spending” be directed towards supporting or opposing candidates. Plaintiffs point out that this definition radically narrows the definition of “political committee” set forth in Art. XXVIII § 2(12)(a). There, “political committee” is defined as any group that spends or receives more than \$200 to support or oppose candidates. Defendant argues that the rule’s “major purpose” test is clearly required in light of *Alliance for Colorado’s Families v. Gilbert*, 172 P.3d 964 (Colo. App. 2007) and *Colorado Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1154-55 (10th Cir. 2007). Both of these cases held that, as applied to the parties in those two cases, the “political committee” test now articulated in Rule 1.18.2 was required by *Buckley v. Valeo*, 424 U.S. 1 (1976).

Both *Alliance for Colorado’s Families v. Gilbert* and *Colorado Right to Life Comm., Inc. v. Coffman* undeniably required application of the *Buckley* test to determine whether the plaintiffs in these cases were subject to regulation as political committees. Nevertheless, the Secretary’s proposed definition is clearly contrary to the “political committee” definition in Amendment XXVIII. Courts “cannot re-write state laws to conform [to] constitutional requirements where doing so would be inconsistent with legislative, or here, the state citizenry’s intent. . . .” *Alliance for Colorado’s Families v. Gilbert*, 172 P.3d 964, 972 (Colo. App. 2007) (quoting *Colorado Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1154-55 (10th Cir. 2007)).

Because the Rule 1.18.2’s limitation is contrary to the intent of Art. XXVIII § 2(12)(a) as passed by the citizens of Colorado, the Secretary cannot read the “major purpose” limitation into the definition. Doing so would result in the addition of a new, strict, limitation into Section 2(12)(a). Both *Alliance for Colorado’s Families v. Gilbert* and *Colorado Right to Life Comm., Inc. v. Coffman* hold that such a narrowing is impermissible (though, paradoxically, also required to pass constitutional muster as applied in those cases). But Section 2(12)(a) has never been declared facially unconstitutional, so there still may be circumstances where it can apply as written.

Ultimately, it comes down to this: Can the Secretary add a “major purpose” limitation to Section 2(12)(a) to save the provision, or is it a matter for the legislature or the citizens, through referendum, to fix it? While the Secretary’s pragmatism is to be respected, removing a critical element of 2(12)(a) by rule goes beyond the Secretary’s powers. *Sanger v. Dennis*, 148 P.3d 404 (Colo. App. 2006); *Wine & Spirits Wholesalers v. Colo. Dep’t of Revenue*, 919 P.2d 894, 897 (Colo. App. 1996). He assumes a solution without legislative or voter input, and

thereby exceeds his delegated authority. C.R.S. § 24-4-103(8)(a). For these reasons, Rule 1.18.2 is invalid.

D. *Rule 1.10 and 7.2.1, Definition of “political organization”*

Challenged Rule 7.2.1 states:

Political organizations. In the case of political organizations as defined in section 1-45-103(14.5), C.R.S.:

7.2.1 For purposes of section 1-45-108.5, C.R.S., an entity is considered a political organization only if [it]:

- (a) Has as its major purpose influencing or attempting to influence elections as defined in Rule 1.10; and
- (b) Is exempt, or intends to seek exemption, from taxation by the Internal Revenue Service.

(Punctuation in the original.)

Challenged Rule 1.10 states:

“Influencing or attempting to influence”, for purposes of political organizations as defined in section 1-45-103(14.5), C.R.S., means making expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate or candidates.

(Punctuation in the original.)

Plaintiffs maintain that these two rules impermissibly narrow the definition of “political organization” which already is defined in C.R.S. § 1-45-103(14.5). The result, according to Plaintiffs, is that that “political organization” as defined by these rules becomes indistinguishable from “political committee” which in turn results in a loophole that allows organizations to avoid reporting at all. The Secretary responds that Rule 7.2.1 merely echoes the definition of Section 527 of the Internal Revenue Code, and that Rule 1.10 is supported by “forty years of First Amendment Jurisprudence.”

C.R.S. § 1-45-103(14.5) defines “political organization” as

a political organization defined in section 527(e)(1) of the federal “Internal Revenue Code of 1986”, as amended, that is engaged in influencing or attempting to influence the selection, nomination, election or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code.

To this, the Secretary’s rule adds a “major purpose” requirement and further narrows the phrase “influence or attempting to influence” to “express advocacy.” Thus, under the challenged rules, “an entity is considered a political organization only if [it] . . . has as its major purpose influencing or attempting to influence elections as defined in Rule 1.10.” Rule 1.10 in turn defines “influencing or attempting to influence” as “making expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate or candidates.” Read in combination, as intended, the two rules define a “political organization” as an entity which has as its major purpose making expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate or candidates.

Thus, the Secretary’s rules improperly narrow the definition of “political organization.” Under the statute, it is an organization that “is engaged in” influencing elections or appointments of individuals to public office. Under Rule 7.2.1, this is narrowed to organizations with a “major purpose” in influencing elections. Rule 1.10 further narrows the definition to groups which “expressly advocate” for or against candidates. These narrowing rules effectively eliminate distinctions between “political organization” and “political committee.” Political committees, subject to a constitutional contribution reporting limit of \$200, could switch to a “political organization” and avoid this restriction under the challenged rules. Such a result is contrary to the clear terms of the statute and the intent of the legislature. *See* Letter from State Senator Morgan Carroll to Secretary of State Scott Gessler (Dec. 14, 2011) (Record at Tab 5.11). Removing or limiting critical elements of C.R.S. § 1-45-103(14.5) by rule goes beyond the Secretary’s powers. *Sanger v. Dennis*, 148 P.3d 404 (Colo. App. 2006); *Wine & Spirits Wholesalers v. Colo. Dep’t of Revenue*, 919 P.2d 894, 897 (Colo. App. 1996). He thus has exceeded his delegated authority under C.R.S. § 24-4-103(8)(a). For these reasons, Rules 1.10 and 7.2 are invalid.

E. *18.1.8(a), Major Contributor Reporting Penalties*

Challenged Rule 1.18.1 provides as follows:

18.1 Requests for waiver or reduction of campaign finance penalties

18.1.1 A request for waiver or reduction of campaign finance penalties imposed under Article XXVIII, Section 10(2) must state the reason for the delinquency. The filer should provide an explanation that includes all relevant factors relating to the delinquency and any mitigating circumstances, including measures taken to avoid future delinquencies. Before the Secretary of State will consider a request, the report must be filed, and a request including the information required by this paragraph must be submitted

* * *

18.1.8 Major Contributor Reports

(a) Penalties assessed for failure to timely file a Major Contributor Report under section 1-45-108(2.5), C.R.S., stop accruing on the date that the contribution is first disclosed, either on the Major Contributor Report or the regularly-scheduled Report of Contributions and Expenditures. Penalties will not accrue beyond the date of the general election.

Plaintiffs challenge this rule claiming that it sets a definite cut off for the accrual of fines for failure to file required reports. Plaintiffs maintain that certain wealthy organizations simply will decline to file knowing that the fine for failing to do so will be fixed on Election Day. Defendant maintains that he simply is setting forth what constitutes good cause for failing to file a report.

C.R.S. § 1-45-108(2.5) specifies when a major donor report must be filed. C.R.S. § 1-45-111.5(c) sets the penalty for failing to do so: “fifty dollars per day for each day that a report [required to be filed] is not filed.” There is no limit, and no cutoff date. Rule 18.1.8 abrogates the fifty dollar per day penalty once a contributor is identified in any report, either the Major Contributor Report or the regularly-scheduled Report of Contribution and Expenditures. But the rule goes too far and cuts off all penalties as of the date of the general election.

This substantially denudes the statutory penalty and raises the possibility that those subject to the penalty simply will not report knowing that the fine amount will be fixed on Election Day. The Secretary does not address the effect of the cutoff date in his brief. Stopping accrual of the fine on Election Day is contrary to the stated interests of “strong enforcement of campaign finance requirements” as stated in Art. XVIII § 1. Furthermore, the rule removes an enforcement element from C.R.S. § 1-45-111.5(c) by setting an ultimate limit on fines for lack of reporting. As such, this rule is beyond the Secretary’s powers under *Sanger v. Dennis*, 148 P.3d 404 (Colo. App. 2006); *Wine & Spirits Wholesalers v. Colo. Dep’t of Revenue*, 919 P.2d 894, 897 (Colo. App. 1996). He thus has exceeded his delegated authority under C.R.S. § 24-4-103(8)(a). For these reasons, Rule 18.1.8 is invalid.

F. Rules 4.1 and 15.6

Rules 4.1 and 15.6 increase the reporting limits for issue committees to \$5,000. Both rules contain a disclaimer indicating that they will not be enforced unless *Colorado Common Cause v. Gessler*, No. 2011CV4164 (Denver Dist. Ct. Nov. 17, 2011) is overturned by a higher court. *Colorado Common Cause* held that the \$5,000 limit in Rule 4.1’s predecessor, Rule 4.27, was invalid. The Secretary has indicated in Rules 4.1 and 15.6 that they will not be enforced in light of the trial court’s ruling in *Colorado Common Cause*.

Under the doctrine of ripeness, a claim must be real and immediate. With this requirement in mind, we must refuse to consider uncertain or contingent future matters that suppose speculative injury that may never occur. We determine

ripeness on the basis of the situation at the time of review, not the situation existing when the trial court acted.

Developmental Pathways v. Ritter, 178 P.3d 524, 534 (Colo. 2008) (citations and internal quotes omitted). Here, the Secretary has expressly stated that Rules 4.1 and 15.6 will not be enforced pending a ruling in *Colorado Common Cause*. Because there is no real and immediate threat of enforcement, I conclude that Plaintiffs' claims with respect to these two rules are not ripe for decision.

IV. Conclusion

For the reasons set forth above, Rule 1.7 is valid. Rules 1.10; 1.12; 1.18; 7.2; and 18.1.8 are invalid. Rules 4.1 and 15.6 are not yet ripe for determination.

ENTERED this 10th day of August, 2012.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J. Eric Elliff". The signature is written in a cursive, flowing style.

J. Eric Elliff
District Court Judge