

<p>STATE OF COLORADO SECRETARY OF STATE BEFORE THE ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290</p> <hr/> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE, Complainant, vs. COLIN LARSON; COLIN FOR COLORADO; RESTORE COLORADO LEADERSHIP FUND IEC, RESTORE COLORADO LEADERSHIP FUND 527; DANIEL COLE, COLE COMMUNICATIONS, LLC; and VICTOR’S CANVASSING, LLC, Respondents.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2023 AHO 0003</p>
<p>ORDER DENYING MOTION TO DISMISS</p>	

The Elections Division of the Colorado Secretary of State filed an administrative complaint alleging improper coordination by House of Representatives candidate Colin Larson and his candidate committee Colin for Colorado during the 2022 election cycle. The complaint alleges that improper coordination with other entities through third parties resulted in two violations of Colorado’s campaign finance laws:

- Count 1: Failure to report contributions and expenditures of Colin Larson and Colin for Colorado in violation of § 1-45-108(1)(a)(I), C.R.S., and;
- Count 2: Receipt of excessive contributions by Colin Larson and Colin for Colorado in violation of Colo. Const. art. XXVIII, § 3.

1. Respondents Colin Larson and Colin for Colorado filed a Motion to Dismiss the Division’s Complaint, asserting that it was untimely because it was filed more than “125 days past

the notice of Initial Review and Opportunity to Cure,” Motion, ¶10, and therefore deprives the agency of jurisdiction to hear the complaint.

2. As a preliminary matter, I note for the parties that I do not have access, at this stage of the proceedings, to the Division’s initial complaint (which from the Motion I infer was filed in November 2022), its notice to cure, a subsequent motion by the Division to dismiss or the Deputy Secretary’s decision dismissing some claims or parties and not others. There were no affidavits, declarations or attachments to the motion or response that supplied any information at all about those. I have only a scattering of dates that are set out in counsel’s arguments as to why the Respondents’ Motion to Dismiss should, or should not, be granted. I use these dates in my consideration of the Motion:

- a. **November 22, 2022:** the Division notified Respondents of their Initial Review and Opportunity to Cure. Motion ¶2.
- b. **February 13, 2023:** Respondents’ counsel asks the Division for an update.
- c. **March 24, 2023:** the case was moved into the investigation stage. Response, p. 2.
- d. **March 27, 2023:** the Division moved to dismiss the complaint. Motion ¶10; Response, p. 2.
- e. **May 1, 2023:** the Deputy Secretary of State—the final agency decisionmaker for campaign finance matters—granted in part and denied in part the motion to dismiss. Response, p. 2.
- f. **May 19, 2023:** the administrative complaint with a hearing officer is filed.¹

3. Turning now to Respondents’ assertion that a delay in processing the initial complaint deprived the agency of jurisdiction to bring an administrative complaint before a hearing officer, the processing stages for the Secretary of State’s handling of campaign finance complaints arising under either Colo. Const. art. XXVIII or the Fair Campaign Practices Act (FCPA), § 1-45-

¹ I take this date from the certificate of service in the administrative complaint, to which I do have access.

101, C.R.S. et seq. are set out in detail in FCPA § 1-45-111.7. Subsection (1) contains definitions. Subsection (2) deals with how complaints may be initiated.

4. The next four subsections are the ones that bear on Respondents' Motion to Dismiss. They lay out the processing stages and actions to be taken on a campaign finance complaint as it proceeds through to the ultimate decision of the Division about when and whether an "Administrative complaint...is filed by the Division...with a hearing officer pursuant to sections 1-45-111. 7(5) and (7), C.R.S." Those stages and their titles are as follows:

- a. Subsection (3): "Initial review"
- b. Subsection (4): "Curing violations"
- c. Subsection (5): "Investigations and enforcement"
- d. Subsection (6): "Conduct of hearings"

5. **Subsection (3): Initial Review.** Upon receipt of an "initial complaint,"² the Division has 10 days within which to conduct "an initial review," § 1-45-111.7(3)(a), and I) to prepare a motion to dismiss, or II) to notify respondent of the opportunity to cure, or III) to "conduct [an] additional review... within thirty days to determine whether to file a complaint with a hearing officer." § 1-45-111.7(3)(b).

6. **Subsection (4): Curing violations.** The initial complaint against Respondents survived the initial review, with the Division notifying Respondents of their right to cure the violations on November 22, 2022. Motion, ¶2. Respondents declined, asserting there were no violations so there was nothing to cure. On February 13, 2023, they "requested an update on the

² "Initial complaint" is defined in Rule 1 § 1.18 of the Secretary of State's Rules Concerning Campaign and Political Finance, 8 CCR 1505-6. It is distinctly different from a later filed "administrative complaint" that is defined by Rule 1 § 1.1.

matter, citing the thirty-day rule in statute.” *Id.* ¶8. They were advised “the matter was still in the cure stage.” *Id.*, ¶9.

7. While §§ 1-45-111.7(3)(a) and (3)(b) have specific time limits—ten days and thirty days—for action on the complaint by the Division during the initial review stage, there is no such time limit imposed on the Division during the cure stage offered by § 1-45-111.7(3)(b)(II). During the cure stage, if the Division concludes that a respondent has “substantially complied with its legal obligations, the division shall prepare and file with the deputy secretary a motion to dismiss the complaint.” § 1-45-111.7(4)(e)(II).

8. On the other hand, if the Division concludes during the cure period that “respondent has failed to substantially comply..., the division shall conduct *an additional review...* to determine whether to file the complaint with a hearing officer.” §1-45-111.7(4)(e)(III). [Emphasis supplied.] In this case, there were nine respondents and so the Division asserts that it took some time to determine whether there was substantial compliance, Response, p. 5, because it was required to consider the multiple factors in §1-45-111.7(4)(f):

“(I) The extent of the respondent's noncompliance;

“(II) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and

“(III) Whether the noncompliance may properly be viewed as an intentional attempt to mislead the electorate or election officials.”

9. **Subsection (5): Investigations and enforcement.** Where the Division concludes that a respondent has not complied with its legal obligations under Colo. Const. art. XXVIII or the FCPA, additional investigation is authorized by § 1-45-111.7(5)(a)(I).

“The division shall investigate each complaint that was not dismissed during either its initial review or by means of the cure proceedings in accordance with subsection

(3) or (4) of this section to determine whether to file a complaint with a hearing officer.”

10. As there are time limits during the initial review under subsection (3), there are also time limits—thirty and thirty-five days—imposed on the Division during the investigation and enforcement stage under subsection (5). The investigation must be completed, and either a complaint with a hearing officer or a motion to dismiss with the Deputy Secretary must be filed “within thirty days after initiating an investigation.” §1-45-111.7(5)(a)(IV). The Division’s scrutiny of the complaint during the initial review (subsection (3)) stage and the curing violations (subsection(4)) stage are referred to in the statute as “reviews.” It is at this point in the process, however, that scrutiny of the complaint by the Division is called an “investigation”—including in the very title of the subsection (5). In this case involving the Larson Respondents, the investigation began on March 24, Response, p. 2, and the Division moved to dismiss some parts of the complaint (and I infer some parties, as well) on March 27, 2023. Motion ¶10; Response, p. 2.

11. Having proceeded with a motion to dismiss during this stage, the Deputy Secretary then has an additional 35 days to rule on the motion. § 1-45-111.7(5)(a)(IV). Once the Deputy Secretary has ruled on the motion, “the Division has fourteen *business* days to file a complaint with a hearing officer.” *Id.* [Emphasis supplied.]

12. This case was moved into the investigations and enforcement stage on March 24, 2023 and the Division’s motion to dismiss was filed March 27. Response, p. 2. Exactly thirty-five days later, on May 1, 2023, the Deputy Secretary granted in part the motion to dismiss and denied it as to the Larson Respondents. Fourteen business days thereafter, the instant Complaint with a hearing officer was filed. So the Division complied precisely with the subsection (5) time limits imposed on it in § 1-45-111.7(5)(a)(IV).

13. Putting a fine point on it, the Division complied with the time constraints imposed upon it during the Initial Review stage under subsection (3) and during the Investigations and enforcement stage under subsection (5).

14. Respondents' basis for the Motion to Dismiss is that the "division did not move to dismiss until March 27th, 2023, 125 days past the notice of Initial Review and Opportunity to Cure." Motion, ¶10. It is indeed 125 days from November 22, 2022 to March 27, 2023. But Respondents have failed to show that this length of time violated any of the statutory prescriptions or directives contained in the FCPA.

15. Plaintiff bears the burden of proving jurisdiction. *Cash Advance & Preferred Cash Loans v. State ex rel. Suthers*, 242 P.3d 1099, 1113 (Colo. 2010). When the alleged jurisdictional facts are in dispute, a trial court should conduct an evidentiary hearing and enter findings of fact. When there is no evidentiary dispute, the trial court may rule without a hearing. *Tidwell v. City & County of Denver*, 83 P.3d 75 (Colo. 2003).

16. There are no jurisdictional facts in dispute here. The Division has established jurisdiction under Colo. Const. XXVIII and § 1-45-111.7, C.R.S. Respondents have pointed to no provision in the statute or rules that is violated by the passage of time between filing the initial complaint sometime in November 2022 and the filing of the administrative complaint with a hearing officer on May 19, 2023.

17. In essence, Respondents claim that the window of time for curing a violation is finite, and that that amount of time was exceeded in this case. But as I have pointed out, there are no time limits imposed on the Division in subsection (4) of the statute. It is reasonable to infer that

where the General Assembly imposed time limits in subsections (3) and (5) of § 1-45-111.7, that their omission of any time limits imposed on the Division in subsection (4) was intentional.

“When the General Assembly includes a provision in one section of a statute, but excludes the same provision from another section, we presume that the General Assembly did so purposefully. See *Romer v. Bd. of County Comm'rs of County of Pueblo*, 956 P.2d 566, 567 (Colo.1998)(absence of specific provisions or language in a statute "is not an error or omission, but a statement of legislative intent"); *Eagle Peak Farms, Ltd.*, 919 P.2d at 218.”

Well Augmentation Subdistrict v. Aurora, 221 P.3d 399, 419 (Colo. 2009).

18. I decline the Division’s invitation to rule on whether the time limits set forth in subsections (3) and (5) of § 1-45-111.7 are merely “directory, not mandatory.” Response, p. 6. A narrower basis for my ruling is adopted here: there is simply no provision in the FCPA that has been violated by the filing of the administrative complaint more than “125 days past the notice of Initial Review and Opportunity to Cure,” as argued in the Motion, ¶10. The statute is clear and unambiguous on its face, so there is no need look no further. *People v. Luther*, 58 P.3d 1013, 1015 (Colo.2002).

19. Accordingly, Respondents’ Motion to Dismiss is denied.

20. **Setting a hearing on the administrative complaint.** § 1-45-111.7(6)(a) of the FCPA requires the hearing officer to set a hearing within thirty days of the date that the administrative complaint was filed.

21. I am ordering counsel promptly to confer with each other regarding the schedule for discovery, dispositive motions, motions in limine and filing pretrial statements consistent with Rule 24.11.1. The goal of conferring is to reach an agreement on these matters. After conferring, counsel for the Division is ordered to file a Motion to Set Hearing, on or before December 8, 2023, that sets

forth the proposed pretrial schedule and hearing dates. Respondent's counsel is ordered to file a Response, if any, to the Motion to Set Hearing on or before December 15, 2023. The Motion and Response are to be served on the Secretary of State's administrative staff and me by using the email address AdministrativeHearingOfficer@ColoradoSOS.gov. Administrative staff will then coordinate the trial setting with the availability of the hearing room, counsel and the Hearing Officer. An order setting out these dates will follow on or before December 21, 2023.

SO ORDERED this 21st day of November 2023.



Macon Cowles, Hearing Officer



CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of the Order herein was sent via email on November 21, 2023 to the following:

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Macon Cowles, Hearing Officer