



COLORADO SECRETARY OF STATE

AHO No.: 2023-001
OAC Case Number: OS 2021-0012
Elections Div'n No. 2021-27

IN THE MATTER OF ELECTIONS DIVISION v. UNITE FOR COLORADO

**ORDER REFERRING CASE TO
COLORADO DEPARTMENT OF STATE ADMINISTRATIVE HEARING OFFICER**

This matter comes before Colorado Deputy Secretary Christopher P. Beall (“Deputy Secretary”), on the Deputy Secretary’s own motion, in light of the non-compliance of the Office of Administrative Courts (“OAC”) with the Deputy Secretary’s prior order of remand in accordance with the “Memorandum of Understanding on Campaign Finance Hearings Under § 1-45-111.7, C.R.S. (2019)” (herein, “the MoU”).

As the parties are aware, the Deputy Secretary issued an order on December 30, 2022, setting aside the prior initial decision by the prior hearing officer and remanding this case to the OAC for further proceedings before a different hearing officer. See “Order Setting Aside Initial Decision, Remanding Complaint for Further Consideration, and Directing Reassignment to New Hearing Officer,” *Elec. Div’n v. Unite for Colo.*, Case No. E.D. 2021-27 (Dec. 30, 2022).

On March 10, 2023, the Director and Chief ALJ of the OAC emailed a letter to the Deputy Secretary stating, “The OAC declined to take action in response to this [order].” See Ltr. of Chief ALJ Laura A. Broniak to C. Beall (Mar. 10, 2023). Concurrent with this letter, Chief ALJ Broniak also delivered notice to the Secretary of State that the OAC was exercising the provision in the MoU to terminate the MoU upon 45-days written notice, with the effective date of such termination being April 24, 2023. See Ltr. of Chief ALJ Laura A. Broniak to J. Griswold (Mar. 10, 2023). Since these two letters, the OAC has confirmed that it

intends to take no further steps to adjudicate the formal complaint in this case, and the Executive Director of the Department of Personnel & Administration has confirmed to the Secretary of State that his agency will no longer serve as a hearing office for complaints under the Fair Campaign Practices Act (“FCPA”).

The Deputy Secretary hereby finds that the OAC’s refusal to conduct further proceedings in this case as directed by the December 30, 2022, remand order is in direct violation of the MoU, which remains in effect and will continue to apply even after April 24, 2023. See MoU, ¶ 6 (“Termination ends the Parties’ respective and joint agreements and obligations under this MOU only with respect to complaints filed by the Division with the OAC after the effective date of the termination.”). Nevertheless, in light of the clear and unequivocal position of the Executive Director of the Department of Personnel & Administration, and in light of the potential legal complications of an effort by one state agency to enforce a contractual provision with another state agency, see, e.g., *Roemer v Bd. of Cnty. Comm’rs*, 956 P.2d 566, 573 (Colo. 1998), the Deputy Secretary further finds that the interests of the parties in a prompt resolution of this matter require the Deputy Secretary to direct that this case be filed with the Administrative Hearing Officer established pursuant to newly promulgated Rule 24 of the Campaign and Political Finance Rules of the Department of State. See Notice of Temporary Adoption of Rules Concerning Campaign and Political Finance, 8 CCR 1505-6, (April 13, 2023).

In light of these findings, the Deputy Secretary concludes that a new referral is now appropriate directing this case to be adjudicated by the Administrative Hearing Officer employed by the Department of State pursuant to the new Rule 24 procedures for administrative hearings on campaign finance complaints. The Administrative Hearing Officer, who is the former chief administrative law judge of the OAC and who previously signed the MoU on behalf of the OAC when it was established in 2019, has been engaged by the Department of State pursuant to an engagement agreement that requires compliance with the FCPA and the state Administrative Procedures Act, as well as the provisions of the new Rule 24.

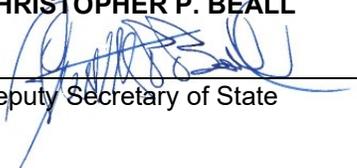
Conclusion

Considering the foregoing, the Deputy Secretary directs that the full record of the prior proceedings before the prior hearing officer be provided to the Department of State’s Administrative Hearing Officer, and that the Administrative Hearing Office take such steps as it deems appropriate to resolve the matter presented by the Division in its underlying complaint.

IT IS SO ORDERED.

DONE and **ORDERED** this 13th day of April 2023.

CHRISTOPHER P. BEALL


Deputy Secretary of State



CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **ORDER REFERRING CASE TO COLORADO DEPARTMENT OF STATE ADMINISTRATIVE HEARING OFFICER** was served on the following parties via electronic mail on April 13, 2023:

Administrative Hearing Officer
Matthew Azer, Esq.
AdministrativeHearingOfficer@ColoradoSoS.gov

Petitioner
Jason Marquez, Asst. Attorney General
Michael Kotlarczyk, Senior Assistant Attorney General
Colorado Department of Law
mike.kotlarczyk@coag.gov
jason.marquez@coag.gov
xan.zerocki@coag.gov

Respondent
Suzanne Taheri
West Group Law and Policy
st@westgpl.com

Courtesy copy to Elections Division:
CPFComplaints@sos.state.co.us

Courtesy copy to counsel for underlying complainants Katherine S. Dorman and Scott Wasserman:
Edward T. Ramey
eramey@tierneylawrence.com

/s/ Christopher P. Beall
Deputy Secretary of State