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| <p>STATE OF COLORADO<br/>SECRETARY OF STATE<br/>BEFORE THE ADMINISTRATIVE HEARING OFFICER<br/>1700 Broadway #550<br/>Denver, CO 80290</p> <hr/> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,<br/><br/>Complainant,<br/>vs.<br/><br/>UNITE FOR COLORADO, d.b.a., ADVANCE COLORADO<br/>ACTION,<br/><br/>Respondent.</p> | <p>Case Number: 2024 AHO 0024<br/><br/>(In re 2023-56)</p> |
| <p style="text-align: center;">AMENDED ORDER REQUIRING SIGNING THE ANSWER AND VACATING THE<br/>SCHEDULING ORDER</p>   |  |

**The only respect in which this Order is amended from when it was originally issued July 17, 2024 is the addition of the pin citation to C. R. C. P. 121 in paragraph 2 at the top of p. 2. Inadvertently, the rule number was blank, which is corrected and highlighted in this Amended Order. And I do note that counsel for Respondent immediately filed a compliant Answer in response to the Order yesterday. This addresses the concern expressed in ¶¶1-4 of the Order.**

1. The Answer filed by Respondent July 15, 2024 fails to comply with an elemental rule of pleading, mainly that it be signed by the lawyer responsible for the pleading. The same formalities apply to administrative courts that apply in other civil courts requiring that pleadings be signed so that lawyers, in signing pleadings, bind themselves to the obligations explicit in C.R.C.P. Rule 11.

“The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause

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unnecessary delay or needless increase in the cost of litigation. If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader.”

C.R.C.P. 11

2. Campaign & Political Finance Rule (CPFR) 24.3.1, 8 Code Colo. Regs. 1505-6, states that the Colorado Rules of Civil Procedure apply to matters before the administrative hearing officer. CPFR 24.6.1 says that entries of appearance and first pleadings filed by a lawyer in the case must comply with C.R.C.P. 121, §1-1.

“No attorney shall appear in any matter before the court unless that attorney has entered an appearance by filing an Entry of Appearance or *signing a pleading*.” [Emphasis supplied.]

C.R.C.P. 121, §1-1.

3. C.R.C.P. 11 provides the coordinates and information that is to be provided in every pleading filed by a lawyer in the proceeding.

### **Rule 11. Signing of Pleadings.**

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**(a) Obligations of Parties and Attorneys.** Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. The initial pleading shall state the current number of his registration issued to him by the Supreme Court. The attorney’s address and that of the party shall also be stated . . . . If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader..

C.R.C.P. 11(a).

4. Compliance with these fundamental pleading rules will be easily accomplished, and I expect that counsel will correct the deficiencies promptly by signing the Answer and identifying the signatory—not just the “West Group.” A couple of issues raised in the Answer, however, require briefing prior to the hearing.

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5. Respondent has asserted these affirmative defenses at the top of p. 10 of the unsigned Answer:

- a. 8 CCR 1505-6, Rule 1.36 exceeds the Department's rule making authority.
- b. 8 CCR 1505-6, Rule 1.36 is unconstitutional on its face and as applied to Unite.

6. These affirmative defenses are potentially outcome determinative and present legal questions. And the law concerning the authority of administrative courts to rule on facial constitutional challenges is different from the law concerning "as applied" constitutional challenges. The best path forward is likely for these defenses to be raised by one or more motions. In any event, the legal issues above *do* require briefing that must be submitted to the court prior to the hearing in this matter so that the parties can present their views of the relevant law for consideration by the hearing officer in making an Initial Decision.

7. I am ordering counsel promptly to confer with each other regarding the schedule for discovery, dispositive motions and briefs responding thereto, motions in limine and filing pretrial statements consistent with CPFR Rule 24.11.1. The goal of conferring is to reach an agreement on these matters. It is my hope (but not a requirement) that the first motion or brief addressing the legal issues can be filed no later than July 24, 2024, which is the date established in the prior Scheduling Order for the filing of Prehearing Statements. The filing of motions and briefs should be consistent with C.R.C.P. 121, §1-15.

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8. After conferring, counsel for the Division is ordered to file a Motion to Set Hearing, on or before July 24, 2024, that sets forth the proposed pretrial schedule and hearing dates. Respondent's counsel may file a Response, if any, to the Motion to Set Hearing within one week thereafter. 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](mailto: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 August 5, 2024.

9. The hearing in this matter currently set for July 31, 2024 is vacated.

**SO ORDERED** this 18<sup>th</sup> day of July 2024.

  
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Macon Cowles, Hearing Officer

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CERTIFICATE OF SERVICE

The undersigned hereby states and certifies that one true copy of this Amended Order was sent via email on July 18, 2024 to the following:

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*/s/ N. B. Porte*  
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Nathan Borochoff-Porte, Administrative Court Clerk