



Notice of Proposed Permanent Rulemaking

Office of the Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

May 24, 2018

I. Hearing Notice

As required by the State Administrative Procedure Act,¹ the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for **July 2, 2018 from 1:30 p.m. – 4:30 p.m.** in the Blue Spruce Conference Room on the 2nd floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

II. Subject

The Secretary is considering amendments to the rules concerning campaign and political finance² to improve the administration and enforcement of Colorado campaign finance law.³

Specifically, the Secretary proposes permanent adoption of temporary Rule 18.2.4 adopted on May 4, 2018. The Secretary may consider additional rule amendments including revisions necessary to ensure proper administration of legislation recently passed by the Colorado General Assembly; establish uniformity in the administration of current law; eliminate obsolete provisions; remove rules stricken by the courts; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Rulemaking authority

The Secretary proposes the rule revisions and amendments in accordance with the following statutory and constitutional provisions:

¹ Section 24-4-103(3)(a), C.R.S. (2017).

² 8 CCR 1505-CCR 6.

³ Article 45 of Title 1, C.R.S. (2017).

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to “promulgate rules related to filing in accordance with article 4 of title 24, C.R.S.”
- Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which requires the Secretary of State to “[p]romulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution].”
- Section 1-1-107(2)(a), C.R.S., (2017), which authorizes the Secretary of State “[t]o promulgate, publish, and distribute...such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”

IV. Copies of draft rules

A preliminary draft of the proposed rules is posted on the Secretary of State’s rules and notices of rulemaking website at:

http://www.sos.state.co.us/pubs/rule_making/hearings/2018/CPFRulesHearing20180702.html

You may also contact our office to request a paper or editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,⁴ if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by June 27, 2018.

V. Opportunity to testify and submit written comments

The Secretary values your feedback in our rulemaking process and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comment concerning the rule amendments. To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

You may submit written comments by mail, email, or in person to our office any time before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as well. Additional opportunity to comment in writing may be announced at the conclusion of the hearing.

All written comments will be posted online at the Secretary of State website at: http://www.sos.state.co.us/pubs/rule_making/hearings/2018/CPFRulesHearing20180702.html.

We will redact contact information, including home address, email address, and telephone

⁴ Section 24-4-103(3)(a), C.R.S. (2017). “Any 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.”

number(s), from submissions before posting the information online, unless otherwise directed by the contributor.

VI. Broadcast and audio recording of hearing

If you are unable to attend the hearing, you may listen to the live broadcast from the Aspen Conference Room online at www.sos.state.co.us/pubs/info_center/audioBroadcasts.html. After the hearing, visit the same website and click on “archived recordings” to access an audio recording of the hearing.

VII. Office contact

If you have any questions or would like to submit written comments, please contact Andrea Gyger with the Administration Division at SoS.Rulemaking@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 24th Day of May, 2018.



Suzanne Staiert
Deputy Secretary of State

For

Wayne W. Williams
Colorado Secretary of State



Draft Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

May 24, 2018

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State rules concerning campaign and political finance.¹ The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance law² as follows:

- Amendments to Rule 1.4 to establish uniformity in the administration of current law.
- Amendments to Rule 1.6.1 to ensure proper administration of HB 18-1047.
- Amendments to Rule 1.7 to ensure proper administration of HB 18-1047.
- Amendments to Rule 1.8.1 to ensure proper administration of HB 18-1047.
- New Rule 1.17 to establish uniformity in the administration of current law.
- Renumbering of Rules 1.18 through 1.21.
- Amendments to Rule 1.19 to establish uniformity in the administration of current law.
- Amendments to Rule 2.2.2 to establish uniformity in the administration of current law.
- Amendments to Rule 2.2.3 to establish uniformity in the administration of current law.
- Amendments to Rule 2.2.4 to establish uniformity in the administration of current law.
- Amendments to Rule 2.4.3 to establish uniformity in the administration of current law.

¹ 8 CCR 1505-CCR 6.

² Article 45 of Title 1, C.R.S. (2017).

- Repeal Rule 4.5 as duplicative of statute.
- Renumbering of Rule 4.6.
- Amendments to Rule 10.3 to ensure proper administration of HB 18-1047.
- New Rule 10.7 to establish uniformity in the administration of current law.
- Renumbering of Rule 10.7.
- Repeal of Rule 14.4 to establish uniformity in the administration of current law.
- Amendments to Rule 17.5 to establish uniformity in the administration of current law.
- Amendments to Rule 18.1.1 to establish uniformity in the administration of current law.
- Repeal Rule 18.1.4 to establish uniformity in the administration of current law.
- Amendments to Rule 18.1.4 to clarify language.
- Permanently adopt Rule 18.2.4.
- New Rule 18.5 to establish uniformity in the administration of current law.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

On May 16, 2018, the Secretary issued a request for public comment to help our office develop preliminary draft rules. The comments we received in anticipation of rulemaking are available online at: www.sos.state.co.us/pubs/rule_making/CPFRuleComments.html and are incorporated into the official rulemaking record.

II. Rulemaking Authority

- Article XXVIII, Section 8 of the Colorado Constitution, which requires the Secretary of State to “promulgate rules related to filing in accordance with article 4 of title 24, C.R.S.”
- Article XXVIII, Section 9(1)(b) of the Colorado Constitution, which requires the Secretary of State to “[p]romulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of [Article XVIII of the Colorado State Constitution].”
- Section 1-1-107(2)(a), C.R.S., (2017), which authorizes the Secretary of State “[t]o promulgate, publish, and distribute...such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”

Preliminary Draft of Proposed Rules

Office of the Colorado Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

May 24, 2018

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary 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 July 2, 2018 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 **June 27, 2018**.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

1 *Amendments to 8 CCR 1505-6:*

2 *Amendments to Rule 1.4 concerning the definition of contribution:*

3 1.4 “Contribution” has the same meaning as set forth in Colo. Const. article XXVIII, section ~~2(5)(e)~~
4 2(5)(B), and section 1-45-103(6), C.R.S.

5 1.4.1 A contribution does not include an endorsement of a candidate or an issue by any person,
6 or include interest earned in an interest-bearing bank account, dividend income from
7 invested committee funds, earned income from commercially reasonable transactions, or
8 transfers of money within a political party.

9 ~~1.4.1-1.4.2 Services provided without compensation by individuals volunteering their time~~
10 ~~as outlined in Colo. Const. article XXVIII, section 2(5)(b), VOLUNTEER SERVICES~~

11 (A) ~~includes time based~~ TIME-BASED services volunteered by an individual ~~as a~~
12 ~~member of any firm, association, or other business entity, including a corporation~~

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2017). 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. (2017). “[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 ARE NOT CONSIDERED A CONTRIBUTION if the individual receives no direct or
2 indirect compensation for the time volunteered.

3 (B) IF AN INDIVIDUAL VOLUNTEERS ONLY A PORTION OF HIS OR HER TIME-BASED
4 SERVICES, THE VOLUNTEERED PORTION IS NOT CONSIDERED A CONTRIBUTION.

5 (C) Any unpaid services that create a thing of value are ~~exempted~~-NOT CONSIDERED
6 A CONTRIBUTION. If volunteer services yield a thing of value, “contribution” only
7 includes the reasonable value of the materials involved, unless the value is de
8 minimis.

9 *[Not shown: renumber Rule 1.4.2 to 1.4.3].*

10 *Amendments to Rule 1.6.1 concerning the definition of frequent filing schedule:*

11 1.6 “Frequent filing schedule” means:

12 1.6.1 For state AND SCHOOL DISTRICT DIRECTOR candidates and committees, the filing
13 schedule outlined in sections 1-45-108 (2)(a)(I)(B), (2)(a)(I)(C), (2)(a)(I)(D), and
14 (2)(a)(I)(E), C.R.S.;

15 *[No amendments to Current Rules 1.6.2 and 1.6.3]*

16 *Amendments to Rule 1.7 concerning the definition of independent expenditure committee:*

17 1.7 “Independent expenditure committee” has the same meaning as set forth in section 1-45-
18 103(11.5), C.R.S. An ~~Independent~~-INDEPENDENT expenditure committee ~~differs from a political~~
19 ~~committee in that an independent expenditure committee may not directly contribute to a~~
20 ~~candidate committee or political party and~~ may not coordinate its campaign-related expenditures
21 with a candidate, candidate committee, or political party. Nothing in these rules limits joint
22 fundraising efforts or the transfer of funds raised through joint fundraising efforts by an
23 independent expenditure committee or other committee as long as each committee pays its
24 allocated share of joint fundraising expenses and no committee participating in the joint
25 fundraising activity receives more than its allocated share of funds raised in accordance with
26 applicable contribution limits.

27 *Amendments to Rule 1.8.1 concerning the definition of infrequent filing schedule:*

28 1.8 “Infrequent filing schedule” means:

29 1.8.1 For a state AND SCHOOL DISTRICT DIRECTOR candidate or committee, the quarterly filing
30 schedule outlined in section 1-45-108(2)(a)(I)(A), C.R.S.; and

31 *[No amendments to Current Rule 1.8.2]*

32 *New Rule 1.17 concerning lobbyist principals:*

33 1.17 “PRINCIPAL” AS USED IN SECTION 1-45-105.5, C.R.S., MEANS ANY PERSON THAT EMPLOYS,
34 RETAINS, ENGAGES, OR USES, WITH OR WITHOUT COMPENSATION, A PROFESSIONAL OR
35 VOLUNTEER LOBBYIST. A PERSON SERVING AS AN OFFICER, EMPLOYEE, MEMBER, SHAREHOLDER,

1 OR PARTNER OF AN ORGANIZATION OR BUSINESS ENTITY THAT EMPLOYS, RETAINS, ENGAGES, OR
2 USES A LOBBYIST IS NOT CONSIDERED A PRINCIPAL.

3 *[Not shown: renumbering Rule 1.17 to 1.18.]*

4 *Amendments to Rule 1.18 concerning the definition of public announcement:*

5 ~~1.18~~-1.19 “Publicly announced an intention to seek election to public office or retention of a
6 judicial office” means:

7 1.18.1 Registering a candidate committee; or

8 1.18.2 ~~A person has made a statement signifying an interest in, or exploring the possibility of~~
9 ~~seeking the;~~ ANNOUNCING AN INTENTION TO SEEK PUBLIC OFFICE OR RETENTION OF A
10 JUDICIAL OFFICE THROUGH:

11 ~~1.18.3 The statement is made by means of~~

12 (A) ~~a~~-A speech, advertisement, or other communication reported or appearing in
13 public media; or

14 (B) A STATEMENT MADE in any place accessible to the public; ~~and~~ OR

15 ~~1.18.4~~ (C) A STATEMENT MADE IN A MANNER THAT ~~A~~-A reasonable person would expect the
16 ~~statement~~ to become public.

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

18 *[Not shown: renumbering of Rules 1.19 through 1.21.]*

19 *Amendments to Rule 2.2.2 through 2.2.4 concerning candidate committees:*

20 2.2.2 Once assigned a candidate committee must follow the frequent filing schedule for the
21 remainder of the year, EXCEPT AS OUTLINED IN RULE 17.5.

22 2.2.3 A candidate committee may accept the contribution limit specified in Colo. Const. Article
23 XXVIII, Section 3(1) for the primary election even if the primary election is canceled
24 under section 1-4-104.5(1), C.R.S. OR THE CANDIDATE IS RUNNING UNOPPOSED.

25 2.2.4 Managing unexpended campaign contributions

26 *[No changes to Rules 2.2.4(a)-(b)]*

27 (c) Candidates seeking election to a different office

28 (1) A candidate committee may transfer funds to a candidate committee
29 established by the same candidate for a different public office, subject to
30 the political party contribution limit, ~~only if the new office sought has~~
31 ~~contribution limits that are equal to or greater than the current office, or~~
32 ~~the new office sought has no contribution limits~~ FOR THE NEW OFFICE
33 SOUGHT. [Colo. Const. Article XXVIII, Section 3]

1 (2) CONTRIBUTIONS FROM PERSONS OR COMMITTEES MADE TO THE PRIOR
2 CANDIDATE COMMITTEE DO NOT APPLY TOWARD THE CONTRIBUTION
3 LIMITS FOR THE NEW CANDIDATE COMMITTEE.

4 ~~(2)~~(3) A candidate committee transferring funds to a candidate committee for a
5 different office must terminate within ten days of registering the new
6 candidate committee.

7 ~~(3)~~(4) A candidate seeking election to a state, county, or local office may not
8 transfer funds from a federal candidate committee to a Colorado
9 candidate committee that is subject to the provisions of the Fair
10 Campaign Practices Act.

11 *Rule 2.2.4(d)(a)(A): cross reference update:*

12 (A) A political party, in an amount not to exceed the limit in Colo.
13 Const. Article XXVIII Section 3(3) (as adjusted by Rule ~~40.16~~
14 10.17);

15 *Amendments to Rule 2.4.3 concerning personal financial disclosures:*

16 2.4.3 If a candidate withdraws his or her candidacy by submitting appropriate documentation
17 before filing the disclosure statement required in section 1-45-110(2)(a), C.R.S., the
18 candidate need not file a disclosure statement. Any fines that the candidate accrued
19 before withdrawing ~~will remain in effect~~ MAY BE WAIVED BY THE SECRETARY OF STATE.

20 *Repeal of Rule 4.5 concerning issue committees:*

21 ~~4.5 — A matter becomes a ballot measure requiring a committee to register as an issue committee or~~
22 ~~small scale issue committee under section 1-45-108(7)(a)(I), C.R.S., after a title has been~~
23 ~~designated and fixed and any motion for rehearing has been heard.~~

24 ~~4.6~~4.5 For issue committees and small-scale issue committees, the election cycle is a calendar year,
25 beginning January 1 and ending December 31. This rule does not apply to issue committees
26 formed to support or oppose a recall.

27 *Rule 6.2.2, cross reference update:*

28 6.2.2 The party must disclose transfers as “other income” in accordance with Rule ~~40.14~~ 10.15.

29 *Amendments to Rule 10.3 concerning expenditures:*

30 10.3 Except for independent expenditure committees and small-scale issue committees, committees
31 must report expenditures as follows:

32 10.3.1 A committee must list all expenditures ~~made and obligations entered into by a committee~~
33 of \$20 or more during a reporting period, including the name and address of payees. THE
34 COMMITTEE MAY REPORT ANY DISBURSEMENT NOT DEFINED AS AN EXPENDITURE TO THE
35 APPROPRIATE OFFICER.

1 10.3.2 A committee must list individual expenditures ~~made and obligations entered into~~ in
2 amounts less than \$20 that aggregate to total \$20 or more to the same payee during the
3 reporting period.

4 10.3.3 A committee may report all other expenditures ~~made and obligations entered into~~ less
5 than \$20 during a reporting period in total as non-itemized expenditures.

6 [Section 1-45-108(1), C.R.S.]

7 *New Rule 10.7 concerning contributions:*

8 10.7 A COMMITTEE MAY ACCEPT CONTRIBUTIONS IN CRYPTOCURRENCY, UP TO THE ACCEPTABLE
9 LIMIT FOR A CASH OR COIN CONTRIBUTION. THE AMOUNT OF THE CONTRIBUTION IS THE VALUE
10 OF THE CRYPTOCURRENCY AT THE TIME OF THE CONTRIBUTION. THE COMMITTEE MUST REPORT
11 ANY GAIN OR LOSS AFTER THE CONTRIBUTION AS OTHER INCOME OR RECEIPTS.

12 ~~10.7-10.8~~ Contributions by anonymous contributor

13 ~~10.7-1-10.8.1~~ 10.8.1 A committee may not keep anonymous contributions of \$20 or more.

14 ~~10.7-2-10.8.2~~ 10.8.2 Anonymous contributions are contributions where the identity of the contributor
15 or other required reporting information is unknown.

16 ~~10.7-3-10.8.3~~ 10.8.3 A committee must donate an anonymous contribution of \$20 or more to a
17 charitable organization recognized by the Internal Revenue Service, or transmit the
18 contribution to the State Treasurer within 30 days after receipt.

19 *[Not shown: renumbering Rules 10.8 through 10.17 to 10.9 through 10.18]*

20 *Repeal of Rule 14.4 concerning home rule jurisdictions:*

21 ~~14.4—Section 1-45-117, C.R.S., applies to home rule counties or home rule municipalities.~~

22 *Amendments to Rule 17.5 concerning filing calendars and reporting periods:*

23 17.5 Reports for former officeholders ~~or~~, persons not elected to office, AND TERM-LIMITED OFFICE
24 HOLDERS

25 17.5.1 Annual reporting

26 (a) A candidate committee for a candidate not elected to office, ~~or~~ who was formerly
27 in office, OR WHO IS TERM-LIMITED may submit a written request to file only an
28 annual report for each calendar year.

29 (1) Statewide candidate committees must file an annual report not later than
30 January 15th of the following year.

31 (2) All other candidate committees must file an annual report on the first day
32 of the month in which the anniversary of the major election occurs, in
33 accordance with section 1-45-108(2)(a)(II), C.R.S.

1 (b) A change in the balance of funds resulting solely from the accrual of interest or
2 dividends to the account and/or the automatic deduction of periodic service fees
3 does not subject a candidate committee to the reporting requirements of section
4 1-45-108, C.R.S. At a minimum, a candidate committee must file an annual
5 report as set forth in subsection (a) of this Rule.

6 [Sections 1-45-108(2)(c) and (2)(d), C.R.S.]

7 *Amendments to Rule 18.1 concerning penalty waivers:*

8 18.1.1 A request for waiver or reduction of campaign finance penalties imposed under Colo.
9 Const. Article XXVIII, Section 10(2) must state the reason for the delinquency.

10 (a) The filer should provide an explanation that includes all relevant factors relating
11 to the delinquency and any mitigating circumstances, including measures taken
12 to avoid future delinquencies.

13 (b) Before the appropriate officer will consider a request, the report must be filed,
14 and a request including the required information must be submitted.

15 (c) ~~Payment of the penalty for which a waiver has been requested voids the request.~~
16 THE SECRETARY OF STATE WILL NOT CONSIDER A WAIVER REQUEST AFTER A
17 PENALTY HAS BEEN PAID.

18 *Repeal of Rule 18.1.4 concerning penalty waivers:*

19 ~~18.1.4 For waiver requests that apply to more than one penalty, the guidelines will be applied~~
20 ~~separately to each penalty in chronological order using the single request as the basis for~~
21 ~~each.~~

22 ~~18.1.5~~ 18.1.4 Filers may request that the appropriate officer reconsider a request for waiver or
23 reduction of campaign finance penalties. A filer must submit, in writing any request for
24 reconsideration within 30 days of the date on which the waiver decision was mailed. The
25 filer must present additional material facts that are significantly different than those
26 ~~alleged~~ PRESENTED in the original request for reduction or waiver.

27 *[Not shown: renumbering Rules 18.1.6 through 18.1.8 to 18.1.5 through 18.1.7]*

28 *Proposed permanent adoption of Rule 18.2.4 concerning complaints (Rule 18.2.4 was originally adopted*
29 *10/25/17, corrective amendments were temporarily adopted 1/5/18, and the corrected version was*
30 *temporarily re-adopted 5/4/18):*

31 18.2.4 In determining whether an entity registered or disclosed in “Good faith” as that term is
32 used in section 1-45-109(4), C.R.S., the appropriate officer must determine whether ten
33 percent or less of the entity’s disclosures or reported dollar amounts on the report or
34 reports at issue in the complaint are out of compliance. If so, the entity is deemed to have
35 attempted to comply in good faith.

36 *Amendments to Rule 18.4 concerning collections:*

1 18.4 ~~If the Secretary of State sends an invoice to the state Controller for the collection of a debt in~~
2 ~~accordance with Colo. Const. Article XXVIII, Section 10 (2) (d), the state Controller may not~~
3 ~~attempt to collect or collect the debt from a non-candidate registered agent or designated filing~~
4 ~~agent of a committee.~~THE SECRETARY OF STATE MAY SEND TO THE STATE CONTROLLER FOR
5 COLLECTION ANY OUTSTANDING DEBT RESULTING FROM A CAMPAIGN FINANCE PENALTY THAT
6 THE SECRETARY DEEMS COLLECTIBLE.

7 *New Rule 18.5 concerning complaints:*

8 18.5 COMPLAINTS CONCERNING MUNICIPAL CAMPAIGN FINANCE MATTERS MUST BE FILED WITH THE
9 MUNICIPAL CLERK.