



## Notice of Temporary & Permanent Adoption

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

August 10, 2020

### I. Adopted Rule Amendments

As authorized by the Colorado Constitution<sup>1</sup>, Colorado campaign finance law<sup>2</sup>, and the State Administrative Procedure Act<sup>3</sup>, the Colorado Secretary of State gives notice that the following amendments to rules concerning campaign and political finance<sup>4</sup> are adopted on a temporary and permanent basis.

The rules were considered at the July 16, 2020 rulemaking hearing in accordance with the State Administrative Procedure Act<sup>5</sup>.

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
<del>Strikethrough</del>	Deletions
<i>[Italic blue font text]</i>	Annotations and publication notes

*Amendments to 8 CCR 1505-6 follow:*

*New Rule 1.12 concerning definitions; establishes definition of municipal campaign finance matter:*

- 1.12 "MUNICIPAL CAMPAIGN FINANCE MATTER" AS USED IN SECTION 1-45-111.7(9)(B), C.R.S., MEANS ANY CAMPAIGN FINANCE MATTER EXCLUSIVELY RELATED TO A MUNICIPAL CAMPAIGN, INCLUDING MATTERS INVOLVING A CANDIDATE FOR A MUNICIPAL OFFICE; A MUNICIPAL BALLOT ISSUE OR BALLOT QUESTION; AND CONTRIBUTIONS OR EXPENDITURES MADE BY ANY PERSON, COMMITTEE, OR GROUP TO SUPPORT OR OPPOSE ANY CANDIDATE FOR MUNICIPAL OFFICE, OR MUNICIPAL BALLOT ISSUE OR BALLOT QUESTION. THIS DEFINITION IS NOT LIMITED TO HOME RULE MUNICIPALITIES THAT HAVE ADOPTED THEIR OWN CAMPAIGN FINANCE RULES OR REGULATIONS, BUT APPLIES TO ALL MUNICIPALITIES.

<sup>1</sup> Article XXVIII, Section 9(1)(b) of the Colorado Constitution.

<sup>2</sup> Article 45 of Title 1, C.R.S. (2019).

<sup>3</sup> Section 24-4-103, C.R.S. (2019).

<sup>4</sup> 8 CCR 1505-6.

<sup>5</sup> Section 24-4-103(3)(a), C.R.S. (2019).

*[Not shown: renumbering current Rules 1.12 – 1.23 as Rules 1.13 – 1.24.]*

*Amendments to Rule 10.4 including New Rule 10.4.7:*

10.4 ~~A-DATE OF A CONTRIBUTION OR DONATION IS RECEIVED ON THE DATE THAT IT IS ACCEPTED BY THE COMMITTEE.~~

10.4.1 A contribution or donation by check or money order is accepted, AT THE EARLIEST ON THE DATE THAT IT IS RECEIVED OR at the latest, on the date that the contribution or donation is deposited into the committee account. If a committee receives a donation by check or money order at least five business days before the end of a reporting period, the committee must deposit the check or money order or return to the contributor before that reporting period closes.

*[No changes to current Rules 10.4.2 through 10.4.6.]*

10.4.7 ANY OTHER CONTRIBUTION OR DONATION IS ACCEPTED ON THE DATE ITS RECEIVED.

*Amendments Rule 12.3 including New Rule 12.3.4 concerning changing or closing a committee:*

12.3 A committee may file a termination report terminating the committee if the following conditions are met:

12.3.1 The committee no longer intends to receive contributions or make expenditures;~~and~~

12.3.2 The committee's TRACER account has a zero balance, indicating it has no cash or assets on hand and there are no outstanding debts, penalties, or obligations;;

12.3.3 A committee may dispose of assets remaining in its possession before termination in the same manner as allowed for unexpended contributions; AND

12.3.4 THE COMMITTEE HAS NO PENDING CAMPAIGN AND POLITICAL FINANCE COMPLAINTS OR RELATED PROCEEDINGS PENDING BEFORE THE ELECTIONS DIVISION OR ANY COURT.

*Amendments to Rule 14.1 concerning local offices and home rule:*

14.1 The requirements of Colo. Const. Article XXVIII and of Article 45 of Title 1, C.R.S., do not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Colo. Const. Article XXVIII or Article 45 of Title 1. NOTHING PRECLUDES A HOME RULE MUNICIPALITY FROM ADOPTING OR USING COLO. CONST. ARTICLE XXVIII AND OF ARTICLE 45 OF TITLE 1, C.R.S., FOR THEIR COMPLIANCE AND ENFORCEMENT.

*Amendments to Rule 15.3 concerning recall elections:*

15.3 The incumbent in a recall election is not a candidate for the successor election and may open an issue committee or small-scale issue committee to oppose the recall. THE INCUMBENT MAY NOT USE HIS OR HER CANDIDATE COMMITTEE TO OPPOSE THE RECALL.

*Amendments to Rule 17.6 filing calendars and reporting periods:*

17.6 ~~The following must file with the municipal clerk: A candidate in a municipal election, a candidate committee, a political committee supporting or opposing a municipal candidate, an issue committee or small-scale issue committee supporting or opposing a municipal ballot issue or ballot question, an independent expenditure committee supporting or opposing a municipal candidate, and a small donor committee making contributions to a municipal candidate. [Section 1-45-109(1)(b), C.R.S.]~~ ANY FILING RELATED TO A MUNICIPAL CAMPAIGN FINANCE MATTER MUST BE FILED WITH THE MUNICIPAL CLERK.

*Amendments to Rule 18:*

**Rule 18. ~~Penalties, Violations, and Complaints~~ LATE FILING PENALTIES AND WAIVER PROCESS**

18.1 Requests for waiver or reduction of campaign finance penalties DUE TO LATE OR MISSING FILING PENALTIES IMPOSED UNDER COLO. CONST. ARTICLE XXVIII, SECTION 10(2):

*[No changes to current Rule 18.1.1]*

18.1.2 Requests for waiver or reduction of campaign finance penalties DUE TO LATE OR MISSING FILINGS imposed under Colo. Const. Article XXVIII, Section 10(2) must be considered by the appropriate officer according to the following rules:

*[No changes to chart under current Rule 18.1.2]*

18.1.3 The appropriate officer may consider any additional factors that establish good cause or may otherwise be relevant to the request for waiver or reduction of campaign finance penalties FOR LATE OR MISSING FILINGS. In considering a request, the appropriate officer may request additional information, including but not limited to financial or other records maintained by the filer.

*[No changes to current Rules 18.1.4 through 18.1.7]*

*Current Rule 18.2 is recodified under New Rule 23.*

*New Rule 23:*

**RULE 23. COMPLAINTS FILED UNDER SECTION 1-45-111.7, C.R.S.**

23.1 FILING COMPLAINTS

23.1.1 CAMPAIGN FINANCE COMPLAINTS MUST BE FILED IN WRITING AND CAN BE SUBMITTED BY HARDCOPY OR ELECTRONICALLY. ELECTRONIC SIGNATURES ARE PERMITTED FOR ANY COMPLAINT DOCUMENTATION THAT REQUIRES A SIGNATURE BY COMPLAINT, RESPONDENT, OR THE ELECTIONS DIVISION.

23.1.2 A COMPLAINT MUST IDENTIFY BOTH A RESPONDENT AND A COMPLAINANT. ANONYMOUS COMPLAINTS OR COMPLAINTS THAT FAIL TO IDENTIFY A COMPLAINANT AND RESPONDENT MAY BE REJECTED AND NOT REVIEWED BY THE ELECTIONS DIVISION.

23.1.3 COMPLAINTS THAT STEM FROM A COMMON SET OF OPERATIVE FACTS AS A PENDING COMPLAINT WILL BE CONSOLIDATED WHEN PRACTICABLE. WHEN CONSOLIDATION IS NOT PRACTICABLE AND THE OUTCOME OF THE INITIAL CASE WILL BE DETERMINATIVE OF THE LATER CASE, A COMPLAINT WILL BE STAYED UNTIL A FINAL AGENCY DECISION ISSUES ON THE INITIAL COMPLAINT AND ANY APPEALS ARE RESOLVED.

23.1.4 VIOLATIONS STEMMING FROM LATE OR MISSING FILINGS THAT HAVE BEEN WAIVED OR ARE PENDING A WAIVER DECISION UNDER RULE 18 ARE NOT SUBJECT TO THE COMPLAINT PROCESS OUTLINED IN SECTION 1-45-111.7, C.R.S.

*Current Rules 18.2 and 18.2.1 are repealed:*

18.2 — Complaints

~~18.2.1 Any person who believes that a violation of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance has occurred may file a complaint under section 1-45-111.7, C.R.S.~~

*Current Rule 18.2.2 is amended and recodified as New Rule 23.2:*

~~18.2.2-23.2 The elections division will make documents related to a complaint publicly available as follows: DOCUMENTS RELATED TO COMPLAINTS.~~

~~(a)-23.2.1 The original complaint, notice of initial review, MOTION TO DISMISS, AN ORDER ISSUED BY THE SECRETARY OF STATE'S OFFICE, final agency decision, and any complaint filed by the elections division with a hearing officer will be publicly available at the time the elections division provides the document to the respondent.~~

~~(b) Any additional documentation related to the complaint, including a notice of intent to cure and supporting evidence, or documents related to the elections division's investigation, will be publicly available, subject to the restrictions set forth in section 1-45-111.7(5)(a), C.R.S. and section 1-45-107.5(14)(d)(IV)(c), C.R.S., at the time the elections division issues a final agency decision or files a complaint with a hearing officer.~~

~~(c)-23.2.2 The elections division may redact any document related to a complaint if it THAT IT WILL OTHERWISE MAKE AVAILABLE PURSUANT TO THIS RULE IF SUCH REDACTION IS NECESSARY TO protect any person's private or confidential PERSONAL PRIVATE information OR PERSONALLY IDENTIFIABLE INFORMATION, IS NOT RELEVANT OR MATERIAL TO THE DETERMINATION, OR IS OTHERWISE REQUIRED UNDER THE COLORADO OPEN RECORDS ACT.~~

~~(d)-23.2.3 Any document the elections division receives under section 1-45-111.7(5)(a)(III), C.R.S. will not be retained after the time necessary to review, investigate, prosecute a complaint, or any appeal, as applicable.~~

*Current Rules 18.2.3 and 18.2.4 are repealed:*

~~18.2.3 The review by the deputy secretary or the deputy secretary's designee of the initial determination made by a hearing officer under section 1-45-111.7(6)(b), C.R.S. must be in accordance with the procedures outlined in sections 24-4-105(14) and 24-4-105(15), C.R.S.~~

~~18.2.4 Rule 18.2 as it was enacted between June 19, 2018 and August 1, 2019 applies to complaints filed before July 1, 2019. Complaints filed on or after July 1, 2019 must be filed under section 1-45-111.7, C.R.S., (2019).~~

23.3 SETTLEMENT OF COMPLAINTS AND FINE STRUCTURE FOR VIOLATIONS

23.3.1 AFTER A COMPLAINT HAS BEEN FILED WITH A HEARING OFFICER THE ELECTIONS DIVISION MAY ENTER INTO A SETTLEMENT AGREEMENT WITH THE RESPONDENT.

23.3.2 IN REACHING A SETTLEMENT AND FINE AMOUNT, THE DEPUTY SECRETARY OF STATE OR A HEARING OFFICER WILL CONSIDER ALL OF THE FOLLOWING FACTORS:

- (A) SPECIFIC FINE AMOUNTS OUTLINED IN RULE 23.3.3; AND
- (B) ANY APPROPRIATE SPECIFIC ACTION IN RULE 23.3.4; AND
- (C) THE MITIGATING AND AGGRAVATING FACTORS IN RULE 23.3.5 TO INCREASE OR DECREASE THE MONETARY FINE OR TERMS.

### 23.3.3 FINE AMOUNTS

- (A) FAILURE TO REGISTER A COMMITTEE
  - (1) AMOUNT OF CONTRIBUTIONS OR DONATIONS ACCEPTED OR EXPENDITURES MADE WHILE OUT OF COMPLIANCE, OUTLINED BELOW:
    - (A) LESS THAN \$1,000 FINE IS AT LEAST \$150;
    - (B) BETWEEN \$1,001 AND UP TO \$5,000 FINE IS AT LEAST \$300; OR
    - (C) GREATER THAN \$5,000 THE FINE OF AT LEAST \$300 PLUS AT LEAST 10 PERCENT OF TOTAL AMOUNT OF THE CONTRIBUTIONS AND EXPENDITURES MADE.
  - (B) FAILURE TO FILE COMPLETE AND ACCURATE REPORTS
    - (1) FAILURE TO FILE COMPLETE AND ACCURATE REPORTS IS A \$100 FINE PER REPORT PLUS 5 PERCENT OF THE ACTIVITY NOT ACCURATELY OR COMPLETELY REPORTED;
    - (2) FAILURE TO FILE, OR FILE AN ACCURATE, CANDIDATE AFFIDAVIT
      - (A) IF AFFIDAVIT IS SUBMITTED WITHIN 14 DAYS OF REGISTRATION DEADLINE THE FINE IS AT LEAST \$50; OR
      - (B) IF AFFIDAVIT IS SUBMITTED AFTER 14 DAYS POST DEADLINE, THE FINE IS AT LEAST \$100.
  - (C) PROHIBITED CONTRIBUTIONS, DONATIONS, AND EXPENDITURES
    - (1) FOR ACCEPTING A PROHIBITED CONTRIBUTION INCLUDING ACCEPTING AN AMOUNT THAT EXCEEDS A CONTRIBUTION LIMIT OR MAKING PROHIBITED EXPENDITURES, THE FINE IS AT LEAST \$100 AND 10 PERCENT OF THE PROHIBITED ACTIVITY:
    - (2) PROHIBITED USE OF UNSPENT CAMPAIGN FUNDS AND EXCEEDING VOLUNTARY CONTRIBUTION LIMITS
      - (A) A FINE OF AT LEAST \$250 PER VIOLATION; AND
      - (B) A FINE THAT IS UP TO 25 PERCENT OF THE AMOUNT OF THE PROHIBITED ACTIVITY.
  - (D) DISCLAIMER AND ELECTIONEERING COMMUNICATIONS
    - (1) IF NONCOMPLIANT COMMUNICATION IS MITIGATED PRIOR TO THE ELECTION: A FINE OF AT LEAST 5 PERCENT COST OF THE NONCOMPLIANT COMMUNICATION INCLUDING COST TO BROADCAST; OR
    - (2) IF NONCOMPLIANT COMMUNICATION IS NOT MITIGATED PRIOR TO THE ELECTION: A FINE OF AT LEAST 10 PERCENT OF THE COST OF THE COMMUNICATION INCLUDING COST TO BROADCAST.
  - (E) OTHER VIOLATIONS OF CAMPAIGN AND POLITICAL FINANCE RULES AND REGULATIONS WILL BE ASSESSED PENALTIES BASED ON THE CIRCUMSTANCES OF THE VIOLATIONS AND FACTORS OUTLINED IN RULE 23.3.4.

#### 23.3.4 SPECIFIC ACTION(S)

- (A) IN ADDITION TO MONETARY FINES THE DEPUTY SECRETARY OF STATE OR ASSIGNEE MAY SEEK A SPECIFIC ACTION(S) FROM THE RESPONDENT. SPECIFIC ACTIONS MAY INCLUDE:
- (1) REGISTERING AS A COMMITTEE OR CANDIDATE IN TRACER;
  - (2) RETURN OR DONATION OF PROHIBITED CONTRIBUTION OR DISGORGEMENT OF THE VALUE OF THE IMPROPER CONDUCT;
  - (3) FILING OR AMENDING DISCLOSURE REPORTS;
  - (4) INCLUSION OR CORRECTION OF DISCLAIMER ON THE COMMUNICATION; OR
  - (5) OTHER SPECIFIC PERFORMANCE OR TERMS THAT MAY BE WARRANTED.

#### 23.3.5 THE ELECTIONS DIVISION MAY ALSO CONSIDER THE FOLLOW MITIGATING AND AGGRAVATING FACTORS:

- (A) NATURE AND EXTENT OF THE VIOLATION;
- (B) TIMING OF THE VIOLATION (INCLUDING PROXIMITY TO THE ELECTION);
- (C) ABILITY OR EFFORT TO MITIGATE THE VIOLATION;
- (D) EVIDENCE OF AN INTENTIONAL ACT OR A PATTERN OR PRACTICE OF MISCONDUCT;
- (E) EXTENT TO WHICH THE HARM CAUSED BY THE VIOLATION OR THE VALUE OF THE VIOLATION CANNOT BE REASONABLY CALCULATED; OR
- (F) OTHER AGGRAVATING OR MITIGATING FACTORS MAY BE TAKEN INTO CONSIDERATION IN REACHING A JUST AND EQUITABLE OUTCOME.

**II. Basis, Purpose, and Specific Statutory Authority**

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

**III. Statement of Justification and Reasons for Adoption of Temporary Rules**

A statement of the Secretary of State’s findings to justify the immediate adoption of the amended rules on a temporary basis follows this notice and is incorporated by reference.<sup>6</sup>

**IV. Effective Date of Adopted Rules**

These new and amended rules are immediately effective on a temporary basis. The rules will become permanently effective twenty days after publication in the Colorado Register.<sup>7</sup>

Dated this 10<sup>th</sup> day of August, 2020,

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Ian Rayder  
Deputy Secretary of State

For

Jena Griswold  
Colorado Secretary of State

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<sup>6</sup> Section 24-4-103(6), C.R.S. (2019).

<sup>7</sup> Section 24-4-103(5), C.R.S. (2019).



## **Statement of Basis, Purpose, and Specific Statutory Authority**

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

**August 10, 2020**

#### **I. Basis and Purpose**

This statement explains amendments to the Colorado Secretary of State rules concerning campaign and political finance.<sup>1</sup> The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance law<sup>2</sup> as follows:

- New Rule 1.12 defines “municipal campaign finance matter.”
- Amendments to Rule 10.4, including New Rule 10.4.7, to clarify the date of a contribution or donation.
- Amendments to Rule 12.3, including New Rule 12.3.4, clarify when a committee may file a termination report terminating the committee. Specifically, to file a termination report, the committee may not have pending campaign and political financial complaints for related proceedings pending before the elections division or any court.
- Amendments to Rule 14.1 clarify that home rule municipality may adopt or use the requirements of Colo. Const. Article XXVIII and of Article 45 of Title 1, C.R.S., for their compliance and enforcement.
- Amendments to Rule 15.3 clarify that the incumbent in a recall election may not use his or her candidate committee to oppose the recall.
- Amendments to Rule 17.6 simplify the rule to state that any filing related to a municipal campaign matter, as defined under New Rule 1.12, must be filed with the municipal clerk.
- Amendments to Rule 18 clarify that requests for waiver or reduction of penalties concern late or missing filing penalties imposed under Colorado Constitution

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<sup>1</sup> 8 CCR 1505-CCR 6.

<sup>2</sup> Article 45 of Title 1, C.R.S. (2019).



Article XXVIII, Section 10(2). Additionally, the rule is amended to only cover late filing penalties and waiver process. Current Rule 18.2 is amended and recodified under New Rule 23.

- New Rule 23 is necessary to implement SB19-232, concerning campaign finance enforcement, and establishes complaint rules, including disclosure of documents related to complaints, the settlement of complaints, and fines.

## **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., (2019), 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.”
- Section 1-45-111.5(1), C.R.S., (2019), which requires the Secretary of State to promulgate such rules “as may be necessary to enforce and administer any provision of” article 45 of title 1, C.R.S.