



Notice of Temporary Adoption

Colorado Department of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

April 13, 2023

I. Adopted Rule Amendments

As authorized by the Colorado Constitution¹, Colorado campaign finance law², and the State Administrative Procedure Act³, the Colorado Department of State gives notice that the following amendments to rules concerning campaign and political finance⁴ are adopted on a temporary basis and immediately effective. (SMALL CAPS indicate proposed additions to the current rules. Stricken type indicates proposed deletions from current rules. *Annotations* may be included):

Amendments to 8 CCR 1505-6 are as followed:

Amendments to Rule 23.2 concerning documents related to complaints filed under section 1-45-111.7, C.R.S.:

23.2 Documents related to complaints.

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 IS PROVIDED to the respondent.

23.2.2 The elections division may redact any document that it will otherwise make available pursuant to this rule if such redaction is necessary to protect any 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.

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, OR prosecute a complaint, INCLUDING, ~~or~~ any appeal, as applicable.

New Rule 24 concerning procedural rules for administrative hearings under section 1-45-111.7, C.R.S.:

Rule 24. Procedural Rules for Hearings under section 1-45-111.7, C.R.S.

24.1 SCOPE OF RULES

¹ Article XXVIII, Section 9(1)(b) of the Colorado Constitution.

² Article 45 of Title 1, C.R.S. (2022).

³ Section 24-4-103, C.R.S. (2022).

⁴ 8 CCR 1505-6.

24.1.1 THESE RULES APPLY TO INITIAL COMPLAINTS FILED UNDER SECTION 1-45-111.7(2)(A) AND (7), C.R.S., AND TO ADMINISTRATIVE COMPLAINTS FILED BY THE DIVISION WITH A HEARING OFFICER PURSUANT TO SECTION 1-45-111.7(5), C.R.S.

24.2 DEFINITIONS

24.2.1 "ADMINISTRATIVE COMPLAINT" MEANS A COMPLAINT ALLEGING THAT ONE OR MORE VIOLATIONS OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION, ARTICLE 45 OF TITLE 1, C.R.S., SUCH OTHER CONSTITUTIONAL OR STATUTORY PROVISIONS THAT ARE INCORPORATED OR REFERENCED THEREIN, OR THE RULES HAS OCCURRED AND THAT IS FILED BY THE DIVISION, OR ITS DESIGNEE, WITH A HEARING OFFICER PURSUANT TO SECTIONS 1-45-111.7(5) AND (7), C.R.S.

24.2.2 "AGENCY" OR "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF STATE.

24.2.3 "C.R.C.P" MEANS COLORADO RULES OF CIVIL PROCEDURE.

24.2.4 "DEPUTY SECRETARY" MEANS THE PERSON APPOINTED BY THE SECRETARY OF STATE AS THE DEPUTY SECRETARY OF STATE PURSUANT TO SECTION 24-21-105, C.R.S., WITH AUTHORITY UNDER SECTION 1-45-111.7, C.R.S., OR SUCH OTHER PERSON AS MAY BE DESIGNATED BY THE DEPUTY SECRETARY OF STATE AS THE DEPUTY SECRETARY'S DESIGNEE UNDER SECTION 1-45-111.7(1)(B), C.R.S.

24.2.4 "DIVISION" HAS THE SAME MEANING AS IN SECTION 1-45-111.7(1)(C), C.R.S., WHICH IS COMMONLY KNOWN AS THE ELECTIONS DIVISION OF THE COLORADO DEPARTMENT OF STATE.

24.2.6 "HEARING OFFICER" HAS THE SAME MEANING AS IN SECTION 1-45-111.7(1)(D), C.R.S., AND IS THE PERSON WHO HAS BEEN RETAINED BY THE AGENCY TO CONDUCT HEARINGS AND ISSUE INITIAL DECISIONS UNDER SECTION 1-45-111.7(6), C.R.S.

24.2.7 "INITIAL COMPLAINT" MEANS A COMPLAINT ALLEGING THAT ONE OR MORE VIOLATIONS OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION, ARTICLE 45 OF TITLE 1, C.R.S., SUCH OTHER CONSTITUTIONAL OR STATUTORY PROVISIONS THAT ARE INCORPORATED OR REFERENCED THEREIN, OR THE RULES HAS OCCURRED AND THAT IS FILED BY ANY PERSON, INCLUDING THE DIVISION, WITH THE DIVISION PURSUANT TO SECTION 1-45-111.7(2)(A) AND (7), C.R.S.

24.2.8 "INITIAL DECISION" HAS THE SAME MEANING AS SECTION 24-4-102, C.R.S., AND INCLUDES THE INITIAL DETERMINATION REFERENCED IN SECTION 1-45-111.7(6)(B), C.R.S.

24.3 FILING AN ADMINISTRATIVE COMPLAINT

24.3.1 THE DIVISION SHALL DETERMINE WHETHER IT WILL FILE AN ADMINISTRATIVE COMPLAINT WITHIN:

- (A) 30 DAYS AFTER INITIATING AN INVESTIGATION UNDER SECTION 1-45-111.7(5), C.R.S.; OR
- (B) 14 BUSINESS DAYS AFTER THE DEPUTY SECRETARY'S DENIAL OF A MOTION TO DISMISS THE INITIAL COMPLAINT FILED UNDER SECTION 1-45-111.7(5), C.R.S.

24.3.2 AN ADMINISTRATIVE COMPLAINT MAY SUPPLEMENT OR AMEND THE INITIAL COMPLAINT WITH SUCH ADDITIONAL OR ALTERNATIVE FACTUAL ALLEGATIONS AND LEGAL CLAIMS THAT ARE SUPPORTED BY THE DIVISION'S REVIEW AND INVESTIGATION UNDER SECTIONS 1-45-111.7(4) AND (5), C.R.S., AND ALSO MAY OMIT ANY FACTUAL ALLEGATIONS, LEGAL CLAIMS, AND NAMED RESPONDENTS IN THE INITIAL COMPLAINT THAT ARE NOT SUPPORTED BY THE DIVISION'S REVIEW AND INVESTIGATION.

24.3.3 IN ANY PROCEEDINGS RELATED TO AN ADMINISTRATIVE COMPLAINT, THE DIVISION WILL BE REPRESENTED BY COUNSEL FROM THE COLORADO DEPARTMENT OF LAW, OR SUCH OTHER SPECIAL ASSISTANT ATTORNEYS GENERAL AS MAY BE DESIGNATED BY THE COLORADO DEPARTMENT OF LAW.

24.3.4 FOR PURPOSES OF THIS RULE, ANY FILINGS MADE TO THE HEARING OFFICER SHALL BE MADE TO THE FOLLOWING EMAIL ADDRESS: ADMINISTRATIVEHEARINGOFFICER@COLORADOSOS.GOV.

24.4 GENERAL CONDUCT OF HEARINGS

24.4.1 TO THE EXTENT PRACTICABLE, AND UNLESS INCONSISTENT WITH THESE RULES AND THE APPLICABLE STATUTE, THE C.R.C.P. APPLIES TO MATTERS BEFORE THE HEARING OFFICER. UNLESS THE CONTEXT OTHERWISE REQUIRES, WHENEVER THE WORD "COURT" APPEARS IN A RULE OF CIVIL PROCEDURE, THAT WORD SHALL BE CONSTRUED TO MEAN A HEARING OFFICER. THE FOLLOWING C.R.C.P RULES DO NOT APPLY:

- (i) C.R.C.P. 16.;
- (ii) THE FILING DEADLINES FOR MOTIONS AND CROSS MOTIONS FOR SUMMARY JUDGMENT SET FORTH IN C.R.C.P. 56(C); AND
- (iii) ANY OTHER C.R.C.P. RULE THAT BY ITS TERMS NECESSARILY DOES NOT APPLY TO THE LITIGATION OF A DISPUTED ADMINISTRATIVE COMPLAINT.

24.4.2 A HEARING OFFICER NEED NOT STRICTLY COMPLY WITH THE COLORADO RULES OF EVIDENCE. SUCH RULES SHALL SERVE AS GUIDANCE FOR THE HEARING OFFICER WHO HAS DISCRETION TO ADMIT EVIDENCE, NOT ADMISSIBLE UNDER COLORADO RULES OF EVIDENCE, THAT IS SUFFICIENTLY RELIABLE AND TRUSTWORTHY, AND IS EVIDENCE THAT POSSESSES PROBATIVE VALUE COMMONLY ACCEPTED BY REASONABLE AND PRUDENT PERSONS IN THE CONDUCT OF THEIR AFFAIRS.

24.4.3 THE HEARING OFFICER WILL CONDUCT ANY HEARINGS AT THE OFFICES OF THE DEPARTMENT AT 1700 BROADWAY, DENVER, COLORADO, UNLESS EXIGENT CIRCUMSTANCES REQUIRE USE OF ANOTHER LOCATION. THE DEPARTMENT WILL PROVIDE SUCH ADMINISTRATIVE, TECHNICAL, AND LOGISTICAL SUPPORT TO THE HEARING OFFICER AS MAY BE REQUIRED TO FACILITATE SUCH HEARINGS. REMOTE HEARINGS BY VIDEO CONFERENCE OR TELEPHONE CONFERENCE MAY BE CONDUCTED AS CIRCUMSTANCES REQUIRE.

24.4.4 ANY HEARING CONDUCTED BY THE HEARING OFFICER SHALL BE OPEN TO THE PUBLIC, UNLESS CLOSED PURSUANT TO A WRITTEN ORDER BY THE HEARING OFFICER FINDING GOOD CAUSE FOR SUCH CLOSURE.

24.4.5 ALL HEARINGS CONDUCTED BY THE HEARING OFFICER SHALL BE AUDIO RECORDED, WITH AN AUDIO RECORDING SYSTEM PROVIDED BY THE DEPARTMENT.

- (A) THE AUDIO RECORDING OF THE HEARING SHALL BE THE OFFICIAL RECORD OF THE PROCEEDING.
- (B) ANY PARTY MAY REQUEST A COPY OF THE RECORDING, AT THE PARTY'S EXPENSE.
- (C) ONE PARTY OR THE OTHER, OR BY AGREEMENT OF THE PARTIES, MAY MAKE ARRANGEMENTS FOR A COURT REPORTER TRANSCRIPTION OF THE PROCEEDINGS.

24.4.6 SUBJECT TO THE EXCEPTIONS SET FORTH IN SECTIONS 1-45-111.7(5)(A)(II) AND (III), C.R.S., ALL DOCUMENTS FILED WITH OR BY THE HEARING OFFICER SHALL BE OPEN TO PUBLIC INSPECTION, UNLESS OTHERWISE PROHIBITED BY LAW, REGULATION, OR COURT ORDER, OR

WHEN UPON MOTION BY EITHER PARTY AND SO ORDERED BY THE HEARING OFFICER TO PROHIBIT PUBLIC INSPECTION.

24.4.7 AS REQUIRED BY SECTION 1-45-111.7(6)(B), C.R.S., OR ANY SUCCESSOR PROVISION, ANY INITIAL DECISION ISSUED BY A HEARING OFFICER MUST BE MADE IN ACCORDANCE WITH SECTION 24-4-105, C.R.S., AND IS SUBJECT TO REVIEW BY THE DEPUTY SECRETARY, INCLUDING ANY SUBMISSION OF EXCEPTIONS FILED BY THE PARTIES. THE FINAL AGENCY DECISION IS SUBJECT TO REVIEW UNDER SECTION 24-4-106, C.R.S.

24.5 ASSIGNMENT OF CASES

24.5.1 CASES WILL BE ASSIGNED ON A ROTATING BASIS TO THE HEARING OFFICER(S) RETAINED BY THE DEPARTMENT FOR PURPOSES OF CONDUCTING HEARINGS UNDER THIS RULE. SHOULD THE DEPARTMENT RETAIN ONLY ONE HEARING OFFICER, THAT HEARING OFFICER WILL BE ASSIGNED AND WILL PRIORITIZE HEARING CASES IN ORDER OF THEIR FILING AS APPROPRIATE.

24.6 SETTING OF HEARINGS OR OTHER PROCEEDINGS

24.6.1 WITHIN 30 DAYS OF THE FILING OF AN ADMINISTRATIVE COMPLAINT, A HEARING OFFICER WILL SET A DATE FOR HEARING UNLESS A STAY IS ENTERED, THE MATTER IS CONTINUED, OR THE HEARING OFFICER FINDS GOOD CAUSE FOR AN ENLARGEMENT OF TIME.

24.6.2 FOR A PROCEEDING THAT IS STAYED, OR FOR A HEARING THAT HAS BEEN CONTINUED, ANY PARTY MAY FILE A REQUEST TO RESET THE PROCEEDINGS TO SET A HEARING DATE WITH THE HEARING OFFICER.

24.7 ENTRY OF APPEARANCE AND WITHDRAWAL OF COUNSEL

24.7.1 ENTRIES OF APPEARANCE AND WITHDRAWALS OF COUNSEL SHALL BE IN CONFORMANCE WITH C.R.C.P. 121 § 1-1. ANY OUT-OF-STATE ATTORNEY SHALL COMPLY WITH C.R.C.P. 221.1.

24.7.2 RULE 24.7.1 DOES NOT APPLY TO A SUBSTITUTION OF COUNSEL IF NEW COUNSEL ENTERS AN APPEARANCE AT THE SAME TIME AS PRIOR COUNSEL WITHDRAWS.

24.8 DEFAULT PROCEDURES

24.8.1 A PERSON WHO IS SERVED AN ADMINISTRATIVE COMPLAINT IS REQUIRED TO FILE A WRITTEN ANSWER, A MOTION UNDER C.R.C.P. 12(b), A MOTION FOR ENLARGEMENT OF TIME OR A MOTION TO STAY DUE TO SETTLEMENT WITHIN 30 DAYS AFTER THE SERVICE OR MAILING OF NOTICE OF THE PROCEEDING. IF A PERSON RECEIVING SUCH NOTICE FAILS TO FILE AN ANSWER, A HEARING OFFICER MAY ENTER A DEFAULT AGAINST THAT PERSON.

24.8.2 RESPONDENT MAY, BUT IS NOT REQUIRED TO, FILE AN ANSWER DURING A STAY OR IF THE ADMINISTRATIVE COMPLAINT IS DISMISSED. IF A STAY IS LIFTED AND COMPLAINT PROCEEDINGS RESUME, RESPONDENT MUST FILE AN ANSWER, OR RESPONSIVE PLEADING WITHIN 30 DAYS OR AS PROVIDED BY THE HEARING OFFICER.

24.8.3 A HEARING OFFICER WILL NOT GRANT A MOTION FOR ENTRY OF A DEFAULT UNDER THIS RULE UNLESS THE FOLLOWING REQUIREMENTS ARE MET:

- (A) THE MOTION FOR ENTRY OF A DEFAULT MUST BE SERVED UPON ALL PARTIES TO THE PROCEEDING, INCLUDING THE PERSON AGAINST WHOM A DEFAULT IS SOUGHT;
- (B) THE MOTION SHALL BE ACCOMPANIED BY AN AFFIDAVIT ESTABLISHING THAT BOTH THE NOTICE OF THE PROCEEDING AND THE MOTION FOR ENTRY OF DEFAULT HAVE BEEN PERSONALLY SERVED UPON THE PERSON AGAINST WHOM A DEFAULT IS SOUGHT OR

HAVE BEEN MAILED BY FIRST CLASS MAIL TO THE LAST ADDRESS FURNISHED TO THE AGENCY BY THE PERSON AGAINST WHOM THE DEFAULT IS SOUGHT; AND

- (C) ANY MOTION FOR ENTRY OF DEFAULT REQUESTING A FINE OR CIVIL PENALTY SHALL SET FORTH THE LEGAL AUTHORITY FOR THE CLAIM AND ANY APPLICABLE CALCULATION THEREOF.

24.9 DISCOVERY

24.9.1 DISCOVERY MAY BE SOUGHT BY ANY PARTY WITHOUT AUTHORIZATION OF THE HEARING OFFICER.

24.9.2 TO THE EXTENT PRACTICABLE, C.R.C.P. 26 THROUGH 37 AND 121, SECTION 1-12, AND THE DUTY TO CONFER AT C.R.C.P. 121, SECTION 1-15(8), APPLY TO PROCEEDINGS WITHIN THE SCOPE OF THESE RULES, EXCEPT TO THE EXTENT THAT THEY PROVIDE FOR OR RELATE TO REQUIRED DISCLOSURES, OR THE TIME WHEN DISCOVERY CAN BE INITIATED.

24.9.3 IN ADDITION TO THE REQUIREMENTS OF C.R.C.P. 36, A REQUEST FOR ADMISSION SHALL EXPLICITLY ADVISE THE RESPONDING PARTY THAT FAILURE TO TIMELY RESPOND TO THE REQUEST MAY RESULT IN ALL OF THE MATTERS STATED IN THE REQUEST BEING DEEMED ESTABLISHED UNLESS THE HEARING OFFICER, ON MOTION, PERMITS WITHDRAWAL OR AMENDMENT OF THE ADMISSION. THE FAILURE TO COMPLY WITH THIS RULE MAY RESULT IN THE MATTERS CONTAINED IN THE REQUEST BEING DEEMED DENIED.

24.9.4 DISCOVERY REQUESTS AND RESPONSES SHOULD NOT BE FILED WITH THE HEARING OFFICER, EXCEPT TO THE EXTENT NECESSARY FOR THE HEARING OFFICER TO RULE UPON MOTIONS INVOLVING DISCOVERY DISPUTES, REQUESTS FOR SUMMARY JUDGMENT, OR SUCH OTHER DISPOSITIVE MOTIONS AS MAY DEPEND ON A DISCOVERY RESPONSE.

24.9.5 EITHER PARTY MAY MOVE TO MODIFY DISCOVERY DEADLINES AND LIMITATIONS IN ACCORDANCE WITH PRE-HEARING PROCEDURES AS SET FORTH IN RULE 24.12.

24.9.6 EITHER PARTY MAY MOVE FOR A PROTECTIVE ORDER. THE MOTION MUST SPECIFY THE DISCLOSURE OR PORTION OF THE DISCLOSURE TO BE SUBJECT TO A PROTECTIVE ORDER, AS WELL AS THE LEGAL BASIS FOR SEEKING SUCH AN ORDER.

24.10 DETERMINATION OF MOTIONS

24.10.1 ANY MOTION INVOLVING A CONTESTED ISSUE OF LAW SHALL BE SUPPORTED BY A RECITATION OF LEGAL AUTHORITY.

24.10.2 A RESPONDING PARTY SHALL HAVE 14 DAYS FROM SERVICE, OR AS SPECIFIED BY THE HEARING OFFICER TO FILE AND SERVE A RESPONSIVE BRIEF. REPLY BRIEFS MAY BE FILED WITHIN SEVEN DAYS OF SERVICE OF THE RESPONSIVE BRIEF, OR AS SPECIFIED BY THE HEARING OFFICER.

24.10.3 IF FACTS NOT IN THE RECORD BEFORE THE HEARING OFFICER ARE TO BE CONSIDERED IN DISPOSITION OF THE MOTION, THE PARTIES MAY FILE AFFIDAVITS AT THE TIME OF FILING THE MOTION OR RESPONSIVE OR REPLY BRIEF. COPIES OF SUCH AFFIDAVITS AND ANY DOCUMENTARY EVIDENCE USED IN CONNECTION WITH THE MOTION SHALL BE SERVED ON ALL OTHER PARTIES.

24.10.4 IF POSSIBLE, MOTIONS WILL BE DETERMINED UPON THE WRITTEN MOTION AND BRIEFS SUBMITTED. THE HEARING OFFICER MAY ORDER ORAL ARGUMENT OR EVIDENTIARY HEARING ON THE HEARING OFFICER'S REQUEST. IF ANY PARTY FAILS TO APPEAR AT AN ORAL ARGUMENT OR HEARING WITHOUT PRIOR SHOWING OF GOOD CAUSE FOR NON-APPEARANCE, THE HEARING OFFICER MAY PROCEED TO HEAR AND RULE ON THE MOTION.

24.10.5 AN EXPEDITED HEARING ON ANY MOTION MAY BE HELD AT THE INSTANCE OF THE HEARING OFFICER. IF ANY PARTY REQUESTS THAT A MOTION BE DETERMINED IMMEDIATELY WITH OR WITHOUT A HEARING, OR THAT A HEARING BE HELD ON A MOTION IN ADVANCE OF A PREVIOUSLY SET MOTIONS DATE, THAT PARTY SHALL:

- (A) INFORM THE HEARING OFFICER IN WRITING OF SAID REQUEST;
- (B) CONTACT ALL OTHER PARTIES, DETERMINE THEIR POSITION ON THE MOTION, AND INDICATE ON THE FACE OF THE MOTION WHETHER OTHER PARTIES OPPOSE THE MOTION AND WHETHER THEY WILL REQUEST A HEARING ON THE MOTION; AND
- (C) CONFERENCE IN ALL OTHER PARTIES TO SET THE MATTER DIRECTLY WITH THE HEARING OFFICER ON AN EXPEDITED BASIS, IF A HEARING IS DESIRED BY ANY PARTY AND AUTHORIZED UPON ADVANCED NOTICE BY THE HEARING OFFICER.

24.11 BURDEN OF PROOF

24.11.1 THE PROPONENT OF A REQUEST FOR REMEDY OR RELIEF SHALL HAVE THE BURDEN OF PROOF, AND EVERY PARTY TO THE PROCEEDING SHALL HAVE THE RIGHT TO PRESENT THEIR CASE OR DEFENSE BY ORAL AND DOCUMENTARY EVIDENCE, TO SUBMIT REBUTTAL EVIDENCE, AND TO CONDUCT SUCH CROSS-EXAMINATION AS MAY BE REQUIRED FOR A FULL AND TRUE DISCLOSURE OF THE FACTS.

24.11.2 RESPONDENT BEARS THE BURDEN OF PROVING ANY AFFIRMATIVE DEFENSES.

24.11.3 THE DEGREE OF PROOF REQUIRED TO PREVAIL ON A REQUEST FOR A REMEDY OR RELIEF IS A PREPONDERANCE OF THE EVIDENCE, UNLESS A CONSTITUTIONAL OR STATUTORY PROVISION SETS A DIFFERENT STANDARD.

24.12 PREHEARING PROCEDURES, STATEMENTS, AND CONFERENCES

24.12.1 UNLESS OTHERWISE ORDERED BY THE HEARING OFFICER, EACH PARTY SHALL FILE WITH THE HEARING OFFICER AND SERVE ON EACH OTHER PARTY A PREHEARING STATEMENT IN SUBSTANTIAL COMPLIANCE WITH THE FORM AS OUTLINED IN APPENDIX A TO THESE RULES.

24.12.2 PREHEARING STATEMENTS SHALL BE FILED AND SERVED NO LATER THAN SEVEN DAYS PRIOR TO THE HEARING OR SUCH OTHER DATE AS SPECIFIED BY THE HEARING OFFICER. EXHIBITS SHALL NOT BE FILED WITH PREHEARING STATEMENTS, UNLESS ORDERED BY THE HEARING OFFICER. EXHIBITS SHALL BE EXCHANGED BETWEEN THE PARTIES BY THE DATE ON WHICH PREHEARING STATEMENTS ARE TO BE FILED AND SERVED ON SUCH OTHER DATE AS ORDERED BY THE HEARING OFFICER.

- (A) THE AUTHENTICITY OF EXHIBITS, STATUTES, ORDINANCES, REGULATIONS, OR STANDARDS SET FORTH IN THE PREHEARING STATEMENT SHALL BE ADMITTED UNLESS OBJECTED TO IN A WRITTEN OBJECTION FILED WITH THE HEARING OFFICER AND SERVED ON OTHER PARTIES NO LATER THAN FIVE DAYS PRIOR TO HEARING.
- (B) THE INFORMATION PROVIDED IN A PREHEARING STATEMENT SHALL BE BINDING ON EACH PARTY THROUGHOUT THE COURSE OF THE HEARING UNLESS MODIFIED TO PREVENT MANIFEST INJUSTICE. NEW WITNESSES OR EXHIBITS MAY BE ADDED ONLY IF THE NEED TO DO SO WAS NOT REASONABLY FORESEEABLE AT THE TIME OF FILING OF THE PREHEARING STATEMENT AND THEN ONLY IF IT WOULD NOT PREJUDICE OTHER PARTIES OR NECESSITATE A DELAY OF THE HEARING. THE DIVISION SHALL USE NUMBERS TO IDENTIFY EXHIBITS AND ANY OPPOSING PARTY SHALL USE LETTERS.

- (C) IN THE EVENT OF NONCOMPLIANCE WITH THIS RULE, THE HEARING OFFICER MAY IMPOSE APPROPRIATE SANCTIONS INCLUDING, BUT NOT LIMITED TO, THE STRIKING OF WITNESSES, EXHIBITS, CLAIMS, AND DEFENSES.

24.12.3 PREHEARING CONFERENCES MAY BE HELD AT THE REQUEST OF EITHER PARTY OR UPON ORDER OF THE HEARING OFFICER.

24.13 MOTIONS FOR CONTINUANCE

24.13.1 CONTINUANCES SHALL BE GRANTED ONLY UPON A SHOWING OF GOOD CAUSE. MOTIONS FOR CONTINUANCE MUST BE FILED IN A TIMELY MANNER. STIPULATIONS FOR A CONTINUANCE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL APPROVED BY THE HEARING OFFICER.

24.13.2 GOOD CAUSE MAY INCLUDE, BUT IS NOT LIMITED TO:

- (A) DEATH OR INCAPACITATION OF A PARTY OR AN ATTORNEY FOR A PARTY;
- (B) ENTRY OR SUBSTITUTION OF AN ATTORNEY FOR A PARTY A REASONABLE TIME PRIOR TO THE HEARING, IF THE ENTRY OR SUBSTITUTION REASONABLY REQUIRES A POSTPONEMENT OF THE HEARING;
- (C) A CHANGE IN THE PARTIES OR PLEADINGS SUFFICIENTLY SIGNIFICANT TO REQUIRE A POSTPONEMENT;
- (D) A SHOWING THAT MORE TIME IS NECESSARY TO COMPLETE MANDATORY PREPARATION FOR THE HEARING;
- (E) AGREEMENT OF THE PARTIES TO A SETTLEMENT OF THE CASE WHICH HAS BEEN SUBMITTED FOR APPROVAL TO THE DEPUTY SECRETARY; OR
- (F) DISCOVERY.

24.13.3 GOOD CAUSE NORMALLY WILL NOT INCLUDE THE FOLLOWING:

- (A) UNAVAILABILITY OF COUNSEL BECAUSE OF ENGAGEMENT IN ANOTHER JUDICIAL OR ADMINISTRATIVE PROCEEDING, UNLESS THE OTHER PROCEEDING WAS INVOLUNTARILY SET SUBSEQUENT TO THE SETTING IN THE PRESENT CASE;
- (B) UNAVAILABILITY OF A NECESSARY WITNESS, IF THE WITNESS'S TESTIMONY CAN BE TAKEN BY TELEPHONE OR BY DEPOSITION; OR
- (C) FAILURE OF AN ATTORNEY OR A PARTY TIMELY TO PREPARE FOR THE HEARING.

24.14 SUBPOENAS

24.14.1 UPON ORAL OR WRITTEN REQUEST OF ANY PARTY OR OF COUNSEL FOR ANY PARTY, A HEARING OFFICER SHALL SIGN A SUBPOENA OR SUBPOENA DUCES TECUM REQUIRING THE ATTENDANCE OF A WITNESS OR THE PRODUCTION OF DOCUMENTARY EVIDENCE, OR BOTH, AT A DEPOSITION OR HEARING. UNLESS OTHERWISE PROVIDED BY STATUTE, RULE, OR REGULATION, PRACTICE BEFORE THE HEARING OFFICER REGARDING SUBPOENAS SHALL BE GOVERNED BY C.R.C.P. 45.

24.14.2 HEARING OFFICER SHALL DESIGNATE AND AUTHORIZE SPECIFIC DEPARTMENT PERSONNEL TO USE A STAMP SIGNATURE OR TO OTHERWISE DUPLICATE THE SIGNATURE OF A HEARING OFFICER ON SUBPOENAS COMPLETED BY THE PARTIES. HOWEVER, NO OTHER PARTY OR PERSON MAY DUPLICATE THE SIGNATURE OF A HEARING OFFICER. SUBPOENAS ISSUED IN CONTRAVENTION OF THIS RULE ARE INVALID AND MAY SUBJECT THE PARTY USING THEM TO SANCTIONS.

24.14.3 ANY ATTORNEY REPRESENTING A PARTY BEFORE A HEARING OFFICER MAY ISSUE A SUBPOENA OR SUBPOENA DUCES TECUM REQUIRING THE ATTENDANCE OF A WITNESS OR THE PRODUCTION OF DOCUMENTARY EVIDENCE, OR BOTH, AT A DEPOSITION OR HEARING. SUCH ATTENDANCE MAY BE IN-PERSON OR BY VIDEO CONFERENCE AS PROVIDED BY THE HEARING OFFICER.

24.15 SETTLEMENTS

24.15.1 AT ANY TIME, THE PARTIES MAY ENTER INTO A SETTLEMENT AGREEMENT. THE SETTLEMENT AGREEMENT MUST BE IN WRITING AND SIGNED BY THE PARTIES.

24.15.2 THE DIVISION SHALL FILE A MOTION TO STAY PROCEEDINGS WITH THE HEARING OFFICER ONCE GOOD FAITH SETTLEMENT NEGOTIATIONS BEGIN. THE DIVISION SHALL FILE A MOTION OF DISMISSAL WITH THE HEARING OFFICER IF A SETTLEMENT HAS BEEN APPROVED BY THE DEPUTY SECRETARY. IF THE SETTLEMENT AGREEMENT IS NOT APPROVED AND ALTERNATIVE TERMS CANNOT BE AGREED UPON, THE DIVISION WILL MOVE THE HEARING OFFICER TO LIFT THE STAY AND RESUME PROCEEDINGS BEFORE THE HEARING OFFICER.

24.15.3 THE FOLLOWING FACTORS SHALL BE CONSIDERED IN ARRIVING AT A SETTLEMENT AGREEMENT:

- (A) SPECIFIC FINE AMOUNTS OUTLINED IN RULE 23.3.3;
- (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, INCLUDING THE PUBLIC INTEREST IN RESOLUTION OF THE COMPLAINT.

24.15.4 THE SETTLEMENT AGREEMENT IS CONTINGENT UPON APPROVAL BY THE DEPUTY SECRETARY, WHO MUST ALSO CONSIDER THE FACTORS SET FORTH IN RULE 24.15.3. IF THE DEPUTY SECRETARY DOES NOT APPROVE THE SETTLEMENT AGREEMENT, NONE OF THE TERMS OR RECITALS OF THE AGREEMENT ARE BINDING OR ENFORCEABLE BY EITHER PARTY.

24.15.5 IF RESPONDENT FAILS TO COMPLY WITH THE TERMS OF A SETTLEMENT AGREEMENT, INCLUDING FAILURE TO SUBMIT PAYMENT OR SATISFY ANY REGISTRATION, FILING, OR OTHER TASKS REQUIRED BY THE SETTLEMENT AGREEMENT, THE DIVISION MAY PURSUE AN ENFORCEMENT ACTION IN DENVER DISTRICT COURT.

24.15.6 THE SETTLEMENT AGREEMENT SHALL BECOME THE FINAL AGENCY ACTION UNDER SECTION 24-4-105, C.R.S., UPON APPROVAL BY THE DEPUTY SECRETARY.

24.16 EX PARTE COMMUNICATIONS

24.16.1 WITH THE EXCEPTION OF SCHEDULING OR OTHER PURELY ADMINISTRATIVE MATTERS, A PARTY OR COUNSEL FOR A PARTY SHALL NOT INITIATE ANY COMMUNICATION WITH A HEARING OFFICER PERTAINING TO A MATTER BEFORE THAT HEARING OFFICER UNLESS PRIOR CONSENT OF ALL OTHER PARTIES OR THEIR COUNSEL HAS BEEN OBTAINED. COPIES OF ALL PLEADINGS OR CORRESPONDENCE FILED WITH THAT HEARING OFFICER OR DIRECTED TO A HEARING OFFICER BY ANY PARTY SHALL BE SERVED UPON ALL OTHER PARTIES OR THEIR COUNSEL.

24.16.2 DURING THE PENDENCY OF AN ADMINISTRATIVE COMPLAINT, THE DEPUTY SECRETARY, AS WELL AS STAFF DIRECTLY SUPPORTING THE DEPUTY SECRETARY OR THE DEPUTY SECRETARY'S DESIGNEE, SHALL HAVE NO CONTACT REGARDING THE MATTER WITH THE HEARING OFFICER WHILE THE MATTER IS PENDING BEFORE THE HEARING OFFICER. STAFF DIRECTLY SUPPORTING THE DEPUTY SECRETARY OR THE DEPUTY SECRETARY'S DESIGNEE ARE AUTHORIZED TO CONTACT SUPPORT STAFF DIRECTLY SUPPORTING THE HEARING OFFICER CONCERNING PROCEDURAL, RECORD-KEEPING, OR OTHER NON-SUBSTANTIVE MATTERS.

24.17 COMPUTATION AND MODIFICATION OF TIME

24.17.1 IN COMPUTING ANY PERIOD OF TIME PRESCRIBED OR ALLOWED BY THESE RULES, THE PROVISIONS OF C.R.C.P. 6 SHALL APPLY. THE TIME PERIODS OF THESE RULES MAY BE MODIFIED AT THE DISCRETION OF THE HEARING OFFICER.

24.18 FILING OF PLEADINGS AND OTHER PAPERS

24.18.1 PLEADINGS AND OTHER PAPERS MAY BE FILED BY EMAIL TO THE HEARING OFFICER. PLEADINGS MAY NOT BE FILED BY FACSIMILE COPY.

24.18.2 AFTER THE CASE HAS BEEN ASSIGNED A CASE NUMBER, ALL PLEADINGS AND PAPERS FILED WITH THE HEARING OFFICER SHALL CONTAIN THAT CASE NUMBER.

24.19 SERVICE OF PLEADINGS AND OTHER PAPERS.

24.19.1 SERVICE OF PLEADINGS OR OTHER PAPERS ON A PARTY OR ON AN ATTORNEY REPRESENTING A PARTY MAY BE MADE BY EMAIL. SERVICE OF PLEADINGS WILL NOT BE ACCEPTED BY FACSIMILE COPY.

24.19.2 PLEADINGS OR OTHER PAPERS SENT TO THE HEARING OFFICER MUST CONTAIN A CERTIFICATE OF SERVICE ATTESTING TO SERVICE ON THE OPPOSING PARTY AND IN THE CASE OF SERVICE BY MAIL PROVIDING THE ADDRESS WHERE PLEADINGS OR OTHER PAPERS WERE SERVED.

24.19.3 ATTORNEYS AND PARTIES NOT REPRESENTED BY ATTORNEYS MUST INFORM THE HEARING OFFICER AND ALL OTHER PARTIES OF THEIR CURRENT ADDRESS AND OF ANY CHANGE OF ADDRESS DURING THE COURSE OF THE PROCEEDINGS.

24.20 COURT REPORTERS

24.20.1 NEITHER THE DEPARTMENT NOR THE HEARING OFFICER SUPPLIES COURT REPORTERS. IF ANY PARTY WISHES TO HAVE ALL OR A PORTION OF A PROCEEDING TRANSCRIBED BY A COURT REPORTER, THAT PARTY MAY MAKE PRIVATE ARRANGEMENTS TO DO SO AT THAT PARTY'S OWN EXPENSE. THE RECORDING OF ANY PROCEEDING MADE ELECTRONICALLY BY THE HEARING OFFICER SHALL BE THE OFFICIAL RECORD.

24.20.2 A REQUEST TO THE HEARING OFFICER OR THE DEPARTMENT FOR A RECORDING MUST BE IN WRITING AND MUST CONTAIN THE CASE NUMBER AND THE DATE AND TIME OF THE HEARING OR CONFERENCE.

24.21 SUBSTITUTION OF HEARING OFFICER

24.21.1 IN THE EVENT THE HEARING OFFICER BECOMES AWARE OF A CIRCUMSTANCE THAT REFLECTS AN ACTUAL OR PERCEIVED CONFLICT OF INTEREST FOR THE HEARING OFFICER TO CONDUCT A HEARING ON AN ADMINISTRATIVE COMPLAINT, THE HEARING OFFICER SHALL PROMPTLY TRANSMIT TO THE DEPUTY SECRETARY A REQUEST FOR THE DEPUTY SECRETARY TO APPOINT A SUBSTITUTE HEARING OFFICER IN THEIR PLACE TO CONDUCT THE HEARING IN THE MATTER. THE DEPUTY SECRETARY WILL APPOINT A SUBSTITUTE HEARING OFFICER TO CONDUCT THE HEARING OF THE PENDING ADMINISTRATIVE COMPLAINT.

24.21.2 A PARTY MAY SEEK SUBSTITUTION OF THE HEARING OFFICER ASSIGNED TO CONDUCT THE HEARING ON AN ADMINISTRATIVE COMPLAINT ONLY UPON A VERIFIED MOTION WITH SUPPORTING EVIDENCE THAT IS CONCRETE AND PARTICULAR AND NOT SPECULATIVE, DEMONSTRATING THAT A REASONABLE PERSON WOULD QUESTION THE PROPRIETY OF THE HEARING OFFICER CONDUCTING THE HEARING ON THE ADMINISTRATIVE COMPLAINT. SUCH A REQUEST FOR SUBSTITUTION OF THE HEARING OFFICER WILL BE DETERMINED IN THE FIRST INSTANCE BY THE

HEARING OFFICER ASSIGNED TO HEAR THE ADMINISTRATIVE COMPLAINT. IF THE HEARING OFFICER DENIES THE REQUEST FOR A SUBSTITUTE HEARING OFFICER, THAT DECISION IS NOT SUBJECT TO REVIEW UNTIL THE HEARING OFFICER ISSUES AN INITIAL DECISION FOR REVIEW BY THE DEPUTY SECRETARY, AT WHICH TIME A PARTY MAY RAISE THE SUBSTITUTION ISSUE AMONG ITS EXCEPTIONS TO THE INITIAL DECISION.

24.21.3 BY WAY OF ILLUSTRATION, AND WITHOUT LIMITATION, CIRCUMSTANCES THAT MAY GIVE RISE TO AN ACTUAL OR PERCEIVED CONFLICT OF INTEREST REQUIRING THE SUBSTITUTION OF THE HEARING OFFICER ARE THE FOLLOW:

- (A) A FAMILIAL RELATIONSHIP WITH A PARTY OR THE PARTY'S COUNSEL;
- (B) A CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIP WITH OR REPRESENTATION OF A PARTY;
- (C) CURRENT REPRESENTATION OF A RESPONDENT IN ANOTHER CAMPAIGN FINANCE CASE EITHER BEFORE THE DIVISION OR IN A SEPARATE HEARING; OR
- (D) SUCH OTHER CIRCUMSTANCES AS WOULD CAUSE A REASONABLE PERSON TO QUESTION THE PROPRIETY OF THE HEARING OFFICER CONDUCTING THE HEARING ON THE ADMINISTRATIVE COMPLAINT.

24.22 TRANSFER

24.22.1 UPON MOTION BY THE DIVISION, ANY ADMINISTRATIVE COMPLAINT PENDING BEFORE THE OFFICE OF ADMINISTRATIVE COURTS SHALL BE TRANSFERRED TO A HEARING OFFICER AS PROVIDED FOR IN THESE RULES. THE ADMINISTRATIVE COMPLAINT WILL PROCEED UNINTERRUPTED.

APPENDIX A - OUTLINE FOR PREHEARING STATEMENT

The following shall be included in each party's Prehearing Statement:

I. **PENDING MOTIONS.** A list of all outstanding motions that have not been ruled upon by the hearing officer.

II. **STATEMENT OF CLAIMS AND DEFENSES.** A concise statement of all claims or defenses asserted by all parties, together with all matters in mitigation or aggravation.

III. **UNDISPUTED FACTS.** A concise statement of all facts that the party contends are or should be undisputed.

IV. **DISPUTED ISSUES OF FACT.** A concise statement of the material facts that the party claims or concedes to be in dispute.

V. **POINTS OF LAW.** A concise statement of all points of law that are to be relied upon or that may be in controversy, citing pertinent statutes, regulations, cases and other authority. Extended legal argument is not required but may be reserved for a trial brief at the option of the party.

VI. **WITNESSES.** The name, address and telephone number of any witness or party whom the party may call at hearing, together with a detailed statement of the content of that person's testimony.

VII. **EXPERTS.** The name, address and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.

VIII. **EXHIBITS.** A description of any physical or documentary evidence to be offered into evidence at the hearing. An agency shall use numbers to identify exhibits and any opposing party shall use letters.

IX. **STIPULATIONS.** A listing of all stipulations of fact or law reached, as well as a listing of any additional stipulations requested or offered to facilitate disposition of the case.

X. **TRIAL EFFICIENCIES.** An estimate of the amount of time required to try the case.

APPENDIX B – OUTLINE FOR CASE MANAGEMENT ORDER

A case management conference was held on _____ at which the following schedule and deadlines were ordered:

Hearing:

The hearing has been scheduled for _____ through _____ at _____ starting at 9:00 a.m.

Discovery:

1. Discovery cutoff, including completion of expert and fact witness depositions and receipt of all written discovery: _____
2. The numerical limits on interrogatories, requests forth in C.R.C.P. 26 (b)(2) are/are not adopted. The C.R.C.P. 26 (b)(2)(A) are/are not adopted.
3. Other discovery issues

Expert Disclosures:

1. The Agency's initial disclosure of expert witnesses: _____
2. The opposing party's initial disclosure of expert witnesses: _____
3. Rebuttal experts: _____
4. Expert disclosures shall be filed with the hearing officer, as well as served on the opposing party.

Prehearing Statements:

(Set out any modifications to the content of the prehearing statements.)

Motions Deadline:

1. Dispositive motions: _____ Responses: _____
2. All other prehearing motions to the extent that the basis for the motion is reasonably known: _____ Response: _____

Service:

(Set out any agreement or order as to the method of service, i.e., by email, mail, or other method. Set out whether extra time for mailing is permitted.)

Filing:

(Set out any agreement or order as to the method of filing, i.e., by email, mail, or other method. Set out whether extra time for mailing is permitted.)

Prehearing Conference:

A motions hearing/final prehearing conference is set for _____ at ____ a.m./p.m.
at _____.

DONE AND SIGNED

(date)

(NAME)
Hearing Officer

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 Department 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.⁵

IV. Effective Date of Adopted Rules

The amended rules are immediately effective on a temporary basis.

Dated this 13th day of April 2023,



Christopher P. Beall
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State

⁵ Section 24-4-103(6), C.R.S. (2022).



Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

April 13, 2023

I. Basis and Purpose

This statement explains amendments to the Colorado Department 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 23.2 to ensure the proper implementation of New Rule 24.
- New Rule 24 to establish procedural rules for administrative hearings in compliance with section 1-45-111.7, C.R.S., and section 24-4-105, C.R.S.

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.

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 XXVIII of the Colorado State Constitution].”
- Section 1-1-107(2)(a), C.R.S., (2022), 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., (2022), 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.

¹ 8 CCR 1505-6.

² Article 45 of Title 1, C.R.S. (2022).



Statement of Justification and Reasons for Adoption of Temporary Rules

Colorado Department of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

April 13, 2023

Amended Rule: 23.2

New Rule: 24

In accordance with Colorado campaign and political finance laws,¹ the Department of State finds that amendments to the existing campaign and political finance rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado campaign and political finance laws. Temporary adoption is necessary both to comply with the law and to preserve the public welfare.

Given that the Office of Administrative Courts (“OAC”) recently provided notice of its termination of and withdrawal from the “Memorandum of Understanding on Campaign Finance Hearings Under § 1-45-111.7, C.R.S.,” dated September 19, 2019, between the OAC and the Department concerning the adjudication of campaign finance complaints under the procedures established by the General Assembly in section 1-45-111.7, C.R.S., the Department finds it necessary to adopt these rules on a temporary basis to establish procedural rules concerning the adjudication of certain campaign finance complaints through the use of a third-party administrative hearing officer, as defined in section 1-45-111.7, C.R.S., and a hearing process that is consistent with both the Colorado Administrative Procedures Act and the Fair Campaign Practices Act.

Adoption of these rules on a temporary basis is necessary to ensure timely adjudication of campaign finance complaints without interruption and in keeping with statutory deadlines. Temporary adoption is also necessary to provide clear guidance concerning interested parties, including, but not limited to: candidates, political parties, political organizations, and committees. Concurrent with this notice, the Department of State is issuing a notice of proposed rulemaking in accordance with the Colorado Administrative Procedures Act² to consider permanent adoption of the amended rules.

¹ Article XXVIII, Section 9(1)(b), of the Colorado Constitution and section 1-45-111.5(1), C.R.S. (2022)

² Section 24-4-103(3)(a), C.R.S. (2022).

For these reasons, and in accordance with the Colorado Administrative Procedures Act, the Department finds that adoption and immediate effect of the amendments to existing campaign and political finance rules is imperative to comply with state and federal law and to promote public interests.³

³ Section 24-4-103(6)(a), C.R.S. (2022).