

COLORADO SECRETARY OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Revised Draft of Proposed Rules

August 27, 2009

This draft supersedes the Preliminary Draft that was issued with the Notice of Proposed Rulemaking on July 31, 2009. This rulemaking hearing to be conducted on September 1, 2009 will use this Revised Draft.

This draft copy of the proposed rule amendments is made available to the public and posted on the Department of State's web site, in compliance with the requirement of section 24-4-103 (4) (a), C.R.S., that "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."

*Proposed additions to the current rules are reflected in SMALL CAPS or underlined. Proposed deletions from current rules are shown in ~~stricken type~~. **Shading** indicates revisions from the previous draft. Annotations may be included.*

1 Rule 1.6 would be repealed as follows:

2 ~~1.6 "Issue", as used in Article XXVIII of the Colorado Constitution and Article 45 of Title 1,~~
3 ~~C.R.S., shall mean a "ballot issue" or "ballot question" as such terms are defined in~~
4 ~~section 1-1-104(2.3) and (2.7), C.R.S. For the purposes Article XXVIII, section 2(10) of~~
5 ~~the Colorado Constitution, a matter shall be considered an "issue" at the earliest of the~~
6 ~~following:~~

7 ~~a. It has had a title designated and fixed in accordance with law;~~

8 ~~b. It has been referred to the voters by a governing board or the general assembly;~~

9 ~~c. In the case of a citizen referendum petition, it has been submitted for format~~
10 ~~approval in accordance with law;~~

11 ~~d. A petition has been circulated and signed by at least one person; except that,~~
12 ~~where a matter becomes an "issue" upon such signing, a person or persons~~
13 ~~opposing such issue shall not be considered an "issue committee" until one such~~
14 ~~person knows or has reason to know of the circulation; or~~

1 e. ~~A signed petition has been submitted to the appropriate election official in~~
2 ~~accordance with law.~~ REPEALED.

3 Rule 1.14 would be amended as follows:

4 1.14 “Signature”, for purposes of any report filed electronically with the secretary of state,
5 means ~~the committee’s identification number, and “signing”, means the electronic~~
6 ~~transmission of the committee’s identification number to the secretary of state with the~~
7 ~~report being filed.~~ THE DESIGNATED REPRESENTATIVE HAS ELECTRONICALLY SUBMITTED
8 THE REPORT THROUGH THE ONLINE FILING SYSTEM.

9 Rules 2.1, 2.3, 2.4, and 2.5 would be amended as follows

10 2.1 When a committee registration form is received AND DEEMED COMPLETE by the
11 appropriate filing officer, an identification number will be assigned and a letter OR EMAIL
12 of acknowledgement will be sent by the appropriate filing officer to the registered agent
13 on file ~~informing him/her of the identification number.~~ The registered agent for any issue
14 committee, political committee, small donor committee, or political party shall sign the
15 committee’s registration form and all disclosure reports. [1-45-108(3) through (6)]

16 2.3 A registered agent resigning from a political committee, issue committee, small donor
17 committee, or political party shall file a letter of resignation with the appropriate filing
18 officer and the committee or party via certified mail. A REGISTERED AGENT FOR A
19 CANDIDATE COMMITTEE, WHO IS NOT THE CANDIDATE, SHALL FILE A LETTER OF
20 RESIGNATION WITH THE APPROPRIATE FILING OFFICER AND THE CANDIDATE OF THE
21 CANDIDATE COMMITTEE VIA CERTIFIED MAIL. The letter of resignation to the appropriate
22 filing officer shall BE FILED WITHIN SEVEN BUSINESS DAYS OF RESIGNATION AND SHALL
23 include the certified mail receipt number sent to the committee or party and the contact
24 information for the committee or party. In accordance with Rule 3.1, the committee or
25 party shall file an amended committee registration form within five days of ~~such change~~
26 RECEIPT OF THE LETTER OF RESIGNATION. [1-45-108(3)(b)]

27 2.4 The purpose or nature of interest of the committee or party shall be included. A
28 candidate committee shall identify the ~~NAME OF THE CANDIDATE AND THE~~ specific elective
29 office sought upon registration. A political committee or small donor committee shall
30 identify the types of candidates being supported or opposed, such as party affiliation or
31 public policy position, and if known, the specific candidates being supported or opposed.
32 TERMS DESCRIBING TYPES OF CANDIDATES SHALL BE DESCRIPTIVE IN PROVIDING
33 DISCLOSURE OF THE COMMITTEE’S PURPOSE. IT IS NOT SUFFICIENT TO IDENTIFY CANDIDATE
34 TYPES BY LISTING THE JURISDICTION OR OFFICE SOUGHT, SUCH AS “LEGISLATIVE
35 CANDIDATES” OR “STATEWIDE CANDIDATES.”

36 2.5 An issue committee may support or oppose more than one issue without having to open
37 numerous campaign accounts and file numerous committee registration forms if the
38 following conditions are met: the specific issues are included on the committee
39 registration form at such time as an issue meets the provisions of ~~Rule 1.6~~ SECTION 1-45-
40 108(7), C.R.S.; no generic phraseology may be used once such an issue is known (i.e.:

1 Support or oppose issues affecting the basic rights of cattle); and the registration form
2 states whether the committee will be supporting or opposing said issues. [Article XXVIII,
3 Section 2(10)(a)(I) and (2)(10)(a)(II)]

4 Effective January 1, 2010, Rules 2.10 would be amended and Rule 2.11 would be repealed as
5 follows:

6 2.10 In accordance with the procedures set out in the “State Administrative Procedure Act”
7 (Article 4 of Title 24, Colorado Revised Statutes), the secretary of state may close an
8 inactive committee after two years of non-reporting. A committee shall be deemed
9 inactive for the purpose of this rule after such committee has failed to file any reports
10 with the appropriate filing officer for two consecutive years. [Article XXVIII, Section
11 2(3), and C.R.S. 24-4-105]

12 2.10.1 A ~~county clerk and recorder or~~ municipal clerk designated as a committee’s
13 appropriate filing officer pursuant to section 1-45-109, C.R.S., may request the
14 secretary of state to close a committee pursuant to this Rule. Such request shall
15 be submitted in writing and contain a statement from the county clerk and
16 recorder or municipal clerk that no disclosure reports have been received for at
17 least two years either manually or electronically from such committee, and any
18 other information that is relevant.

19 2.11 ~~The “appropriate filing officer” for a political committee whose purpose is to support or~~
20 ~~oppose school board candidates or an issue committee whose purpose is to support or~~
21 ~~oppose a ballot issue, question, or measure for a school district not wholly contained~~
22 ~~within a single county shall be the county clerk and recorder of the county where the~~
23 ~~school district administrative offices are located.~~ REPEALED EFFECTIVE JANUARY 1, 2010.

24 Rule 3.4 would be amended as follows:

25 3.4 A committee may terminate if the following conditions are met: the candidate or
26 committee no longer intends to receive contributions or make expenditures; a zero
27 balance is achieved by having no cash OR ASSETS on hand and no outstanding debts or
28 obligations; and the candidate or committee files a termination statement of contributions
29 and expenditures. ASSETS REMAINING IN POSSESSION OF A COMMITTEE PRIOR TO
30 TERMINATION MAY BE DISPOSED OF IN THE SAME MANNER AS ALLOWED FOR UNEXPENDED
31 CONTRIBUTIONS. A termination statement may be filed at any time. [Article XXVIII,
32 Section 2(3) and 1-45-106]

33 Rule 3.7 would be amended as follows:

34 3.7 Unexpended campaign contributions to ~~local candidate~~ committees NOT SUBJECT TO THE
35 LIMITS SET FORTH IN ARTICLE XXVIII, SECTION 3 may not be contributed to a ~~state~~
36 ~~candidate~~ committee THAT IS SUBJECT TO SUCH LIMITS.

1 Rule 4.1 would be repealed as follows:

2 4.11 ~~For purposes of complying with the requirement of Article XXVIII, Section 5, that a~~
3 ~~notice of independent expenditure include “a detailed description of the use of such~~
4 ~~independent expenditure”, such notice is sufficient if it includes an identification of the~~
5 ~~payee of the expenditure, the medium used for the communication, the date or dates for~~
6 ~~broadcast, delivery, or publication of the communication, and either the complete written~~
7 ~~text or transcript of the communication produced by the expenditure or a summary of the~~
8 ~~major points contained within the communication. REPEALED~~

9 *[Relocated verbatim to new Rule 14.]*

10 Rule 4.3 would be amended as follows:

11 4.3 Contributions – when counted.

12 a. A contribution is considered made or received as of the date that it is accepted by
13 the committee or party. In the case of a contribution by check or credit card, the
14 date accepted is the date that the contribution is deposited into the committee’s or
15 party’s account. ANY CONTRIBUTION IN THE FORM OF A CHECK RECEIVED BY A
16 COMMITTEE, OR 527 POLITICAL ORGANIZATION AT LEAST FIVE BUSINESS DAYS
17 PRIOR TO THE END OF A REPORTING PERIOD MUST BE DEPOSITED OR RETURNED TO
18 THE CONTRIBUTOR BY THE CLOSE OF THAT REPORTING PERIOD.

19 b. However, for purposes of section 1-45-105.5, concerning contributions by
20 lobbyists to certain state officers and candidates when legislation is under
21 consideration, a contribution is considered made or promised when possession of
22 the check is transferred to any person not under the control of the issuer.

23 Rule 4.5 would be amended as follows:

24 4.5 Loans received by a committee or party

25 a. All loans received by a committee or party must be reported continuously until
26 repaid. [Article XXVIII, Section 3(8)]

27 b. Notwithstanding Article XXVIII, Section 3(8), a candidate may make a loan to
28 his or her candidate committee. Such loan shall be at no interest. In accordance
29 with the definition of “contribution” in Article XXVIII, section 2(5), the amount
30 of the loan is a contribution from the candidate to the committee, but the interest-
31 free use of such loan by the committee is not a contribution to the committee.

32 c. Any repayment of a loan shall be considered a returned contribution, except that
33 interest repaid for a loan made pursuant to Article XXVIII, Section 3(8) shall be
34 reported as an expenditure by the ~~candidate~~ committee.

- 1 d. A loan made by a candidate to the candidate's own committee may be forgiven by
2 the candidate. The amount of unpaid debt forgiven by the candidate shall remain
3 a contribution and shall not be considered a returned contribution.
- 4 e. Loans made from a financial institution to a candidate committee pursuant to
5 Article XXVIII, Section 3(8) shall not be forgiven.

6 Rule 4.8 would be amended as follows:

7 4.8 FOR ANY ~~Any contributions~~ CONTRIBUTION received in excess of contribution limits,
8 NEITHER THE CONTRIBUTOR NOR THE RECEIVING COMMITTEE SHALL BE LIABLE FOR
9 EXCEEDING THE CONTRIBUTION LIMIT IF THE EXCESS AMOUNT IS ~~shall be~~ returned to the
10 contributor within thirty (30) days.

11 New Rule 4.24 would be adopted as follows:

12 4.24 IF A PRIMARY ELECTION IS CANCELLED IN ACCORDANCE WITH SECTION 1-4-104.5(1), A
13 CANDIDATE COMMITTEE MAY ACCEPT THE CONTRIBUTION LIMIT SPECIFIED IN ARTICLE
14 XXVIII, SECTION 3(1) FOR THE PRIMARY ELECTION IN WHICH THE CANDIDATE WHOSE
15 NAME THE CANDIDATE COMMITTEE IS ACCEPTING CONTRIBUTIONS FOR IS ELIGIBLE TO BE
16 ON THE PRIMARY ELECTION BALLOT. IN ACCORDANCE WITH SECTION 1-45-103.7(3) SUCH
17 CONTRIBUTIONS MAY BE ACCEPTED AT ANY TIME BEFORE OR AFTER THE PRIMARY
18 ELECTION WAS CANCELLED.

19 Effective January 1, 2010, Rules 5.7, 5.8, 5.9, and 5.10 would be amended as follows:

20 5.7 The reporting period for any ~~quarterly, monthly, or biweekly~~ report begins on the first
21 day following the last day of the reporting period for the previous report filed with the
22 ~~secretary of state~~ APPROPRIATE OFFICER. [1-45-108(2)(c)]

23 5.8 Special district elections.

24 a. ~~For r~~Reports relating to special district elections ~~that are required to be filed with~~
25 ~~the county clerk and recorder~~ shall be required ~~only~~ on the 21st day prior to, and
26 on the Friday prior to, and on the 30th day after the date of the regular election.
27 [1-45-109(1)(A)(II) AND (1)(C)]

28 b. ~~Reports relating to special district elections that are required to be filed with the~~
29 ~~secretary of state shall be subject to quarterly, monthly, and biweekly reporting as~~
30 ~~provided in section 1-45-108(2)(a)(I) if the major elections for such special~~
31 ~~district occur on the date of the general election. If the major elections for such~~
32 ~~special district occur at any other time, then reports shall be required only on the~~
33 ~~21st day prior to, on the Friday prior to, and on the 30th day after the date of the~~
34 ~~regular election.~~ REPEALED EFFECTIVE JANUARY 1, 2010.

35 5.9 The reporting period for any report that is required to be filed ~~with the county clerk and~~
36 ~~recorder~~ PURSUANT TO SECTIONS 1-45-109(1)(A)(II) AND (1)(C) shall close five calendar
37 days prior to the date that the report is due.

1 5.10 For purposes of section 1-45-108(2)(d), which exempts a candidate committee for a
2 former officeholder or person not elected to office from reporting if there is no change in
3 the balance of funds maintained by such committee and if certain other conditions are
4 met, a change in the balance of funds resulting solely from the accrual of interest or
5 dividends to the account and/or the automatic deduction of periodic service fees does not
6 subject such candidate committee to the reporting requirements of section 1-45-108,
7 C.R.S., except that such candidate committee shall file an annual report for each calendar
8 year. ~~State candidate committees shall file such report not later than January 15th of the~~
9 ~~following year, and county and municipal candidate committees shall file such report in~~
10 ~~accordance with section 1-45-108(2)(a)(II),, C.R.S.~~ Candidate committees that choose
11 this option must notify, in writing, the appropriate filing officer of their intent. [1-45-
12 108(2)(c) and (2)(d)]

13 A. STATE CANDIDATE COMMITTEES SHALL FILE SUCH REPORT NOT LATER THAN
14 JANUARY 15TH OF THE FOLLOWING YEAR.

15 B. ALL OTHER CANDIDATE COMMITTEES SHALL FILE SUCH REPORT ON THE FIRST
16 DAY OF THE MONTH IN WHICH THE ANNIVERSARY OF THE MAJOR ELECTION
17 OCCURS, IN ACCORDANCE WITH SECTION 1-45-108(2)(A)(II), C.R.S.

18 Effective January 1, 2010, Rule 5.11 would be repealed as follows:

19 ~~5.11 County political party organizations shall file required reports pursuant to section~~
20 ~~1-45-108 (2)(a)(II) with the county clerk and recorder for their jurisdiction. State~~
21 ~~political party organizations shall file required reports pursuant to section 1-45-108 with~~
22 ~~the secretary of state. REPEALED EFFECTIVE JANUARY 1, 2010.~~

23 Rule 6.1 would be amended as follows:

24 6.1 If the appropriate officer, as defined in Section 2(1) of Article XXVIII, discovers IN THE
25 ORDINARY COURSE OF HIS OR HER DUTIES IN MAINTAINING A CAMPAIGN FINANCE FILING
26 SYSTEM a possible violation of Article XXVIII or Title 1, Article 45, and no complaint
27 alleging such violation has been filed with the secretary of state pursuant to Article
28 XXVIII, Section 9(2)(a), then the appropriate officer shall:

29 a. Provide the person believed to have committed the violation with written notice of
30 the facts or conduct that constitute the possible violation, and

31 b. Allow seven business days to correct the violation or to submit written statements
32 explaining the reasons that support a conclusion that a violation was not
33 committed.

34 Effective January 1, 2010, Rules 8.1, 8.2, and 8.3 would be amended as follows:

35 8.1 The special district designated election official or, as applicable, the presiding officer or
36 the secretary of the board of directors, under section 32-1-804.3(5), C.R.S., shall provide
37 to the SECRETARY OF STATE ~~county clerk and recorder of the county in which the district~~
38 ~~court having jurisdiction over the special district pursuant to section 32-1-303, C.R.S., is~~

1 ~~located~~, the self-nomination and acceptance forms and letters, and affidavits of intent to
2 be a write-in candidate no later than the date established for certification of the special
3 district's ballot pursuant to section 1-5-203(3)(a), C.R.S.

4 8.2 If a candidate for a special district office fails to file a candidate affidavit, or the filed
5 self-nomination and acceptance form or letter, or the affidavit of intent to be a write-in
6 candidate does not contain the statement required by section 1-45-110(1), C.R.S., the
7 ~~county clerk and recorder~~ SECRETARY OF STATE shall mail the special district a copy of
8 the notification to the candidate regarding pending disqualification sent pursuant to
9 section 1-45-110(3).

10 8.3 The ~~clerk and recorder's~~ SECRETARY OF STATE'S receipt of the self-nomination and
11 acceptance form or letter or the affidavit of intent to be a write-in candidate shall be
12 deemed to be filed by the candidate; ~~provided, however, that.~~ Nothing in this rule shall
13 be deemed or construed to impose any duty on a designated election official, presiding
14 officer, or secretary to file any document on behalf of any candidate or to relieve any
15 candidate of any obligation to file any document required by the fair campaign practices
16 act, article XXVIII, or other law.

17 The title to Rule 10 would be amended as follows:

18 **10. Recall Elections for State Office**

19 Rule 10.2 would be amended as follows:

20 10.2 The reporting period for committees participating in the recall election shall BEGIN ON
21 THE DATE THE RECALL PETITION IS APPROVED BY THE DESIGNATED ELECTION OFFICIAL FOR
22 CIRCULATION PURSUANT TO SECTION 1-12-1098, C.R.S. REPORTING PERIODS FOR ALL
23 REPORTS RELATING TO THE RECALL ELECTION SHALL close five calendar days prior to the
24 date that the report is due.

25 Rule 10.5 would be amended as follows:

26 10.5 NOTWITHSTANDING SECTION 1-45-108(6), C.R.S., ANY ~~Any~~ issue committee whose
27 purpose is to support or oppose the recall of any elected official shall REGISTER WITHIN
28 TEN CALENDAR DAYS OF ACCEPTING OR MAKING CONTRIBUTIONS OR EXPENDITURES IN
29 EXCESS OF TWO HUNDRED DOLLARS IN ACCORDANCE WITH SECTION 1-45-108(3.3), C.R.S.
30 SUCH COMMITTEE SHALL OTHERWISE follow the filing calendar established in section 1-
31 45-108 (6), C.R.S.

32 Rule 11.2 would be amended as follows:

33 11.2 In accordance with section 24-21-111, C.R.S., reports are not required to be filed
34 electronically in ~~any~~ EITHER of the following circumstances:

35 ~~11.2.1 An individual report contains fewer than thirty (30) entries.~~

1 11.2.2.1 The secretary of state has granted an exception to the electronic filing
2 requirement after written application based on hardship or other good cause
3 shown. All applications for an exception shall include a brief statement of the
4 hardship or good cause for which the exception is sought. Applications must be
5 received by the secretary of state at least fifteen (15) calendar days prior to the
6 first applicable filing deadline in the election cycle, unless the exception is based
7 on emergency circumstances arising after such deadline, in which case the nature
8 of the emergency shall be described in the application. The filing of an
9 application for exception based on emergency circumstances does not delay any
10 reporting deadlines, however, if a penalty is imposed for failure to file a report on
11 the date due, the penalty may be set aside or reduced in accordance with section
12 10(2) of Article XXVIII. The Secretary of State shall review and respond in
13 writing to all applications for an exception within three (3) business days.

14 11.2.3.2 The report is filed using the secretary of state's Electronic Data Interface
15 (EDI) upon approval of the secretary of state.

16 New Rule 11.5 would be adopted as follows:

17 11.5 THE TRANSPARENCY IN CONTRIBUTION AND EXPENDITURE REPORTING ELECTRONIC FILING
18 SYSTEM, KNOWN AS "TRACER", WILL ATTEMPT TO IDENTIFY POTENTIAL VIOLATIONS AS
19 AN AID TO FILING BY DISPLAYING WARNING MESSAGES WHEN CONTRIBUTIONS OR
20 EXPENDITURES APPEAR TO VIOLATE ARTICLE XXVIII OF THE COLORADO CONSTITUTION
21 OR ARTICLE 45 OF TITLE 1, C.R.S. HOWEVER, FILERS ARE ULTIMATELY RESPONSIBLE FOR
22 COMPLIANCE WITH THE LAW AND THESE RULES REGARDLESS OF WHETHER THE SYSTEM
23 IDENTIFIES OR FAILS TO IDENTIFY A POTENTIAL VIOLATION.

24 New rule 14 would be adopted as follows:

25 **Rule 14. Independent Expenditures**

26 14.1 FOR PURPOSES OF COMPLYING WITH THE REQUIREMENT OF ARTICLE XXVIII, SECTION 5,
27 THAT A NOTICE OF INDEPENDENT EXPENDITURE INCLUDE "A DETAILED DESCRIPTION OF THE
28 USE OF SUCH INDEPENDENT EXPENDITURE", SUCH NOTICE IS SUFFICIENT IF IT INCLUDES AN
29 IDENTIFICATION OF THE PAYEE OF THE EXPENDITURE, THE MEDIUM USED FOR THE
30 COMMUNICATION, THE DATE OR DATES FOR BROADCAST, DELIVERY, OR PUBLICATION OF
31 THE COMMUNICATION, AND EITHER THE COMPLETE WRITTEN TEXT OR TRANSCRIPT OF THE
32 COMMUNICATION PRODUCED BY THE EXPENDITURE OR A SUMMARY OF THE MAJOR POINTS
33 CONTAINED WITHIN THE COMMUNICATION.

34 ***[RELOCATED VERBATIM FROM RULE 4.11]***

35 14.2 FOR THE PURPOSES OF SECTION 5, ARTICLE XXVIII, A CANDIDATE COMMITTEE, POLITICAL
36 COMMITTEE, SMALL DONOR COMMITTEE, POLITICAL PARTY, OR 527 POLITICAL
37 ORGANIZATION THAT IS REGISTERED WITH THE ~~SECRETARY OF STATE~~ SECRETARY OF STATE
38 OR A COUNTY CLERK AND RECORDER THAT OBLIGATES FUNDS EXCEEDING \$1,000 FOR ANY
39 SINGLE INDEPENDENT EXPENDITURE MORE THAN 30 DAYS PRIOR TO A PRIMARY OR
40 GENERAL ELECTION SHALL NOTIFY THE ~~SECRETARY OF STATE~~ SECRETARY OF STATE BY

1 DISCLOSING SUCH EXPENDITURE ON THE COMMITTEE'S OR ORGANIZATION'S REGULARLY
2 SCHEDULED DISCLOSURE REPORT FOR THAT REPORTING PERIOD.

3 14.3 FOR THE PURPOSES OF SECTION 5, ARTICLE XXVIII, ANY PERSON WHO IS OTHERWISE NOT
4 REQUIRED TO FILE REPORTS WITH THE SECRETARY OF STATE OR COUNTY CLERK AND WHO
5 OBLIGATES FUNDS EXCEEDING \$1,000 FOR ANY SINGLE INDEPENDENT EXPENDITURE MORE
6 THAN 30 DAYS PRIOR TO A PRIMARY OR GENERAL ELECTION SHALL DELIVER NOTICE TO THE
7 ~~SECRETARY OF STATE~~ SECRETARY OF STATE IN ACCORDANCE WITH THE REPORTING
8 SCHEDULE ESTABLISHED FOR POLITICAL PARTIES IN SECTION 1-45-108 (2), C.R.S.
9

10 14.34 NOTWITHSTANDING RULES 14.1 AND 14.2, ANY PERSON (INCLUDING A NATURAL PERSON,
11 ENTITY, CANDIDATE COMMITTEE, POLITICAL COMMITTEE, SMALL DONOR COMMITTEE,
12 POLITICAL PARTY, OR 527 POLITICAL ORGANIZATION) WHO OBLIGATES FUNDS IN ANY
13 AMOUNT FOR AN INDEPENDENT EXPENDITURE, FEWER THAN 31 DAYS BEFORE A PRIMARY OR
14 GENERAL ELECTION, SHALL DELIVER NOTICE TO THE ~~SECRETARY OF STATE~~ SECRETARY OF
15 STATE WITHIN 48 HOURS OF OBLIGATING FUNDS FOR SUCH EXPENDITURE.