

COLORADO SECRETARY OF STATE

[8 CCR 1505-6]

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

Revised Draft of Proposed Rules

April 14, 2011

Disclaimer: This draft supersedes the Preliminary Draft that was issued with the Notice of Proposed Rulemaking on March 11, 2011. The rulemaking hearing to be conducted on April 19, 2011, 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. Proposed deletions from current rules are shown in ~~stricken type~~. Shading indicates revisions from the previous draft. Annotations may be included.

1 New Rule 15 would be adopted as follows:

2 **15. REQUESTS FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES**

3 A. REQUESTS FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES IMPOSED
4 ~~BY THE SECRETARY OF STATE~~ UNDER ARTICLE XXVIII, SECTION 10(2)(B)(I) SHALL
5 MUST BE CONSIDERED BY THE SECRETARY OF STATE AND ADMINISTRATIVE LAW
6 JUDGES ACCORDING TO THE FOLLOWING GUIDELINES:

SCENARIO - APPLIED IN NUMERICAL ORDER (I.E. IF #1 DOESN'T APPLY, MOVE TO #2)	RESULT
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#1	<p>A WAIVER IS REQUESTED AND ESTABLISHES GOOD CAUSE THAT MADE TIMELY FILING IMPRACTICABLE (E.G. FOR EXAMPLE, I WAS IN THE HOSPITAL, MY SISTER GOT IN A CAR ACCIDENT, I WAS STRANDED BY A BLIZZARD, ETC.). THE EVENT OR EVENTS THAT MADE TIMELY FILING IMPRACTICABLE MUST OCCUR WITHIN A REASONABLE TIME OF THE DATE ON WHICH THE REPORT WAS FILED.</p>	<p>WAIVE PENALTY IN FULL. A WAIVER SHALL WILL BE GRANTED WITHOUT CONSIDERATION OF PREVIOUS DELINQUENCIES.</p>
#2	<p>A WAIVER IS REQUESTED BUT DOES NOT PRESENT CIRCUMSTANCES THAT MADE TIMELY FILING IMPRACTICABLE (FOR EXAMPLE, I FORGOT, I WAS OUT OF TOWN, MY ELECTRONIC CALENDAR CRASHED), AND:</p>	<p>THIS SCENARIO #2 SHALL APPLY APPLIES ONLY TO PENALTIES OF \$100 OR MORE.</p>

	<p>(A) CANDIDATE OR COMMITTEE FILER HAD CONTRIBUTIONS AND/OR EXPENDITURES DURING THE REPORTING PERIOD.</p>	<p>FIRST DELINQUENCY IN 24 MONTHS: THE PENALTY SHALL WILL BE REDUCED TO \$50.</p> <p>SECOND DELINQUENCY IN 24 MONTHS: THE PENALTY SHALL WILL BE REDUCED BY 50%.</p> <p>THIRD (OR SUBSEQUENT) DELINQUENCY IN 24 MONTHS: A REDUCTION IN PENALTY SHALL WILL NOT BE GRANTED.</p> <p>PENALTIES IMPOSED UNDER THIS SECTION SHALL BE ARE CAPPED AT THE HIGHER OF THE CONTRIBUTIONS OR EXPENDITURES MADE DURING THE REPORTING PERIOD. THE PENALTY CAP MAY BE DISREGARDED IF A DELINQUENCY IS FOUND TO BE WILLFUL.</p> <p>FOR PURPOSES OF THIS ANALYSIS, PREVIOUS DELINQUENCIES INCLUDES ONLY-EXCLUDE THOSE FOR WHICH A WAIVER UNDER SCENARIO #1 WAS NOT GRANTED.</p>
	<p>(B) CANDIDATE OR COMMITTEE FILER HAS NO ACTIVITY (CONTRIBUTIONS OR EXPENDITURES) DURING THE REPORTING PERIOD AND THE COMMITTEE BALANCE IS ZERO.</p>	<p>THE PENALTY SHALL WILL BE REDUCED TO \$50.</p>

	<p>(C) CANDIDATE OR COMMITTEE FILER HAS A FUND BALANCE GREATER THAN ZERO AND CANDIDATE OR COMMITTEE FILER HAS NO ACTIVITY (CONTRIBUTIONS OR EXPENDITURES) DURING THE REPORTING PERIOD.</p>	<p>FIRST DELINQUENCY IN 24 MONTHS: THE PENALTY SHALL WILL BE REDUCED TO \$50.</p> <p>SECOND DELINQUENCY IN 24 MONTHS: THE PENALTY SHALL WILL BE REDUCED BY 50%, SUBJECT TO A CAP OF 10% OF THE FUND BALANCE AS OF THE DATE OF THE VIOLATION.</p> <p>THIRD (OR SUBSEQUENT) DELINQUENCY IN 24 MONTHS: THE PENALTY IS CAPPED AT 10% OF THE FUND BALANCE AS OF THE DATE OF THE VIOLATION, AND A MINIMUM PENALTY OF \$100 SHALL WILL BE IMPOSED.</p> <p>A PENALTY CAP MAY BE DISREGARDED IF A DELINQUENCY IS FOUND TO BE WILLFUL.</p> <p>FOR PURPOSES OF THIS ANALYSIS, PREVIOUS DELINQUENCIES INCLUDES ONLY-EXCLUDE THOSE FOR WHICH A WAIVER UNDER SCENARIO #1 WAS NOT GRANTED.</p>
	<p>(D) FILER SEEKS TO TERMINATE ACTIVE STATUS, HAS A FUND BALANCE OF \$1,000 OR LESS, AND HAS NO ACTIVITY (CONTRIBUTIONS OR EXPENDITURES) DURING THE REPORTING PERIOD(S) IN QUESTION.</p>	<p>PENALTIES ARE SUBJECT TO A CAP EQUAL TO THE TOTAL AMOUNT OF THE FILER'S FUND BALANCE AS OF THE DATE ON WHICH THE DELINQUENT REPORT WAS FILED, IF THE COMMITTEE IS PROMPTLY TERMINATED.</p>

#3	<p>A WAIVER IS REQUESTED, BUT SUBMITTED MORE THAN 30 DAYS AFTER THE DATE OF PENALTY IMPOSITION. FOR PURPOSES OF THIS ANALYSIS, A FILER HAS 30 DAYS FROM THE DATE ON WHICH THE FINAL NOTICE OF PENALTY IMPOSITION IS ISSUED FOLLOWING THE FILING OF THE DELINQUENT REPORT. UNTIL AN OUTSTANDING REPORT IS FILED, PENALTIES SHALL CONTINUE TO ACCRUE AT A RATE OF \$50 PER DAY AND NO REQUEST FOR WAIVER WILL BE CONSIDERED.</p>	<p>A REQUEST SHALL WILL NOT BE CONSIDERED UNLESS GOOD CAUSE HAS BEEN SHOWN FOR FAILURE TO MEET THE 30-DAY WAIVER FILING REQUIREMENT.</p>
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- 1 B. FOR WAIVER REQUESTS THAT APPLY TO MORE THAN ONE PENALTY, THE GUIDELINES
2 ~~SHALL WILL~~ BE APPLIED SEPARATELY TO EACH PENALTY IN CHRONOLOGICAL ORDER
3 USING THE SINGLE REQUEST AS THE BASIS FOR EACH.
- 4 ~~C. PENALTY CAPS SHALL NOT APPLY TO ANY WILLFUL DELINQUENCY.~~
- 5 C. FILERS MAY REQUEST THAT THE SECRETARY OF STATE RECONSIDER A REQUEST FOR
6 WAIVER OR REDUCTION OF CAMPAIGN FINANCE PENALTIES. ANY REQUEST FOR
7 RECONSIDERATION MUST PRESENT ADDITIONAL MATERIAL FACTS THAT ARE
8 SIGNIFICANTLY DIFFERENT THAN THOSE ALLEGED IN THE ORIGINAL REQUEST FOR
9 REDUCTION OR WAIVER, AND MUST BE SUBMITTED TO THE SECRETARY OF STATE, IN
10 WRITING, WITHIN 30 DAYS OF THE DATE ON WHICH THE WAIVER DECISION WAS
11 MAILED.
- 12 D. THE SECRETARY OF STATE OR ADMINISTRATIVE LAW JUDGE MAY CONSIDER ANY
13 ADDITIONAL FACTORS THAT ESTABLISH GOOD CAUSE OR MAY OTHERWISE BE
14 RELEVANT TO THE REQUEST FOR WAIVER OR REDUCTION OF CAMPAIGN FINANCE
15 PENALTIES.
- 16 E. THE SECRETARY OF STATE WILL RESPOND TO REQUESTS FOR WAIVER OR
17 REDUCTION OF CAMPAIGN FINANCE PENALTIES WITHIN 60 DAYS. FAILURE TO
18 RESPOND WITHIN 60 DAYS, HOWEVER, WILL NOT CONSTITUTE AN APPROVAL OF THE
19 REQUEST.