



**Revised Proposed Statement of Basis, Purpose,  
and Specific Statutory Authority**

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

**December 9, 2011**

**I. Basis and Purpose**

This statement is about proposed recodification of the Colorado Secretary of State Rules Concerning Campaign and Political Finance<sup>1</sup> in its entirety. The amendments and recodification are intended to achieve the uniform and proper administration and enforcement of Colorado campaign and political finance laws.<sup>2</sup> Specifically, the recodification is intended to (a) improve organization and readability; (b) clarify existing laws and regulations; and (c) address questions arising under State campaign and political finance laws. Annotations concerning specific rule amendments included in the recodification follow:

- Rule 1 (formerly Rule 1) is reorganized to put current definitions in alphabetic order.
- Changes to Rule 1.1 clarify the definition of “business activities” to more closely mirror the federal standard in 11 C.F.R. § 1140(b)(3)(i) in order to provide a standard that better reflects qualified nonprofit corporation activity.
- New Rule 1.2 clarifies that “committee,” when used in the rules, references all types of committees. This eliminates the need to repeatedly enumerate all types of committees in rules that apply to candidate committees, political committees, small donor committees, issue committees, independent expenditure committees, political parties, Federal PACs, and political organizations. It also reduces the risk that in an enumerated list, a committee type is omitted.
- Rule 1.3 (formerly Rule 1.2) clarifies the exemption in Article XXVIII, Section 2(5)(b) for volunteer services, and the distinction between volunteer services and the production of tangible goods for a committee.
- Rule 1.4 (formerly Rule 14.7) expands the definition of “coordination” so that it applies to all committee types. The definition currently applies only to independent expenditure

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

<sup>2</sup> Article XXVIII of the Colorado Constitution and Article 45, Title 1 of the Colorado Revised Statutes.

committees. This change provides clarity to committees and persons that must avoid coordinating political spending with candidates and political parties. The changes also add a materiality standard in subsection (b), which addresses the problem that the rule is overly broad with respect to the use of campaign information in producing electioneering communications.

- New rule 1.6 expands the definition of “registered agent” to allow a committee to appoint a designated filing agent who is responsible for filing campaign finance reports.
- New Rule 1.7 defines “electioneering communications” as used in Article XXVIII and Article 45 of Title 1, C.R.S., in a way that clarifies which communications are, and which are not, subject to requirements imposed for electioneering communications. The definition outlines that electioneering communications must be the functional equivalent of express advocacy.
- New Rule 1.9 defines “frequent” and “infrequent” for purposes of filing campaign finance disclosure reports. The definitions clarify, for all types of committees, the applicable filing schedule at any point in time.
- New Rule 1.10 clarifies when an organization qualifies as a “political organization” for purposes of sections 1-45-103(14.5) and 1-45-108.5, C.R.S. The Rule adopts the express advocacy standard set forth in *Buckley v. Valeo*, 424 U.S. 1 (1976).
- Rule 1.12 (formerly Rule 1.7) clarifies what is meant by “a major purpose” as defined in section 1-45-103(12)(b), C.R.S. The revisions create a bright line test for issue committees, making it easier for any person or group of persons to understand when campaign finance law applies.
- Rule 1.13 (formerly Rule 1.15) deletes obsolete portions that expired in 2007.
- Rule 1.14 (formerly Rule 1.16) clarifies the definition of “non-public information” in connection with the amended definition of “coordination,” which has been expanded to include all committees.
- Rule 1.18 (formerly Rule 1.10) adds a major purpose test to the definition of political committee, in accordance with the decision of the Colorado Court of Appeals in *Alliance for Colorado’s Families v. Gilbert*, 172 P.3d 964, 970 (Colo. App. 2007).
- Rule 1.20 (formerly Rule 1.12) adds an intent standard to the announcement of one’s candidacy. The purpose of this change is to avoid the unintended accrual of campaign finance fines by a person who accidentally became subject to campaign finance regulation.
- New Rule 1.23 defines “unexpended campaign contributions” for purposes of section 1-45-106, C.R.S., for candidate committees, to clarify when funds are subject to the restrictions and allowances in statute. The changes are intended to provide guidance to candidates who seek to terminate their candidate committees.

- New Rule 1.24 defines “unexpended contributions” for purposes of section 1-45-106, C.R.S., for issue committees, to clarify when funds are subject to the restrictions and allowances in the statute. The purpose of the change is to direct issue committees in handling money left over when they seek to terminate.
- Rule 2.2 (formerly Rules 4.24, 4.17, 4.10, 3.6, 3.7, and 3.10) consolidates all rules related to unexpended campaign contributions. Revisions also clarify the language for unexpended contributions to a candidate who seeks reelection and those seeking election to a different office, as well as disposition of debt before committee termination.
- New Rule 2.3 requires all candidates to file candidate affidavits electronically using the TRACER system. This makes it easier for candidates to comply with the filing requirement because candidates will no longer be required to sign the statement before a notary public and file a hard-copy original. There have been concerns that an electronic candidate affidavit would serve as an impediment to ballot access, but this change is designed to make it easier, not more difficult, for the public to participate in the political process as candidates. Currently, all other campaign finance forms are filed electronically.

Further, the designated election official must confirm that the affidavit has been filed before certifying a candidate to the ballot under section 1-45-110(3), C.R.S. Because campaign finance staff must manually enter data from hard-copy forms into TRACER, the time-consuming process creates a risk that a candidate will be denied access to the ballot if the document is not entered before the designated election official cross-checks for ballot certification. Electronically filed forms are immediately available, which eliminates the risk that a candidate would be erroneously denied access to the ballot.

The revisions also clarify that candidates for Junior College Boards of Trustees are not subject to Colorado campaign finance provisions because they are not candidates as defined in Article XXVIII, Section 2(2).

- Rule 2.4 (formerly Rule 13) clarifies when an incumbent must file a new, full personal financial disclosure statement, and when a simpler update to a current statement is adequate.
- Rule 3.1 (formerly Rule 2.7) reflects the adoption of a major purpose test for political committees in Rule 1.18 and clarifies that certain committees may purchase event tickets and other merchandise from other committees (see Rule 1.11).
- New Rule 3.3 applies the ruling in case OS 2010-0041 to clarify the distinction between a political committee and an independent expenditure committee.
- The Denver District Court declared Rule 4.27, the predecessor to Rule 4.1, invalid in *Common Cause et. al v. Gessler*, 2011 CV 4164. The Secretary has appealed the decision, and accordingly will not enforce Rule 4.1 unless or until the Colorado appellate courts reverse the District Court’s decision. The Secretary will revive Rule 4.1 if the appellate courts reverse the decision
- Rule 4.2 (formerly Rule 2.5) clarifies required changes to a committee registration when a single issue committee supports or opposes more than one issue.

- New Rule 4.3 restates requirements for issue committees outlined in former Rule 5.12, and clarifies when those requirements apply.
- Rule 4.4 (formerly Rules 3.8 and 4.15) eliminates redundancies created by combining the two former rules and harmonizing the provisions with the issue committee definition in Rule 1.12. The rule clarifies when contributions to an issue committee must be disclosed and the requirements for terminating an issue committee. The confusing concept of “multi-purpose issue committees” is eliminated, but the rule retains the requirement that committees with purposes other than supporting or opposing a ballot issue must report, at a minimum, all contributions received and expenditures made for the purpose of supporting or opposing a ballot issue.
- Rule 5.1 (formerly Rule 14.5) clarifies the requirements for disclaimer statements on nonbroadcast independent expenditure communications, and describes when a disclaimer statement on an independent expenditure is not required because it would be impracticable.
- Rule 5.2 (formerly Rule 14.6) is necessary to comply with the ruling in case OS 2010-0041, regarding the classification of independent expenditure committees. The Agency Decision in the case stated that the laws governing independent expenditure committees in section 1-45-107.5, C.R.S., conflict with the definition of a political committee in Article XXVIII, Section 2(12). The decision resolved the conflict by finding that an independent expenditure committee is not subject to registration as a political committee because the provisions of section 1-45-107.5, C.R.S. serve to narrow the construction of the constitutional provision defining political committees.
- New Rule 6.1 clarifies reporting requirements for political parties because political parties are not enumerated in section 1-45-109, C.R.S. Specifically, the Rule states that political parties must file disclosure reports with the appropriate filing officer, which is necessary because the statutory omission leaves a gap in filing requirements by political parties.
- New Rule 6.2 clarifies how a political party discloses money transferred from one branch to another (such as from the state party to a county party).
- Rule 7.1 (formerly Rule 2.8) clarifies filing requirements for federal political committees (Federal PACs). The amendments simplify filing requirements and require that a Federal PAC file disclosure reports with the Secretary of State’s office, rather than allowing Colorado activity to be disclosed only on reports filed with the Federal Elections Commission. These amendments are intended to conform to the requirements of section 1-45-108(3.5), C.R.S., and will enhance transparency with respect to Federal PAC expenditures supporting or opposing Colorado candidates.
- Rule 7.2 (formerly Rule 4.20) clarifies the filing schedule and reporting requirements for political organizations. Subsection (e) is repealed because amendments to regulations related to independent expenditure committees and political committees made the provision unnecessary. Also, the changes ensure that regulations governing 527 political organizations conform to case law. (*Buckley v. Valeo*, 424 U.S. 1 (1976)).

- Rule 8.1 (formerly 2.4) clarifies what is required on a committee registration form to identify the committee’s purpose.
- New Rule 9.1 allows a designated filing agent to file committee disclosure reports. This expands the class of persons who may file disclosure reports, so that in addition to the candidate or registered agent, a committee may appoint another person who is responsible for filing campaign finance reports. Currently, only the candidate or registered agent can file disclosure reports.
- New Rule 9.2 restates that a candidate may serve as his or her committee’s registered agent, or may choose to appoint someone else.
- Rule 9.3 (formerly Rule 2.3) is necessary to reflect the process for changing a registered agent in the TRACER system, and clarifies that the registered agent on file will receive all mailings from the Secretary of State. *See* section 1-45-108(3)(b), C.R.S.
- Rules 10.1 and 10.2 (formerly Rules 4.1 and 4.4) clarify what information must be itemized on disclosure reports. The changes also outline the handling of anonymous contributions.
- Rule 10.3 (formerly Rule 4.3) clarifies the “received” date for contributions made by check, cash, credit card, or other type of payment.
- New Rule 10.4 outlines record-keeping obligations for committees as required by Article XXVIII, Section 3(9).
- Rule 10.5 (formerly Rule 4.8) clarifies the time frame for returning contributions that violate contribution limits.
- Rule 10.6 (formerly Rule 3.9) clarifies disclosure and retention requirements for anonymous contributions.
- New Rule 10.9 clarifies that reimbursements are not contributions for purposes of Article XXVIII.
- Rule 10.10 (formerly Rule 4.5) simplifies language relating to loans made by candidates to their own committees.
- New Rule 10.12 clarifies the reporting requirements for income to a committee that is not a contribution.
- New charts in Rule 10.14 (formerly Rule 12) make it easier to determine applicable contribution limits, as adjusted for inflation. Revisions also standardize capitalization and citations but do not reflect any substantive change.
- Rules 11.2 (formerly Rule 9.1) and 11.3 (formerly Rule 9.2) clarify disclosure and recordkeeping of electioneering communications.

- New Rule 11.4 outlines record-keeping requirements for entities that make electioneering communications as required by Article XXVIII, Section 3(9).
- New Rule 12.4 outlines how any committee type can dispose of unexpended funds at the end of the election cycle or when the committee seeks to terminate. The Rule clarifies the requirements outlined in section 1-45-106, C.R.S.
- Rule 12.5 cross-references Rule 4.4(b), dealing with multi-purpose issue committees.
- Rule 12.6 (formerly Rule 2.10) adjusts the time frame after which the Secretary of State may administratively terminate a non-reporting committee. The change will reduce the administrative burden on the Secretary of State by reducing the number of defunct and inaccessible committees that accrue compounding campaign finance penalties. Changes also remove an obsolete reference to municipal clerks.
- New Rule 14.5 clarifies the applicability of section 1-45-117, C.R.S., to home rule jurisdictions. The statute regulates campaign spending by government, and applies to all political subdivisions of the state – regardless of home rule status.
- New Rule 14.6 is a harmonizing provision to the Junior College Board of Trustees provision in Rule 2.2.
- New Rule 15.2 modifies the reporting schedule for committees participating in a recall election. The changes will provide a uniform filing calendar for all committees participating in a particular recall election. The changes do not affect the frequency or number of reports filed, but simply put all filers on a uniform schedule.
- Rule 15.5 (formerly Rule 10.6) clarifies when reports of contributions and expenditures are required in recall elections. This change explicitly lists the reports required by section 1-45-108(2.7), C.R.S., rather than merely referencing the statutory section. The proposed amendment does not alter the reporting dates.
- New Rule 15.6 clarifies that the threshold for registration of an issue committee, currently \$5,000, applies to issue committees that support or oppose a recall election the same way it applies to all other issue committees.
- New Rule 16.1 cross-references Rule 17.5, concerning report periods and reporting dates for special district candidates.
- New Rule 16.3 outlines the information candidates must provide in special district elections when filing documentation for purposes of section 1-45-110(1), C.R.S. This information is currently required of all candidates that file campaign finance disclosure reports with the Secretary of State's office. The Rule clarifies that those requirements also apply to special district candidates.
- Rule 18.1 (formerly Rule 15):

- Adds a rounding provision for reduced campaign finance penalties. This provides consistency in the amount of fines imposed following a reduction under Article XXVIII, Section 10(2)(a);
  - Limits the accrual of penalties for late filing to 180 days; and
  - Clarifies the imposition of penalties for reports of major contributions required by section 1-45-108(2.5), C.R.S. The changes ensure that if a major contribution is properly disclosed on a regularly-scheduled report, penalties for the separate “major contribution” report no longer accrue. The changes also define the “received” date for a contribution that requires a Major Contributor Report.
- Rule 18.2 (formerly 6.1) clarifies that the cure provision for reporting deficiencies discovered by the Secretary of State’s office does not apply to late filing of disclosure reports.
  - Rule 18.4 (formerly Rule 6.3) requires a cover sheet to be filed with campaign finance complaints. The cover sheet is designed to ensure that potential complainants understand the complaint process, and will help eliminate the filing of incomplete complaints.
  - New Rule 18.5 clarifies the statute of limitations for penalties imposed for late or incomplete filings.
  - New Rule 18.6 clarifies that any late filing or incomplete reporting violation is subject to penalties of \$50 per day, and not more.
  - New Rule 18.7 clarifies where payments for penalties imposed by an Administrative Law Judge in a campaign finance complaint are to be remitted.

### Repealed Rules

- Former Rule 2.6 is repealed, because the express adoption of the major purpose test for political committees in Rule 1 and a major purpose test for issue committees in section 1-45-103(12)(b), C.R.S., makes it unnecessary.
- Former Rule 9.4 is repealed, because a definition of electioneering communication has been added to Rule 1.

Two tables are attached and incorporated by reference. The first table lists the rule numbers (as amended 6/29/2011) and how they are reorganized as part of the recodification (“OldNew”). A second table lists all of the proposed rules and their existing location (“NewOld”). This helps map the re-organization, and ensures that we don’t inadvertently cut anything out.

Changes to rules not specifically listed are entirely non-substantive. Some words and phrases are changed to simplify or clarify, but the meaning is not intended to be altered unless as described above. Previously repealed rules are removed altogether. Headings are added and refined, and references and capitalization are made uniform.

## II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Article XXVIII, Section 3(13) of the Colorado Constitution, which states that the Secretary of State “shall calculate...an adjustment in each [contribution] limit and specify the limits in rules promulgated in accordance with article 4 of title 24, C.R.S.”
2. 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.”
3. 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].”
4. Section 1-1-107(2)(a), C.R.S., (2011), 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.”
5. Section 1-45-107.5(5)(c), C.R.S., (2011), which requires the Secretary of State to “by rule, establish size and placement requirements for the disclaimer” required to be included on a nonbroadcast independent expenditure communication.
6. Section 1-45-109(5)(e), C.R.S., (2011), which states that the Secretary of State “may promulgate rules necessary for the implementation of [the mandate to create and maintain an electronic filing system].”
7. Section 1-45-109(6)(a), C.R.S., (2011), which states that “[t]he rules for use of the electronic filing system shall be promulgated by the secretary in accordance with article 4 of title 24, C.R.S.”
8. Section 1-45-111.5(1), C.R.S., (2011), which requires the Secretary of State to “promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of [article 45 of title 1, C.R.S.]”