



## Notice of Temporary Adoption

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

June 19, 2018

### 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 rule concerning campaign and political finance<sup>4</sup> is 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):

#### Rule 18. Penalties, Violations, and Complaints

##### 18.2 ~~Written complaints~~COMPLAINTS.

~~18.2.1 A written complaint filed under Colo. Const. Article XXVIII, Section 9(2)(a) must include the Secretary of State's complaint cover sheet, and must include the following information:~~

- ~~(a) The name, address, email, and signature of the complainant (if the complainant is represented by counsel, include the counsel's name, address, and signature);~~
- ~~(b) The name and address, and email if available, of each person alleged to have committed a violation; and~~
- ~~(c) The provision of Colo. Const. Article XXVIII, the Fair Campaign Practices Act, or these Rules violated and the particulars of the violation.~~

~~18.2.2 The Secretary of State will transmit the complaint to the Office of Administrative Courts in the Department of Personnel and Administration for consideration by an Administrative Law Judge within three business days of receipt of the original;~~

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

<sup>2</sup> Article 45 of Title 1, C.R.S. (2017).

<sup>3</sup> Section 24-4-103, C.R.S. (2017).

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

~~signed complaint with the required cover sheet and any applicable exhibits, and will notify the respondents by email of the filing of the complaint. The Secretary of State will not transmit any complaint that is not complete. [Colo. Const. Article XXVIII, Section 9(2)(a)]~~

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 WITH THE SECRETARY OF STATE.

18.2.2 COMPLAINTS MUST BE FILED NO LATER THAN 90 DAYS AFTER THE COMPLAINANT KNEW OR SHOULD HAVE KNOWN BY THE EXERCISE OF REASONABLE DILIGENCE OF THE ALLEGED VIOLATION.

18.2.3 COMPLAINTS MUST BE FILED IN WRITING AND SIGNED BY THE COMPLAINANT ON THE FORM PROVIDED BY THE SECRETARY OF STATE. THE COMPLAINT MUST IDENTIFY THE RESPONDENT OR RESPONDENTS AND THE COMPLAINANT MUST PROVIDE THE INFORMATION REQUIRED ON THE FORM.

#### 18.2.4 INITIAL REVIEW

(A) UPON RECEIPT OF A COMPLAINT, THE SECRETARY OF STATE'S ELECTIONS DIVISION MUST NOTIFY THE RESPONDENT OF THE COMPLAINT BY EMAIL, OR BY MAIL IF EMAIL IS UNAVAILABLE, AND WILL REVIEW:

(1) WHETHER THE COMPLAINANT HAS SPECIFICALLY IDENTIFIED ONE OR MORE VIOLATIONS OF COLORADO CONSTITUTION ARTICLE XXVIII, THE FAIR CAMPAIGN PRACTICES ACT, OR THE SECRETARY OF STATE'S RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE, AND

(2) WHETHER THE COMPLAINANT HAS ALLEGED SUFFICIENT FACTS TO SUPPORT A LEGAL AND FACTUAL BASIS FOR THE COMPLAINT.

(B) WITHIN 10 BUSINESS DAYS OF RECEIVING THE COMPLAINT, THE ELECTIONS DIVISION MUST TAKE ONE OF THE FOLLOWING ACTIONS:

(1) IF THE ELECTIONS DIVISION DETERMINES THAT THE COMPLAINT HAS NOT SPECIFICALLY IDENTIFIED ONE OR MORE VIOLATIONS OR THAT THE COMPLAINANT DID NOT ASSERT FACTS SUFFICIENT TO SUPPORT THE ALLEGED VIOLATIONS, THE ELECTIONS DIVISION WILL DISMISS THE COMPLAINT AND NOTIFY THE COMPLAINANT AND RESPONDENT OF THE REASONS FOR DISMISSAL. THE DISMISSAL IS A FINAL AGENCY ACTION, AND SUBJECT TO REVIEW UNDER SECTION 24-4-106, C.R.S.

(2) IF THE ELECTIONS DIVISION DETERMINES THAT THE COMPLAINT ALLEGES ONE OR MORE CURABLE VIOLATIONS AS DESCRIBED IN

RULE 18.2.5, THE ELECTIONS DIVISION WILL NOTIFY THE RESPONDENT AND PROVIDE AN OPPORTUNITY TO CURE.

- (3) IF THE ELECTIONS DIVISION DETERMINES THAT THE COMPLAINT ALLEGES ONE OR MORE VIOLATIONS THAT REQUIRE A FACTUAL FINDING OR LEGAL INTERPRETATION, THE ELECTIONS DIVISION WILL CONDUCT ADDITIONAL REVIEW UNDER RULE 18.2.6 TO DETERMINE WHETHER TO FILE A COMPLAINT WITH A HEARING OFFICER.

#### 18.2.5 CURING VIOLATIONS

- (A) UPON THE ELECTION DIVISION'S DETERMINATION THAT A COMPLAINT ALLEGES A FAILURE TO FILE OR OTHERWISE DISCLOSE REQUIRED INFORMATION, OR OTHER CURABLE VIOLATION, THE ELECTIONS DIVISION WILL NOTIFY THE RESPONDENT BY EMAIL, OR BY MAIL IF EMAIL IS UNAVAILABLE, OF THE CURABLE DEFICIENCIES ALLEGED IN THE COMPLAINT.
- (B) THE RESPONDENT HAS 10 BUSINESS DAYS FROM THE DATE THE NOTICE IS MAILED TO FILE AN AMENDMENT TO THE RELEVANT REPORT OR REPORTS THAT CURES ANY DEFICIENCIES SPECIFIED IN THE NOTICE.
- (C) THE RESPONDENT MUST PROVIDE THE ELECTIONS DIVISION WITH NOTICE OF ITS INTENT TO CURE ON THE FORM PROVIDED BY THE SECRETARY OF STATE AND INCLUDE A COPY OF ANY AMENDMENTS.
- (D) AFTER THE PERIOD FOR CURE, THE ELECTIONS DIVISION WILL DETERMINE WHETHER THE RESPONDENT CURED THE VIOLATIONS, AND IF SO, WHETHER THE RESPONDENT SUBSTANTIALLY COMPLIED OR ACTED IN GOOD FAITH UNDER RULES 18.2.8 AND 18.2.9. THE ELECTION DIVISION'S DETERMINATION UNDER THIS SUBSECTION IS A FINAL AGENCY ACTION, SUBJECT TO REVIEW UNDER SECTION 24-4-106, C.R.S.
- (E) IF THE RESPONDENT FAILS TO CURE ANY ALLEGED DEFICIENCY, THE ELECTIONS DIVISION WILL CONDUCT ADDITIONAL REVIEW UNDER RULE 18.2.6 TO DETERMINE WHETHER TO FILE THE COMPLAINT WITH A HEARING OFFICER.

#### 18.2.6 INVESTIGATION AND ENFORCEMENT

- (A) THE ELECTIONS DIVISION MUST INVESTIGATE EACH UNRESOLVED OR UNCURED COMPLAINT TO DETERMINE WHETHER TO FILE A COMPLAINT WITH THE HEARING OFFICER DESCRIBED IN RULE 18.2.7(B).
  - (1) IF THE ELECTIONS DIVISION DETERMINES THAT IT WILL NOT FILE A COMPLAINT WITH A HEARING OFFICER BECAUSE THERE IS NOT SUFFICIENT INFORMATION TO SUPPORT THE ALLEGATIONS OR FOR ANY OTHER REASON, IT MUST DISMISS THE COMPLAINT WITHIN 30

DAYS OF THE ELECTION DIVISION'S INITIAL DETERMINATION UNDER RULE 18.2.4(B).

- (2) IF THE ELECTIONS DIVISION FILES A COMPLAINT WITH A HEARING OFFICER, IT MUST SEND NOTICE, INCLUDING A COPY OF THE FILING, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE COMPLAINANT, AND THE RESPONDENT WITHIN ONE BUSINESS DAY OF REFERRAL.
  
- (B) IF THE ELECTIONS DIVISION FILES A COMPLAINT WITH A HEARING OFFICER UNDER THIS RULE, IT IS RESPONSIBLE FOR CONDUCTING SUCH DISCOVERY AS MAY BE NECESSARY FOR EFFECTIVELY PROSECUTING THE COMPLAINT, SUPPLEMENTING OR AMENDING THE COMPLAINT WITH SUCH ADDITIONAL OR ALTERNATE ALLEGATIONS AS MAY BE JUSTIFIED BY THE EVIDENCE, AMENDING THE COMPLAINT TO STRIKE ALLEGATIONS THAT ARE NOT JUSTIFIED BY THE EVIDENCE, AND IN ALL OTHER RESPECTS, PROSECUTING THE COMPLAINT.
  
- (C) THE COMPLAINANT OR ANY OTHER NON-RESPONDENT IS NOT A PARTY TO THE REVIEW, EXCEPT THAT A COMPLAINANT MAY SEEK PERMISSION FROM THE HEARING OFFICER TO FILE WRITTEN LEGAL ARGUMENTS OR FACTUAL DOCUMENTATION, OR BOTH, AS A FRIEND-OF-THE-COURT. A PERSON'S STATUS AS A COMPLAINANT IS NOT SUFFICIENT TO ESTABLISH THAT HE OR SHE MAY BE AFFECTED OR AGGRIEVED BY THE SECRETARY'S ACTION ON THE COMPLAINT. A COMPLAINANT MAY ALSO SEEK REVIEW OF A FINAL AGENCY ACTION UNDER RULES 18.2.4(B)(1) AND 18.2.7(D) UNDER SECTION 24-4-106, C.R.S.
  
- (D) IF THE ELECTION DIVISION FAILS TO FILE A COMPLAINT WITH THE HEARING OFFICER WITHIN 30 DAYS AS OUTLINED IN 18.2.6(A)(1), THE COMPLAINT IS DEEMED DISMISSED UNDER RULE 18.2.4(B)(1).

18.2.7 HEARINGS

- (A) THE HEARING OFFICER MUST BE AN INDIVIDUAL AUTHORIZED UNDER SECTION 24-4-105(3), C.R.S.
  
- (B) HEARINGS CONDUCTED BY A HEARING OFFICER UNDER RULE 18.2 MUST BE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-105, C.R.S., EXCEPT THAT HEARING OFFICER MUST HOLD A HEARING WITHIN 15 BUSINESS DAYS OF THE FILING OF THE COMPLAINT, AND MUST MAKE A DETERMINATION WITHIN 15 DAYS OF THE HEARING. THE RESPONDENT MUST BE GRANTED AN EXTENSION OF UP TO 30 DAYS UPON RESPONDENT'S MOTION, OR LONGER UPON A SHOWING OF GOOD CAUSE.
  
- (C) DETERMINATIONS MADE BY THE HEARING OFFICER MUST BE MADE UNDER SECTION 24-4-105, C.R.S., AND ARE SUBJECT TO REVIEW UNDER SECTION 24-4-106, C.R.S.

~~18.2.3~~18.2.8 In determining whether an entity substantially complied under ~~section 1-45-109(4), C.R.S., the appropriate~~ AS THAT TERM IS USED IN RULE 18.2.5, THE ELECTIONS DIVISION ~~officer~~ must consider:

- (a) The extent of the respondent's noncompliance;
- (b) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; AND
- ~~(c) Whether the respondent received and followed guidance from the Secretary of State's Office regarding the noncompliance; and~~
- (d)(C) Whether the noncompliance can PROPERLY be viewed as ~~the product of an intent~~ AN INTENTIONAL ATTEMPT to mislead the electorate OR ELECTION OFFICIALS.

~~18.2.4~~18.2.9 In determining whether an entity registered or disclosed in "Good faith" as that term is used in ~~section 1-45-109(4), C.R.S., the appropriate officer must determine~~ RULE 18.2.5, THE ELECTIONS DIVISION MAY CONSIDER whether ten percent or less of EITHER the entity's disclosures or, ALTERNATIVELY, THE reported dollar amounts REQUIRED on the report or APPEARING ON THE FILED reports at issue in the complaint are out of compliance. ~~If so, the entity is deemed to have attempted to comply in good faith.~~

18.2.10 ANY PERSON SEEKING GUIDANCE ON THE APPLICATION OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION, THE FAIR CAMPAIGN PRACTICES ACT, OR THE SECRETARY OF STATE'S RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE MAY REQUEST THAT THE SECRETARY OF STATE ISSUE AN ADVISORY OPINION REGARDING THEIR SPECIFIC ACTIVITIES. A PERSON MAY RELY ON THE SECRETARY OF STATE'S ADVISORY OPINION AS AN AFFIRMATIVE DEFENSE TO ANY COMPLAINT FILED UNDER THIS RULE.

18.2.11 THE OFFICE OF ADMINISTRATIVE COURTS MUST REMAND BACK TO THE SECRETARY OF STATE ALL PENDING COMPLAINTS THAT WERE FILED WITH THE SECRETARY OF STATE BEFORE JUNE 19, 2018. THOSE COMPLAINTS MAY BE RE-FILED UNDER THIS RULE 18.2, EVEN IF THE ALLEGED VIOLATIONS FALL OUTSIDE THE PERIOD FOR FILING SET FORTH IN RULE 18.2.2.

~~18.3 The Secretary of State may enforce the decision of the Administrative Law Judge. The Secretary of State will not enforce the decision of the Administrative Law Judge during the pendency of any appeal of the decision, unless or until the appeal is exhausted or the decision is upheld by the court of appeals. [Colo. Const. Article XXVIII, Section 9(2)(a).]~~

## 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>5</sup>

**IV. Effective Date of Adopted Rules**

The amended rules are immediately effective on a temporary basis.

Dated this 19th day of June, 2018,



Suzanne Statert  
Deputy Secretary of State

For

Wayne W. Williams  
Colorado Secretary of State

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<sup>5</sup> Section 24-4-103(6), C.R.S. (2017).



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

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

**June 19, 2018**

#### **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:

- Amendments to Rule 18.2 concerning written complaints are necessary to ensure enforcement of Colorado's campaign finance laws and uniform application of the law throughout the state.

#### **II. Rulemaking Authority**

- 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 1-45-111.5(1), C.R.S., (2017), which requires the Secretary of State to “promulgate such rules...as may be necessary to enforce and administer any provisions of [Article 45, Title 1].”

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

<sup>2</sup> Article 45 of Title 1, C.R.S. (2017).







## **Statement of Justification and Reasons for Adoption of Temporary Rules**

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New Rules: 18.2.1 through 18.2.7, 18.2.10 and 18.2.11

Repealed Rules: 18.2.1, 18.2.2, and 18.3

Amended Rules: 18.2.3 and 18.2.4 (now 18.2.8 and 18.2.9)

In accordance with Colorado campaign and political finance laws,<sup>1</sup> the Secretary of State finds that certain 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 during the 2018 election cycle. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally.

In *Holland v. Williams*<sup>2</sup>, a private citizen challenged the constitutionality of Colorado's campaign finance private enforcement system on First and Fourteenth Amendment grounds. On June 12, 2018, the U.S. District Court held that section 9(2)(a) of Article XXVIII of the Colorado Constitution [the private enforcement system] was facially unconstitutional.

Amendments to Rule 18.2 are consistent with the U.S. District Court's holding, and are necessary to ensure that Colorado's campaign finance laws continue to be enforced in a uniform manner.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing campaign and political finance rules is imperatively necessary to comply with state and federal law and to promote public interests.<sup>3</sup>

<sup>1</sup> Article XXVIII, Section 9(1)(b), of the Colorado Constitution and section 1-45-111.5(1), C.R.S. (2017).

<sup>2</sup> *Holland v. Williams*, 16-cv-00138 (June 12, 2018).

<sup>3</sup> Section 24-4-103(3)(6), C.R.S. (2017).

