

Revised Draft of Proposed Rules

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

September 14, 2018

Disclaimer:

The proposed draft rules have changed. This draft supersedes the Preliminary Draft that was issued with the Notice of Proposed Rulemaking on August 15, 2018. These revised proposed rules will be considered at the September 19, 2018 rulemaking hearing.

In accordance with the State Administrative Procedure Act, this revised copy of the proposed rules is made available to the public and posted on the Department of State’s website.¹

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
Shading	Revisions to 8/15/18 preliminary draft
<i>Italic blue font text</i>	Annotations

1 *Amendments to 8 CCR 1505-6:*

2 *[The following proposed New Rule 18.2 will replace current Rule 18.2, temporarily adopted on*
3 *June 19, 2018 under CCR# 2018-00275, in its entirety.]*

4 **Rule 18. Penalties, Violations, and Complaints**

5 18.2 Complaints.

6 18.2.1 Any person who believes that a violation of Article XXVIII of the Colorado
7 Constitution, the Fair Campaign Practices Act, or the Secretary of State’s rules
8 concerning campaign and political finance has occurred may file a complaint with
9 the Secretary of State.

10 18.2.2 Complaints must be filed no later than 90 days after the complainant knew or
11 should have known by the exercise of reasonable diligence of the alleged
12 violation.

13 18.2.3 Complaints must be filed in writing and signed by the complainant on the form
14 provided by the Secretary of State. The complaint must identify the respondent or

¹ Section 24-4-103(4)(a), C.R.S. (2017). “[A]ny 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.”

1 respondents and the complainant must provide the information required on the
2 form.

3 18.2.4 UPON RECEIPT OF A COMPLAINT, THE SECRETARY OF STATE'S ELECTIONS DIVISION
4 MUST NOTIFY THE RESPONDENT OF THE COMPLAINT BY EMAIL, OR BY MAIL IF EMAIL IS
5 UNAVAILABLE.

6 18.2.5 COMPLAINTS MADE AGAINST ANY CANDIDATE FOR SECRETARY OF STATE WILL BE
7 FORWARDED TO THE ATTORNEY GENERAL'S OFFICE FOR REVIEW IN ACCORDANCE
8 WITH THIS RULE 18.2.

9 ~~18.2.4~~ 18.2.6 Initial review

10 (a) ~~Upon receipt of a complaint, the Secretary of State's elections division~~
11 ~~must notify the respondent of the complaint by email, or by mail if email is~~
12 ~~unavailable, and~~ THE ELECTIONS DIVISION will review THE COMPLAINT TO
13 DETERMINE:

14 (1) WHETHER THE COMPLAINT WAS TIMELY FILED UNDER RULE 18.2.2,

15 (2) Whether the complainant has specifically identified one or more
16 violations of Colorado Constitution Article XXVIII, the Fair
17 Campaign Practices Act, or the Secretary of State's rules
18 concerning campaign and political finance, and

19 ~~(2)~~-(3) Whether the complainant has alleged sufficient facts to support a
20 legal and factual basis for the complaint.

21 (b) Within 10 business days of receiving the complaint, the elections division
22 must take one OR MORE of the following actions:

23 (1) If the elections division determines that the complaint WAS NOT
24 TIMELY FILED, has not specifically identified one or more violations,
25 or that the complainant did not assert facts sufficient to support
26 the alleged violations, the elections division will dismiss the
27 complaint and notify the complainant and respondent of the
28 reasons for dismissal. The dismissal is a final agency action, and
29 subject to review under section 24-4-106, C.R.S.

30 (2) If the elections division determines that the complaint alleges one
31 or more curable violations as described in Rule ~~18.2.5~~ 18.2.7, the
32 elections division will notify the respondent and provide an
33 opportunity to cure.

34 (3) If the elections division determines that the complaint alleges one
35 or more violations that require a factual finding or legal
36 interpretation, the elections division will conduct additional review
37 under Rule ~~18.2.6~~ 18.2.8 to determine whether to file a complaint
38 with a hearing officer.

39 ~~18.2.5~~ 18.2.7 Curing violations

- 1 (a) Upon the election division's determination that a complaint alleges a
2 failure to file or otherwise disclose required information, or other curable
3 violation, the elections division will notify the respondent by email, or by
4 mail if email is unavailable, of the curable deficiencies alleged in the
5 complaint.
- 6 (b) The respondent has 10 business days from the date the notice is mailed
7 to file an amendment to the relevant report or reports that cures any
8 deficiencies specified in the notice.
- 9 (c) THE ELECTIONS DIVISION MAY ASK THE RESPONDENT TO PROVIDE ADDITIONAL
10 INFORMATION, AND MAY GRANT AN EXTENSION OF ~~THE TIME FOR FILING TO~~
11 ~~FILE~~ A NOTICE OF INTENT IN ORDER TO RESPOND TO SUCH A REQUEST.
- 12 ~~(c)~~(D) The respondent must provide the elections division with notice of its intent
13 to cure on the form provided by the Secretary of State and include a copy
14 of any amendments.
- 15 ~~(d)~~(E) After the period for cure, the elections division will determine whether the
16 respondent cured the violations, and if so, whether the respondent
17 substantially complied or acted in good faith under Rules ~~18.2.8-18.2.7~~(F)
18 and ~~18.2.9-18.2.7~~(G).
- 19 (1) IF THE ELECTIONS DIVISION DETERMINES THAT THE RESPONDENT
20 SUBSTANTIALLY COMPLIED OR ACTED IN GOOD FAITH, THE ELECTIONS
21 DIVISION WILL DISMISS THE COMPLAINT.
- 22 (2) IF THE ELECTIONS DIVISION DETERMINES THAT THE RESPONDENT
23 NEITHER SUBSTANTIALLY COMPLIED OR ACTED IN GOOD FAITH, THE
24 ELECTIONS DIVISION WILL CONDUCT ADDITIONAL REVIEW UNDER RULE
25 18.2.6 TO DETERMINE WHETHER TO FILE THE COMPLAINT WITH A
26 HEARING OFFICER.
- 27 (3) The election division's determination under this subsection is a
28 final agency action, subject to review under section 24-4-106,
29 C.R.S.
- 30 ~~18.2.8~~(F) IN DETERMINING WHETHER AN ENTITY SUBSTANTIALLY COMPLIED AS
31 THAT TERM IS USED IN RULE 18.2.7, THE ELECTIONS DIVISION MUST
32 CONSIDER:
- 33 (1) THE EXTENT OF THE RESPONDENT'S NONCOMPLIANCE;
- 34 (2) THE PURPOSE OF THE PROVISION VIOLATED AND WHETHER THAT
35 PURPOSE WAS SUBSTANTIALLY ACHIEVED DESPITE THE
36 NONCOMPLIANCE; AND
- 37 (3) WHETHER THE NONCOMPLIANCE CAN PROPERLY BE VIEWED AS AN
38 INTENTIONAL ATTEMPT TO MISLEAD THE ELECTORATE OR ELECTION
39 OFFICIALS.

1 ~~18.2.9~~(G) IN DETERMINING WHETHER AN ENTITY REGISTERED OR DISCLOSED IN
2 "GOOD FAITH" AS THAT TERM IS USED IN RULE 18.2.7, THE ELECTIONS
3 DIVISION MAY CONSIDER WHETHER TEN PERCENT OR LESS OF EITHER THE
4 ENTITY'S DISCLOSURES OR, ALTERNATIVELY, THE REPORTED DOLLAR
5 AMOUNTS REQUIRED ON THE REPORT OR APPEARING ON THE FILED REPORTS
6 AT ISSUE IN THE COMPLAINT ARE OUT OF COMPLIANCE.

7 ~~(e)~~(H) If the respondent fails to cure any alleged deficiency, the elections
8 division will conduct additional review under Rule ~~18.2.6~~18.2.8 to
9 determine whether to file the complaint with a hearing officer.

10 ~~18.2.6~~18.2.8 Investigation and enforcement

11 (a) The elections division must investigate each unresolved or uncured
12 complaint to determine whether to file a complaint with the hearing officer
13 described in Rule ~~18.2.7(b)~~18.2.9(B).

14 (1) If the elections division determines that it will not file a complaint
15 with a hearing officer because there is not sufficient information to
16 support the allegations or for any other reason, it must dismiss the
17 complaint within 30 days of the election division's initial
18 determination under Rule ~~18.2.4(b)~~18.2.6(B).

19 (2) If the elections division files a complaint with a hearing officer, it
20 must send notice, including a copy of the filing, by certified mail,
21 return receipt requested, to the complainant, and the respondent
22 within one business day of referral.

23 (b) If the elections division files a complaint with a hearing officer under this
24 rule, it is responsible for conducting such discovery as may be necessary
25 for effectively prosecuting the complaint, supplementing or amending the
26 complaint with such additional or alternate allegations as may be justified
27 by the evidence, amending the complaint to strike allegations that are not
28 justified by the evidence, and in all other respects, prosecuting the
29 complaint.

30 (c) The complainant or any other non-respondent is not a party to the review,
31 except that a complainant may seek permission from the hearing officer
32 to file written legal arguments or factual documentation, or both, as a
33 friend-of-the-court. A person's status as a complainant is not sufficient to
34 establish that he or she may be affected or aggrieved by the Secretary's
35 action on the complaint. A complainant may also seek review of a final
36 agency action under Rules ~~18.2.4(b)(1)~~18.2.6(B)(1) and ~~18.2.7(d)~~
37 18.2.9(C) under section 24-4-106, C.R.S.

38 (d) If the election division fails to file a complaint with the hearing officer
39 within 30 days as outlined in ~~18.2.6(a)(1)~~RULE 18.2.8(A)(1), the complaint
40 is deemed dismissed under Rule ~~18.2.4(b)(1)~~18.2.6(B)(1).

41 ~~18.2.7~~18.2.9 Hearings

- 1 (a) The hearing officer must be an individual authorized under section 24-4-
2 105(3), C.R.S.
- 3 (b) Hearings conducted by a hearing officer under Rule 18.2 must be in
4 accordance with the provisions of section 24-4-105, C.R.S., except that A
5 hearing officer must hold a hearing within 15 business days of the filing of
6 the complaint, and must make a determination within 15 days of the
7 hearing. The respondent must be granted an extension of up to 30 days
8 upon respondent's motion, or longer upon a showing of good cause.
- 9 (c) Determinations made by the hearing officer must be made under section
10 24-4-105, C.R.S., and are subject to review under section 24-4-106,
11 C.R.S.

12 *[Content of Temporary Rule 18.2.8 is amended and relocated under Rule 18.2.7(f) as shown*
13 *above]*

14 *[Content of Temporary Rule 18.2.9 is amended and relocated under Rule 18.2.7(g) as shown*
15 *above]*

16 18.2.10 Any person seeking guidance on the application of Article XXVIII of the
17 Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of
18 State's rules concerning campaign and political finance may request that the
19 Secretary of State issue an advisory opinion regarding their specific activities.

20 (A) THE SECRETARY OF STATE WILL DETERMINE, AT HIS OR HER DISCRETION,
21 WHETHER TO ISSUE AN ADVISORY OPINION. IN MAKING THE DETERMINATION,
22 THE SECRETARY WILL CONSIDER:

23 (1) WHETHER THE ADVISORY OPINION WILL TERMINATE A CONTROVERSY
24 OR REMOVE UNCERTAINTIES AS TO THE APPLICATION OF THE
25 REQUESTOR OF ANY LAW;

26 (2) WHETHER THE REQUEST INVOLVES A SUBJECT, QUESTION, OR ISSUE
27 THAT CONCERNS A FORMAL OR INFORMAL MATTER OR INVESTIGATION
28 CURRENTLY PENDING BEFORE THE SECRETARY OF STATE OR A
29 COURT; AND

30 (3) WHETHER THE REQUEST SEEKS A RULING ON A MOOT OR
31 HYPOTHETICAL QUESTION.

32 (B) A person may rely on the Secretary of State's advisory opinion as an
33 affirmative defense to any complaint filed under this Rule.

34 18.2.11 THE ELECTIONS DIVISION WILL MAKE DOCUMENTS RELATED TO A COMPLAINT
35 PUBLICLY AVAILABLE AS FOLLOWS:

36 (A) THE ORIGINAL COMPLAINT, NOTICE OF INITIAL REVIEW, FINAL AGENCY
37 DECISION, AND ANY COMPLAINT FILED BY THE ELECTIONS DIVISION WITH A
38 HEARING OFFICER WILL BE PUBLICLY AVAILABLE AT THE TIME THE ELECTIONS
39 DIVISION PROVIDES THE DOCUMENT TO THE RESPONDENT.

1 (B) ANY ADDITIONAL DOCUMENTATION RELATED TO THE COMPLAINT, INCLUDING A
2 NOTICE OF INTENT TO CURE AND SUPPORTING EVIDENCE, OR DOCUMENTS
3 RELATED TO THE ELECTIONS DIVISION'S INVESTIGATION, WILL BE PUBLICLY
4 AVAILABLE AT THE TIME THE ELECTIONS DIVISION ISSUES A FINAL AGENCY
5 DECISION OR FILES A COMPLAINT WITH A HEARING OFFICER.

6 (C) THE ELECTIONS DIVISION MAY REDACT ANY DOCUMENT RELATED TO A
7 COMPLAINT IF IT IS NECESSARY TO PROTECT ANY PERSON'S PRIVATE OR
8 CONFIDENTIAL INFORMATION.

9 ~~18.2.11~~ 18.2.12 The Office of Administrative Courts must remand back to the
10 Secretary of State all pending complaints that were filed with the Secretary of
11 State before June 19, 2018. Those complaints may be re-filed under this Rule
12 18.2 WITHIN 180 DAYS OF REMAND, even if the alleged violations fall outside the
13 period for filing set forth in Rule 18.2.2.