

Preliminary Draft of Proposed Rules

Colorado Department of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

April 13, 2023

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Department of State and submitted to the Department of Regulatory Agencies.¹

This is a preliminary draft of the proposed rules that may be revised before the May 16, 2023, rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **May 11, 2023**.²

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>Italic blue font text</i>	Annotations

1 *Amendments to 8 CCR 1505-6 follow:*

2 *Amendments to Rule 23.2 concerning documents related to complaints filed under section 1-45-111.7,*
3 *C.R.S.:*

4 23.2 Documents related to complaints.

5 23.2.1 The original complaint, notice of initial review, motion to dismiss, an order issued by the
6 Secretary of State's Office, final agency decision, and any complaint filed by the elections
7 division with a hearing officer will be publicly available at the time ~~the elections division~~
8 ~~provides~~ the document IS PROVIDED to the respondent.

9 23.2.2 The elections division may redact any document that it will otherwise make available
10 pursuant to this rule if such redaction is necessary to protect any personal private
11 information or personally identifiable information, is not relevant or material to the
12 determination, or is otherwise required under the Colorado Open Records Act.

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2022). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2022). "[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 23.2.3 Any document the elections division receives under section 1-45-111.7(5)(a)(III), C.R.S.
2 will not be retained after the time necessary to review, investigate, OR prosecute a
3 complaint, INCLUDING, ~~or~~ any appeal, as applicable.

4 *New Rule 24 concerning procedural rules for administrative hearings under section 1-45-111.7, C.R.S.:*

5 **Rule 24. Procedural Rules for Hearings under section 1-45-111.7, C.R.S.**

6 24.1 SCOPE OF RULES

7 24.1.1 THESE RULES APPLY TO INITIAL COMPLAINTS FILED UNDER SECTION 1-45-111.7(2)(A) AND (7),
8 C.R.S., AND TO ADMINISTRATIVE COMPLAINTS FILED BY THE DIVISION WITH A HEARING OFFICER
9 PURSUANT TO SECTION 1-45-111.7(5), C.R.S.

10 24.2 DEFINITIONS

11 24.2.1 "ADMINISTRATIVE COMPLAINT" MEANS A COMPLAINT ALLEGING THAT ONE OR MORE VIOLATIONS
12 OF ARTICLE XXVIII OF THE COLORADO CONSTITUTION, ARTICLE 45 OF TITLE 1, C.R.S., SUCH
13 OTHER CONSTITUTIONAL OR STATUTORY PROVISIONS THAT ARE INCORPORATED OR
14 REFERENCED THEREIN, OR THE RULES HAS OCCURRED AND THAT IS FILED BY THE DIVISION, OR
15 ITS DESIGNEE, WITH A HEARING OFFICER PURSUANT TO SECTIONS 1-45-111.7(5) AND (7),
16 C.R.S.

17 24.2.2 "AGENCY" OR "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF STATE.

18 24.2.3 "C.R.C.P" MEANS COLORADO RULES OF CIVIL PROCEDURE.

19 24.2.4 "DEPUTY SECRETARY" MEANS THE PERSON APPOINTED BY THE SECRETARY OF STATE AS THE
20 DEPUTY SECRETARY OF STATE PURSUANT TO SECTION 24-21-105, C.R.S., WITH AUTHORITY
21 UNDER SECTION 1-45-111.7, C.R.S., OR SUCH OTHER PERSON AS MAY BE DESIGNATED BY THE
22 DEPUTY SECRETARY OF STATE AS THE DEPUTY SECRETARY'S DESIGNEE UNDER SECTION 1-45-
23 111.7(1)(B), C.R.S.

24 24.2.4 "DIVISION" HAS THE SAME MEANING AS IN SECTION 1-45-111.7(1)(C), C.R.S., WHICH IS
25 COMMONLY KNOWN AS THE ELECTIONS DIVISION OF THE COLORADO DEPARTMENT OF STATE.

26 24.2.6 "HEARING OFFICER" HAS THE SAME MEANING AS IN SECTION 1-45-111.7(1)(D), C.R.S., AND IS
27 THE PERSON WHO HAS BEEN RETAINED BY THE AGENCY TO CONDUCT HEARINGS AND ISSUE
28 INITIAL DECISIONS UNDER SECTION 1-45-111.7(6), C.R.S.

29 24.2.7 "INITIAL COMPLAINT" MEANS A COMPLAINT ALLEGING THAT ONE OR MORE VIOLATIONS OF
30 ARTICLE XXVIII OF THE COLORADO CONSTITUTION, ARTICLE 45 OF TITLE 1, C.R.S., SUCH
31 OTHER CONSTITUTIONAL OR STATUTORY PROVISIONS THAT ARE INCORPORATED OR
32 REFERENCED THEREIN, OR THE RULES HAS OCCURRED AND THAT IS FILED BY ANY PERSON,
33 INCLUDING THE DIVISION, WITH THE DIVISION PURSUANT TO SECTION 1-45-111.7(2)(A) AND (7),
34 C.R.S.

35 24.2.8 "INITIAL DECISION" HAS THE SAME MEANING AS SECTION 24-4-102, C.R.S., AND INCLUDES THE
36 INITIAL DETERMINATION REFERENCED IN SECTION 1-45-111.7(6)(B), C.R.S.

37 24.3 FILING AN ADMINISTRATIVE COMPLAINT

38 24.3.1 THE DIVISION SHALL DETERMINE WHETHER IT WILL FILE AN ADMINISTRATIVE COMPLAINT WITHIN:

1 (A) 30 DAYS AFTER INITIATING AN INVESTIGATION UNDER SECTION 1-45-111.7(5), C.R.S.;

2 OR

3 (B) 14 BUSINESS DAYS AFTER THE DEPUTY SECRETARY'S DENIAL OF A MOTION TO DISMISS

4 THE INITIAL COMPLAINT FILED UNDER SECTION 1-45-111.7(5), C.R.S.

5 24.3.2 AN ADMINISTRATIVE COMPLAINT MAY SUPPLEMENT OR AMEND THE INITIAL COMPLAINT WITH

6 SUCH ADDITIONAL OR ALTERNATIVE FACTUAL ALLEGATIONS AND LEGAL CLAIMS THAT ARE

7 SUPPORTED BY THE DIVISION'S REVIEW AND INVESTIGATION UNDER SECTIONS 1-45-111.7(4)

8 AND (5), C.R.S., AND ALSO MAY OMIT ANY FACTUAL ALLEGATIONS, LEGAL CLAIMS, AND NAMED

9 RESPONDENTS IN THE INITIAL COMPLAINT THAT ARE NOT SUPPORTED BY THE DIVISION'S REVIEW

10 AND INVESTIGATION.

11 24.3.3 IN ANY PROCEEDINGS RELATED TO AN ADMINISTRATIVE COMPLAINT, THE DIVISION WILL BE

12 REPRESENTED BY COUNSEL FROM THE COLORADO DEPARTMENT OF LAW, OR SUCH OTHER

13 SPECIAL ASSISTANT ATTORNEYS GENERAL AS MAY BE DESIGNATED BY THE COLORADO

14 DEPARTMENT OF LAW.

15 24.3.4 FOR PURPOSES OF THIS RULE, ANY FILINGS MADE TO THE HEARING OFFICER SHALL BE MADE TO

16 THE FOLLOWING EMAIL ADDRESS: ADMINISTRATIVEHEARINGOFFICER@COLORADOSOS.GOV.

17 24.4 GENERAL CONDUCT OF HEARINGS

18 24.4.1 TO THE EXTENT PRACTICABLE, AND UNLESS INCONSISTENT WITH THESE RULES AND THE

19 APPLICABLE STATUTE, THE C.R.C.P. APPLIES TO MATTERS BEFORE THE HEARING OFFICER.

20 UNLESS THE CONTEXT OTHERWISE REQUIRES, WHENEVER THE WORD "COURT" APPEARS IN A

21 RULE OF CIVIL PROCEDURE, THAT WORD SHALL BE CONSTRUED TO MEAN A HEARING OFFICER.

22 THE FOLLOWING C.R.C.P RULES DO NOT APPLY:

23 (i) C.R.C.P. 16.;

24 (ii) THE FILING DEADLINES FOR MOTIONS AND CROSS MOTIONS FOR SUMMARY

25 JUDGMENT SET FORTH IN C.R.C.P. 56(C); AND

26 (iii) ANY OTHER C.R.C.P. RULE THAT BY ITS TERMS NECESSARILY DOES NOT

27 APPLY TO THE LITIGATION OF A DISPUTED ADMINISTRATIVE COMPLAINT.

28 24.4.2 A HEARING OFFICER NEED NOT STRICTLY COMPLY WITH THE COLORADO RULES OF EVIDENCE.

29 SUCH RULES SHALL SERVE AS GUIDANCE FOR THE HEARING OFFICER WHO HAS DISCRETION TO

30 ADMIT EVIDENCE, NOT ADMISSIBLE UNDER COLORADO RULES OF EVIDENCE, THAT IS

31 SUFFICIENTLY RELIABLE AND TRUSTWORTHY, AND IS EVIDENCE THAT POSSESSES PROBATIVE

32 VALUE COMMONLY ACCEPTED BY REASONABLE AND PRUDENT PERSONS IN THE CONDUCT OF

33 THEIR AFFAIRS.

34 24.4.3 THE HEARING OFFICER WILL CONDUCT ANY HEARINGS AT THE OFFICES OF THE DEPARTMENT AT

35 1700 BROADWAY, DENVER, COLORADO, UNLESS EXIGENT CIRCUMSTANCES REQUIRE USE OF

36 ANOTHER LOCATION. THE DEPARTMENT WILL PROVIDE SUCH ADMINISTRATIVE, TECHNICAL, AND

37 LOGISTICAL SUPPORT TO THE HEARING OFFICER AS MAY BE REQUIRED TO FACILITATE SUCH

38 HEARINGS. REMOTE HEARINGS BY VIDEO CONFERENCE OR TELEPHONE CONFERENCE MAY BE

39 CONDUCTED AS CIRCUMSTANCES REQUIRE.

40 24.4.4 ANY HEARING CONDUCTED BY THE HEARING OFFICER SHALL BE OPEN TO THE PUBLIC, UNLESS

41 CLOSED PURSUANT TO A WRITTEN ORDER BY THE HEARING OFFICER FINDING GOOD CAUSE FOR

42 SUCH CLOSURE.

- 1 24.4.5 ALL HEARINGS CONDUCTED BY THE HEARING OFFICER SHALL BE AUDIO RECORDED, WITH AN
2 AUDIO RECORDING SYSTEM PROVIDED BY THE DEPARTMENT.
- 3 (A) THE AUDIO RECORDING OF THE HEARING SHALL BE THE OFFICIAL RECORD OF THE
4 PROCEEDING.
- 5 (B) ANY PARTY MAY REQUEST A COPY OF THE RECORDING, AT THE PARTY'S EXPENSE.
- 6 (C) ONE PARTY OR THE OTHER, OR BY AGREEMENT OF THE PARTIES, MAY MAKE
7 ARRANGEMENTS FOR A COURT REPORTER TRANSCRIPTION OF THE PROCEEDINGS.
- 8 24.4.6 SUBJECT TO THE EXCEPTIONS SET FORTH IN SECTIONS 1-45-111.7(5)(A)(II) AND (III), C.R.S.,
9 ALL DOCUMENTS FILED WITH OR BY THE HEARING OFFICER SHALL BE OPEN TO PUBLIC
10 INSPECTION, UNLESS OTHERWISE PROHIBITED BY LAW, REGULATION, OR COURT ORDER, OR
11 WHEN UPON MOTION BY EITHER PARTY AND SO ORDERED BY THE HEARING OFFICER TO PROHIBIT
12 PUBLIC INSPECTION.
- 13 24.4.7 AS REQUIRED BY SECTION 1-45-111.7(6)(B), C.R.S., OR ANY SUCCESSOR PROVISION, ANY
14 INITIAL DECISION ISSUED BY A HEARING OFFICER MUST BE MADE IN ACCORDANCE WITH SECTION
15 24-4-105, C.R.S., AND IS SUBJECT TO REVIEW BY THE DEPUTY SECRETARY, INCLUDING ANY
16 SUBMISSION OF EXCEPTIONS FILED BY THE PARTIES. THE FINAL AGENCY DECISION IS SUBJECT TO
17 REVIEW UNDER SECTION 24-4-106, C.R.S.
- 18 24.5 ASSIGNMENT OF CASES
- 19 24.5.1 CASES WILL BE ASSIGNED ON A ROTATING BASIS TO THE HEARING OFFICER(S) RETAINED BY THE
20 DEPARTMENT FOR PURPOSES OF CONDUCTING HEARINGS UNDER THIS RULE. SHOULD THE
21 DEPARTMENT RETAIN ONLY ONE HEARING OFFICER, THAT HEARING OFFICER WILL BE ASSIGNED
22 AND WILL PRIORITIZE HEARING CASES IN ORDER OF THEIR FILING AS APPROPRIATE.
- 23 24.6 SETTING OF HEARINGS OR OTHER PROCEEDINGS
- 24 24.6.1 WITHIN 30 DAYS OF THE FILING OF AN ADMINISTRATIVE COMPLAINT, A HEARING OFFICER WILL
25 SET A DATE FOR HEARING UNLESS A STAY IS ENTERED, THE MATTER IS CONTINUED, OR THE
26 HEARING OFFICER FINDS GOOD CAUSE FOR AN ENLARGEMENT OF TIME.
- 27 24.6.2 FOR A PROCEEDING THAT IS STAYED, OR FOR A HEARING THAT HAS BEEN CONTINUED, ANY
28 PARTY MAY FILE A REQUEST TO RESET THE PROCEEDINGS TO SET A HEARING DATE WITH THE
29 HEARING OFFICER.
- 30 24.7 ENTRY OF APPEARANCE AND WITHDRAWAL OF COUNSEL
- 31 24.7.1 ENTRIES OF APPEARANCE AND WITHDRAWALS OF COUNSEL SHALL BE IN CONFORMANCE WITH
32 C.R.C.P. 121 § 1-1. ANY OUT-OF-STATE ATTORNEY SHALL COMPLY WITH C.R.C.P. 221.1.
- 33 24.7.2 RULE 24.7.1 DOES NOT APPLY TO A SUBSTITUTION OF COUNSEL IF NEW COUNSEL ENTERS AN
34 APPEARANCE AT THE SAME TIME AS PRIOR COUNSEL WITHDRAWS.
- 35 24.8 DEFAULT PROCEDURES
- 36 24.8.1 A PERSON WHO IS SERVED AN ADMINISTRATIVE COMPLAINT IS REQUIRED TO FILE A WRITTEN
37 ANSWER, A MOTION UNDER C.R.C.P. 12(B), A MOTION FOR ENLARGEMENT OF TIME OR A MOTION
38 TO STAY DUE TO SETTLEMENT WITHIN 30 DAYS AFTER THE SERVICE OR MAILING OF NOTICE OF
39 THE PROCEEDING. IF A PERSON RECEIVING SUCH NOTICE FAILS TO FILE AN ANSWER, A HEARING
40 OFFICER MAY ENTER A DEFAULT AGAINST THAT PERSON.

1 24.8.2 RESPONDENT MAY, BUT IS NOT REQUIRED TO, FILE AN ANSWER DURING A STAY OR IF THE
2 ADMINISTRATIVE COMPLAINT IS DISMISSED. IF A STAY IS LIFTED AND COMPLAINT PROCEEDINGS
3 RESUME, RESPONDENT MUST FILE AN ANSWER, OR RESPONSIVE PLEADING WITHIN 30 DAYS OR
4 AS PROVIDED BY THE HEARING OFFICER.

5 24.8.3 A HEARING OFFICER WILL NOT GRANT A MOTION FOR ENTRY OF A DEFAULT UNDER THIS RULE
6 UNLESS THE FOLLOWING REQUIREMENTS ARE MET:

7 (A) THE MOTION FOR ENTRY OF A DEFAULT MUST BE SERVED UPON ALL PARTIES TO THE
8 PROCEEDING, INCLUDING THE PERSON AGAINST WHOM A DEFAULT IS SOUGHT;

9 (B) THE MOTION SHALL BE ACCOMPANIED BY AN AFFIDAVIT ESTABLISHING THAT BOTH THE
10 NOTICE OF THE PROCEEDING AND THE MOTION FOR ENTRY OF DEFAULT HAVE BEEN
11 PERSONALLY SERVED UPON THE PERSON AGAINST WHOM A DEFAULT IS SOUGHT OR
12 HAVE BEEN MAILED BY FIRST CLASS MAIL TO THE LAST ADDRESS FURNISHED TO THE
13 AGENCY BY THE PERSON AGAINST WHOM THE DEFAULT IS SOUGHT; AND

14 (C) ANY MOTION FOR ENTRY OF DEFAULT REQUESTING A FINE OR CIVIL PENALTY SHALL SET
15 FORTH THE LEGAL AUTHORITY FOR THE CLAIM AND ANY APPLICABLE CALCULATION
16 THEREOF.

17 24.9 DISCOVERY

18 24.9.1 DISCOVERY MAY BE SOUGHT BY ANY PARTY WITHOUT AUTHORIZATION OF THE HEARING
19 OFFICER.

20 24.9.2 TO THE EXTENT PRACTICABLE, C.R.C.P. 26 THROUGH 37 AND 121, SECTION 1-12, AND THE
21 DUTY TO CONFER AT C.R.C.P. 121, SECTION 1-15(8), APPLY TO PROCEEDINGS WITHIN THE
22 SCOPE OF THESE RULES, EXCEPT TO THE EXTENT THAT THEY PROVIDE FOR OR RELATE TO
23 REQUIRED DISCLOSURES, OR THE TIME WHEN DISCOVERY CAN BE INITIATED.

24 24.9.3 IN ADDITION TO THE REQUIREMENTS OF C.R.C.P. 36, A REQUEST FOR ADMISSION SHALL
25 EXPLICITLY ADVISE THE RESPONDING PARTY THAT FAILURE TO TIMELY RESPOND TO THE
26 REQUEST MAY RESULT IN ALL OF THE MATTERS STATED IN THE REQUEST BEING DEEMED
27 ESTABLISHED UNLESS THE HEARING OFFICER, ON MOTION, PERMITS WITHDRAWAL OR
28 AMENDMENT OF THE ADMISSION. THE FAILURE TO COMPLY WITH THIS RULE MAY RESULT IN THE
29 MATTERS CONTAINED IN THE REQUEST BEING DEEMED DENIED.

30 24.9.4 DISCOVERY REQUESTS AND RESPONSES SHOULD NOT BE FILED WITH THE HEARING OFFICER,
31 EXCEPT TO THE EXTENT NECESSARY FOR THE HEARING OFFICER TO RULE UPON MOTIONS
32 INVOLVING DISCOVERY DISPUTES, REQUESTS FOR SUMMARY JUDGMENT, OR SUCH OTHER
33 DISPOSITIVE MOTIONS AS MAY DEPEND ON A DISCOVERY RESPONSE.

34 24.9.5 EITHER PARTY MAY MOVE TO MODIFY DISCOVERY DEADLINES AND LIMITATIONS IN ACCORDANCE
35 WITH PRE-HEARING PROCEDURES AS SET FORTH IN RULE 24.12.

36 24.9.6 EITHER PARTY MAY MOVE FOR A PROTECTIVE ORDER. THE MOTION MUST SPECIFY THE
37 DISCLOSURE OR PORTION OF THE DISCLOSURE TO BE SUBJECT TO A PROTECTIVE ORDER, AS
38 WELL AS THE LEGAL BASIS FOR SEEKING SUCH AN ORDER.

39 24.10 DETERMINATION OF MOTIONS

40 24.10.1 ANY MOTION INVOLVING A CONTESTED ISSUE OF LAW SHALL BE SUPPORTED BY A RECITATION OF
41 LEGAL AUTHORITY.

1 24.10.2 A RESPONDING PARTY SHALL HAVE 14 DAYS FROM SERVICE, OR AS SPECIFIED BY THE HEARING
2 OFFICER TO FILE AND SERVE A RESPONSIVE BRIEF. REPLY BRIEFS MAY BE FILED WITHIN SEVEN
3 DAYS OF SERVICE OF THE RESPONSIVE BRIEF, OR AS SPECIFIED BY THE HEARING OFFICER.

4 24.10.3 IF FACTS NOT IN THE RECORD BEFORE THE HEARING OFFICER ARE TO BE CONSIDERED IN
5 DISPOSITION OF THE MOTION, THE PARTIES MAY FILE AFFIDAVITS AT THE TIME OF FILING THE
6 MOTION OR RESPONSIVE OR REPLY BRIEF. COPIES OF SUCH AFFIDAVITS AND ANY DOCUMENTARY
7 EVIDENCE USED IN CONNECTION WITH THE MOTION SHALL BE SERVED ON ALL OTHER PARTIES.

8 24.10.4 IF POSSIBLE, MOTIONS WILL BE DETERMINED UPON THE WRITTEN MOTION AND BRIEFS
9 SUBMITTED. THE HEARING OFFICER MAY ORDER ORAL ARGUMENT OR EVIDENTIARY HEARING ON
10 THE HEARING OFFICER'S REQUEST. IF ANY PARTY FAILS TO APPEAR AT AN ORAL ARGUMENT OR
11 HEARING WITHOUT PRIOR SHOWING OF GOOD CAUSE FOR NON-APPEARANCE, THE HEARING
12 OFFICER MAY PROCEED TO HEAR AND RULE ON THE MOTION.

13 24.10.5 AN EXPEDITED HEARING ON ANY MOTION MAY BE HELD AT THE INSTANCE OF THE HEARING
14 OFFICER. IF ANY PARTY REQUESTS THAT A MOTION BE DETERMINED IMMEDIATELY WITH OR
15 WITHOUT A HEARING, OR THAT A HEARING BE HELD ON A MOTION IN ADVANCE OF A PREVIOUSLY
16 SET MOTIONS DATE, THAT PARTY SHALL:

17 (A) INFORM THE HEARING OFFICER IN WRITING OF SAID REQUEST;

18 (B) CONTACT ALL OTHER PARTIES, DETERMINE THEIR POSITION ON THE MOTION, AND
19 INDICATE ON THE FACE OF THE MOTION WHETHER OTHER PARTIES OPPOSE THE MOTION
20 AND WHETHER THEY WILL REQUEST A HEARING ON THE MOTION; AND

21 (C) CONFERENCE IN ALL OTHER PARTIES TO SET THE MATTER DIRECTLY WITH THE HEARING
22 OFFICER ON AN EXPEDITED BASIS, IF A HEARING IS DESIRED BY ANY PARTY AND
23 AUTHORIZED UPON ADVANCED NOTICE BY THE HEARING OFFICER.

24 24.11 BURDEN OF PROOF

25 24.11.1 THE PROPONENT OF A REQUEST FOR REMEDY OR RELIEF SHALL HAVE THE BURDEN OF PROOF,
26 AND EVERY PARTY TO THE PROCEEDING SHALL HAVE THE RIGHT TO PRESENT THEIR CASE OR
27 DEFENSE BY ORAL AND DOCUMENTARY EVIDENCE, TO SUBMIT REBUTTAL EVIDENCE, AND TO
28 CONDUCT SUCH CROSS-EXAMINATION AS MAY BE REQUIRED FOR A FULL AND TRUE DISCLOSURE
29 OF THE FACTS.

30 24.11.2 RESPONDENT BEARS THE BURDEN OF PROVING ANY AFFIRMATIVE DEFENSES.

31 24.11.3 THE DEGREE OF PROOF REQUIRED TO PREVAIL ON A REQUEST FOR A REMEDY OR RELIEF IS A
32 PREPONDERANCE OF THE EVIDENCE, UNLESS A CONSTITUTIONAL OR STATUTORY PROVISION
33 SETS A DIFFERENT STANDARD.

34 24.12 PREHEARING PROCEDURES, STATEMENTS, AND CONFERENCES

35 24.12.1 UNLESS OTHERWISE ORDERED BY THE HEARING OFFICER, EACH PARTY SHALL FILE WITH THE
36 HEARING OFFICER AND SERVE ON EACH OTHER PARTY A PREHEARING STATEMENT IN
37 SUBSTANTIAL COMPLIANCE WITH THE FORM AS OUTLINED IN APPENDIX A TO THESE RULES.

38 24.12.2 PREHEARING STATEMENTS SHALL BE FILED AND SERVED NO LATER THAN SEVEN DAYS PRIOR TO
39 THE HEARING OR SUCH OTHER DATE AS SPECIFIED BY THE HEARING OFFICER. EXHIBITS SHALL
40 NOT BE FILED WITH PREHEARING STATEMENTS, UNLESS ORDERED BY THE HEARING OFFICER.
41 EXHIBITS SHALL BE EXCHANGED BETWEEN THE PARTIES BY THE DATE ON WHICH PREHEARING

1 STATEMENTS ARE TO BE FILED AND SERVED ON SUCH OTHER DATE AS ORDERED BY THE
2 HEARING OFFICER.

3 (A) THE AUTHENTICITY OF EXHIBITS, STATUTES, ORDINANCES, REGULATIONS, OR
4 STANDARDS SET FORTH IN THE PREHEARING STATEMENT SHALL BE ADMITTED UNLESS
5 OBJECTED TO IN A WRITTEN OBJECTION FILED WITH THE HEARING OFFICER AND SERVED
6 ON OTHER PARTIES NO LATER THAN FIVE DAYS PRIOR TO HEARING.

7 (B) THE INFORMATION PROVIDED IN A PREHEARING STATEMENT SHALL BE BINDING ON EACH
8 PARTY THROUGHOUT THE COURSE OF THE HEARING UNLESS MODIFIED TO PREVENT
9 MANIFEST INJUSTICE. NEW WITNESSES OR EXHIBITS MAY BE ADDED ONLY IF THE NEED
10 TO DO SO WAS NOT REASONABLY FORESEEABLE AT THE TIME OF FILING OF THE
11 PREHEARING STATEMENT AND THEN ONLY IF IT WOULD NOT PREJUDICE OTHER PARTIES
12 OR NECESSITATE A DELAY OF THE HEARING. THE DIVISION SHALL USE NUMBERS TO
13 IDENTIFY EXHIBITS AND ANY OPPOSING PARTY SHALL USE LETTERS.

14 (C) IN THE EVENT OF NONCOMPLIANCE WITH THIS RULE, THE HEARING OFFICER MAY
15 IMPOSE APPROPRIATE SANCTIONS INCLUDING, BUT NOT LIMITED TO, THE STRIKING OF
16 WITNESSES, EXHIBITS, CLAIMS, AND DEFENSES.

17 24.12.3 PREHEARING CONFERENCES MAY BE HELD AT THE REQUEST OF EITHER PARTY OR UPON ORDER
18 OF THE HEARING OFFICER.

19 24.13 MOTIONS FOR CONTINUANCE

20 24.13.1 CONTINUANCES SHALL BE GRANTED ONLY UPON A SHOWING OF GOOD CAUSE. MOTIONS FOR
21 CONTINUANCE MUST BE FILED IN A TIMELY MANNER. STIPULATIONS FOR A CONTINUANCE SHALL
22 NOT BE EFFECTIVE UNLESS AND UNTIL APPROVED BY THE HEARING OFFICER.

23 24.13.2 GOOD CAUSE MAY INCLUDE, BUT IS NOT LIMITED TO:

24 (A) DEATH OR INCAPACITATION OF A PARTY OR AN ATTORNEY FOR A PARTY;

25 (B) ENTRY OR SUBSTITUTION OF AN ATTORNEY FOR A PARTY A REASONABLE TIME PRIOR TO
26 THE HEARING, IF THE ENTRY OR SUBSTITUTION REASONABLY REQUIRES A
27 POSTPONEMENT OF THE HEARING;

28 (C) A CHANGE IN THE PARTIES OR PLEADINGS SUFFICIENTLY SIGNIFICANT TO REQUIRE A
29 POSTPONEMENT;

30 (D) A SHOWING THAT MORE TIME IS NECESSARY TO COMPLETE MANDATORY PREPARATION
31 FOR THE HEARING;

32 (E) AGREEMENT OF THE PARTIES TO A SETTLEMENT OF THE CASE WHICH HAS BEEN
33 SUBMITTED FOR APPROVAL TO THE DEPUTY SECRETARY; OR

34 (F) DISCOVERY.

35 24.13.3 GOOD CAUSE NORMALLY WILL NOT INCLUDE THE FOLLOWING:

36 (A) UNAVAILABILITY OF COUNSEL BECAUSE OF ENGAGEMENT IN ANOTHER JUDICIAL OR
37 ADMINISTRATIVE PROCEEDING, UNLESS THE OTHER PROCEEDING WAS INVOLUNTARILY
38 SET SUBSEQUENT TO THE SETTING IN THE PRESENT CASE;

1 (B) UNAVAILABILITY OF A NECESSARY WITNESS, IF THE WITNESS'S TESTIMONY CAN BE
2 TAKEN BY TELEPHONE OR BY DEPOSITION; OR

3 (C) FAILURE OF AN ATTORNEY OR A PARTY TIMELY TO PREPARE FOR THE HEARING.

4 24.14 SUBPOENAS

5 24.14.1 UPON ORAL OR WRITTEN REQUEST OF ANY PARTY OR OF COUNSEL FOR ANY PARTY, A HEARING
6 OFFICER SHALL SIGN A SUBPOENA OR SUBPOENA DUCES TECUM REQUIRING THE ATTENDANCE
7 OF A WITNESS OR THE PRODUCTION OF DOCUMENTARY EVIDENCE, OR BOTH, AT A DEPOSITION
8 OR HEARING. UNLESS OTHERWISE PROVIDED BY STATUTE, RULE, OR REGULATION, PRACTICE
9 BEFORE THE HEARING OFFICER REGARDING SUBPOENAS SHALL BE GOVERNED BY C.R.C.P. 45.

10 24.14.2 HEARING OFFICER SHALL DESIGNATE AND AUTHORIZE SPECIFIC DEPARTMENT PERSONNEL TO
11 USE A STAMP SIGNATURE OR TO OTHERWISE DUPLICATE THE SIGNATURE OF A HEARING OFFICER
12 ON SUBPOENAS COMPLETED BY THE PARTIES. HOWEVER, NO OTHER PARTY OR PERSON MAY
13 DUPLICATE THE SIGNATURE OF A HEARING OFFICER. SUBPOENAS ISSUED IN CONTRAVENTION OF
14 THIS RULE ARE INVALID AND MAY SUBJECT THE PARTY USING THEM TO SANCTIONS.

15 24.14.3 ANY ATTORNEY REPRESENTING A PARTY BEFORE A HEARING OFFICER MAY ISSUE A SUBPOENA
16 OR SUBPOENA DUCES TECUM REQUIRING THE ATTENDANCE OF A WITNESS OR THE PRODUCTION
17 OF DOCUMENTARY EVIDENCE, OR BOTH, AT A DEPOSITION OR HEARING. SUCH ATTENDANCE MAY
18 BE IN-PERSON OR BY VIDEO CONFERENCE AS PROVIDED BY THE HEARING OFFICER.

19 24.15 SETTLEMENTS

20 24.15.1 AT ANY TIME, THE PARTIES MAY ENTER INTO A SETTLEMENT AGREEMENT. THE SETTLEMENT
21 AGREEMENT MUST BE IN WRITING AND SIGNED BY THE PARTIES.

22 24.15.2 THE DIVISION SHALL FILE A MOTION TO STAY PROCEEDINGS WITH THE HEARING OFFICER ONCE
23 GOOD FAITH SETTLEMENT NEGOTIATIONS BEGIN. THE DIVISION SHALL FILE A MOTION OF
24 DISMISSAL WITH THE HEARING OFFICER IF A SETTLEMENT HAS BEEN APPROVED BY THE DEPUTY
25 SECRETARY. IF THE SETTLEMENT AGREEMENT IS NOT APPROVED AND ALTERNATIVE TERMS
26 CANNOT BE AGREED UPON, THE DIVISION WILL MOVE THE HEARING OFFICER TO LIFT THE STAY
27 AND RESUME PROCEEDINGS BEFORE THE HEARING OFFICER.

28 24.15.3 THE FOLLOWING FACTORS SHALL BE CONSIDERED IN ARRIVING AT A SETTLEMENT AGREEMENT:

29 (A) SPECIFIC FINE AMOUNTS OUTLINED IN RULE 23.3.3;

30 (B) ANY APPROPRIATE SPECIFIC ACTION IN RULE 23.3.4; AND

31 (C) THE MITIGATING AND AGGRAVATING FACTORS IN RULE 23.3.5 TO INCREASE OR
32 DECREASE THE MONETARY FINE OR TERMS, INCLUDING THE PUBLIC INTEREST IN
33 RESOLUTION OF THE COMPLAINT.

34 24.15.4 THE SETTLEMENT AGREEMENT IS CONTINGENT UPON APPROVAL BY THE DEPUTY SECRETARY,
35 WHO MUST ALSO CONSIDER THE FACTORS SET FORTH IN RULE 24.15.3. IF THE DEPUTY
36 SECRETARY DOES NOT APPROVE THE SETTLEMENT AGREEMENT, NONE OF THE TERMS OR
37 RECITALS OF THE AGREEMENT ARE BINDING OR ENFORCEABLE BY EITHER PARTY.

38 26.15.5 IF RESPONDENT FAILS TO COMPLY WITH THE TERMS OF A SETTLEMENT AGREEMENT, INCLUDING
39 FAILURE TO SUBMIT PAYMENT OR SATISFY ANY REGISTRATION, FILING, OR OTHER TASKS
40 REQUIRED BY THE SETTLEMENT AGREEMENT, THE DIVISION MAY PURSUE AN ENFORCEMENT
41 ACTION IN DENVER DISTRICT COURT.

1 24.15.6 THE SETTLEMENT AGREEMENT SHALL BECOME THE FINAL AGENCY ACTION UNDER SECTION 24-4-
2 105, C.R.S., UPON APPROVAL BY THE DEPUTY SECRETARY.

3 24.16 EX PARTE COMMUNICATIONS

4 24.16.1 WITH THE EXCEPTION OF SCHEDULING OR OTHER PURELY ADMINISTRATIVE MATTERS, A PARTY
5 OR COUNSEL FOR A PARTY SHALL NOT INITIATE ANY COMMUNICATION WITH A HEARING OFFICER
6 PERTAINING TO A MATTER BEFORE THAT HEARING OFFICER UNLESS PRIOR CONSENT OF ALL
7 OTHER PARTIES OR THEIR COUNSEL HAS BEEN OBTAINED. COPIES OF ALL PLEADINGS OR
8 CORRESPONDENCE FILED WITH THAT HEARING OFFICER OR DIRECTED TO A HEARING OFFICER
9 BY ANY PARTY SHALL BE SERVED UPON ALL OTHER PARTIES OR THEIR COUNSEL.

10 24.16.2 DURING THE PENDENCY OF AN ADMINISTRATIVE COMPLAINT, THE DEPUTY SECRETARY, AS WELL
11 AS STAFF DIRECTLY SUPPORTING THE DEPUTY SECRETARY OR THE DEPUTY SECRETARY'S
12 DESIGNEE, SHALL HAVE NO CONTACT REGARDING THE MATTER WITH THE HEARING OFFICER
13 WHILE THE MATTER IS PENDING BEFORE THE HEARING OFFICER. STAFF DIRECTLY SUPPORTING
14 THE DEPUTY SECRETARY OR THE DEPUTY SECRETARY'S DESIGNEE ARE AUTHORIZED TO
15 CONTACT SUPPORT STAFF DIRECTLY SUPPORTING THE HEARING OFFICER CONCERNING
16 PROCEDURAL, RECORD-KEEPING, OR OTHER NON-SUBSTANTIVE MATTERS.

17 24.17 COMPUTATION AND MODIFICATION OF TIME

18 24.17.1 IN COMPUTING ANY PERIOD OF TIME PRESCRIBED OR ALLOWED BY THESE RULES, THE
19 PROVISIONS OF C.R.C.P. 6 SHALL APPLY. THE TIME PERIODS OF THESE RULES MAY BE MODIFIED
20 AT THE DISCRETION OF THE HEARING OFFICER.

21 24.18 FILING OF PLEADINGS AND OTHER PAPERS

22 24.18.1 PLEADINGS AND OTHER PAPERS MAY BE FILED BY EMAIL TO THE HEARING OFFICER. PLEADINGS
23 MAY NOT BE FILED BY FACSIMILE COPY.

24 24.18.2 AFTER THE CASE HAS BEEN ASSIGNED A CASE NUMBER, ALL PLEADINGS AND PAPERS FILED WITH
25 THE HEARING OFFICER SHALL CONTAIN THAT CASE NUMBER.

26 24.19 SERVICE OF PLEADINGS AND OTHER PAPERS.

27 24.19.1 SERVICE OF PLEADINGS OR OTHER PAPERS ON A PARTY OR ON AN ATTORNEY REPRESENTING A
28 PARTY MAY BE MADE BY EMAIL. SERVICE OF PLEADINGS WILL NOT BE ACCEPTED BY FACSIMILE
29 COPY.

30 24.19.2 PLEADINGS OR OTHER PAPERS SENT TO THE HEARING OFFICER MUST CONTAIN A CERTIFICATE
31 OF SERVICE ATTESTING TO SERVICE ON THE OPPOSING PARTY AND IN THE CASE OF SERVICE BY
32 MAIL PROVIDING THE ADDRESS WHERE PLEADINGS OR OTHER PAPERS WERE SERVED.

33 24.19.3 ATTORNEYS AND PARTIES NOT REPRESENTED BY ATTORNEYS MUST INFORM THE HEARING
34 OFFICER AND ALL OTHER PARTIES OF THEIR CURRENT ADDRESS AND OF ANY CHANGE OF
35 ADDRESS DURING THE COURSE OF THE PROCEEDINGS.

36 24.20 COURT REPORTERS

37 24.20.1 NEITHER THE DEPARTMENT NOR THE HEARING OFFICER SUPPLIES COURT REPORTERS. IF ANY
38 PARTY WISHES TO HAVE ALL OR A PORTION OF A PROCEEDING TRANSCRIBED BY A COURT
39 REPORTER, THAT PARTY MAY MAKE PRIVATE ARRANGEMENTS TO DO SO AT THAT PARTY'S OWN
40 EXPENSE. THE RECORDING OF ANY PROCEEDING MADE ELECTRONICALLY BY THE HEARING
41 OFFICER SHALL BE THE OFFICIAL RECORD.

1 24.20.2 A REQUEST TO THE HEARING OFFICER OR THE DEPARTMENT FOR A RECORDING MUST BE IN
2 WRITING AND MUST CONTAIN THE CASE NUMBER AND THE DATE AND TIME OF THE HEARING OR
3 CONFERENCE.

4 24.21 SUBSTITUTION OF HEARING OFFICER

5 24.21.1 IN THE EVENT THE HEARING OFFICER BECOMES AWARE OF A CIRCUMSTANCE THAT REFLECTS AN
6 ACTUAL OR PERCEIVED CONFLICT OF INTEREST FOR THE HEARING OFFICER TO CONDUCT A
7 HEARING ON AN ADMINISTRATIVE COMPLAINT, THE HEARING OFFICER SHALL PROMPTLY
8 TRANSMIT TO THE DEPUTY SECRETARY A REQUEST FOR THE DEPUTY SECRETARY TO APPOINT A
9 SUBSTITUTE HEARING OFFICER IN THEIR PLACE TO CONDUCT THE HEARING IN THE MATTER. THE
10 DEPUTY SECRETARY WILL APPOINT A SUBSTITUTE HEARING OFFICER TO CONDUCT THE HEARING
11 OF THE PENDING ADMINISTRATIVE COMPLAINT.

12 24.21.2 A PARTY MAY SEEK SUBSTITUTION OF THE HEARING OFFICER ASSIGNED TO CONDUCT THE
13 HEARING ON AN ADMINISTRATIVE COMPLAINT ONLY UPON A VERIFIED MOTION WITH SUPPORTING
14 EVIDENCE THAT IS CONCRETE AND PARTICULAR AND NOT SPECULATIVE, DEMONSTRATING THAT A
15 REASONABLE PERSON WOULD QUESTION THE PROPRIETY OF THE HEARING OFFICER
16 CONDUCTING THE HEARING ON THE ADMINISTRATIVE COMPLAINT. SUCH A REQUEST FOR
17 SUBSTITUTION OF THE HEARING OFFICER WILL BE DETERMINED IN THE FIRST INSTANCE BY THE
18 HEARING OFFICER ASSIGNED TO HEAR THE ADMINISTRATIVE COMPLAINT. IF THE HEARING
19 OFFICER DENIES THE REQUEST FOR A SUBSTITUTE HEARING OFFICER, THAT DECISION IS NOT
20 SUBJECT TO REVIEW UNTIL THE HEARING OFFICER ISSUES AN INITIAL DECISION FOR REVIEW BY
21 THE DEPUTY SECRETARY, AT WHICH TIME A PARTY MAY RAISE THE SUBSTITUTION ISSUE AMONG
22 ITS EXCEPTIONS TO THE INITIAL DECISION.

23 24.21.3 BY WAY OF ILLUSTRATION, AND WITHOUT LIMITATION, CIRCUMSTANCES THAT MAY GIVE RISE TO
24 AN ACTUAL OR PERCEIVED CONFLICT OF INTEREST REQUIRING THE SUBSTITUTION OF THE
25 HEARING OFFICER ARE THE FOLLOW:

- 26 (A) A FAMILIAL RELATIONSHIP WITH A PARTY OR THE PARTY'S COUNSEL;
- 27 (B) A CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIP WITH OR
28 REPRESENTATION OF A PARTY;
- 29 (C) CURRENT REPRESENTATION OF A RESPONDENT IN ANOTHER CAMPAIGN
30 FINANCE CASE EITHER BEFORE THE DIVISION OR IN A SEPARATE HEARING; OR
- 31 (D) SUCH OTHER CIRCUMSTANCES AS WOULD CAUSE A REASONABLE PERSON TO
32 QUESTION THE PROPRIETY OF THE HEARING OFFICER CONDUCTING THE
33 HEARING ON THE ADMINISTRATIVE COMPLAINT.

34 24.22 TRANSFER

35 24.22.1 UPON MOTION BY THE DIVISION, ANY ADMINISTRATIVE COMPLAINT PENDING BEFORE THE
36 OFFICE OF ADMINISTRATIVE COURTS SHALL BE TRANSFERRED TO A HEARING OFFICER AS
37 PROVIDED FOR IN THESE RULES. THE ADMINISTRATIVE COMPLAINT WILL PROCEED
38 UNINTERRUPTED.

1 **APPENDIX A - OUTLINE FOR PREHEARING STATEMENT**

2 The following shall be included in each party's Prehearing Statement:

3

4 I. PENDING MOTIONS. A list of all outstanding motions that have not been ruled upon by the hearing
5 officer.

6 II. STATEMENT OF CLAIMS AND DEFENSES. A concise statement of all claims or defenses asserted
7 by all parties, together with all matters in mitigation or aggravation.

8 III. UNDISPUTED FACTS. A concise statement of all facts that the party contends are or should be
9 undisputed.

10 IV. DISPUTED ISSUES OF FACT. A concise statement of the material facts that the party claims or
11 concedes to be in dispute.

12 V. POINTS OF LAW. A concise statement of all points of law that are to be relied upon or that may
13 be in controversy, citing pertinent statutes, regulations, cases and other authority. Extended legal
14 argument is not required but may be reserved for a trial brief at the option of the party.

15 VI. WITNESSES. The name, address and telephone number of any witness or party whom the party
16 may call at hearing, together with a detailed statement of the content of that person's testimony.

17 VII. EXPERTS. The name, address and brief summary of the qualifications of any expert witness a
18 party may call at hearing, together with a statement that details the opinions to which each expert is
19 expected to testify. These requirements may be satisfied by the incorporation of an expert's resume
20 or report containing the required information.

21 VIII. EXHIBITS. A description of any physical or documentary evidence to be offered into evidence at
22 the hearing. An agency shall use numbers to identify exhibits and any opposing party shall use
23 letters.

24 IX. STIPULATIONS. A listing of all stipulations of fact or law reached, as well as a listing of any
25 additional stipulations requested or offered to facilitate disposition of the case.

26 X. TRIAL EFFICIENCIES. An estimate of the amount of time required to try the case.
27

1 **APPENDIX B – OUTLINE FOR CASE MANAGEMENT ORDER**

2 A case management conference was held on _____ at which the following schedule and
3 deadlines were ordered:

4 **Hearing:**

5 The hearing has been scheduled for _____ through _____ at _____ starting at
6 9:00 a.m.

7 **Discovery:**

8 1. Discovery cutoff, including completion of expert and fact witness depositions and receipt of all
9 written discovery: _____

10 2. The numerical limits on interrogatories, requests forth in C.R.C.P. 26 (b)(2) are/are not adopted.
11 The C.R.C.P. 26 (b)(2)(A) are/are not adopted.

12 3. Other discovery issues

13 **Expert Disclosures:**

14 1. The Agency's initial disclosure of expert witnesses: _____

15 2. The opposing party's initial disclosure of expert witnesses: _____

16 3. Rebuttal experts: _____

17 4. Expert disclosures shall be filed with the hearing officer, as well as served on the opposing party.

18 **Prehearing Statements:**

19 (Set out any modifications to the content of the prehearing statements.)

20 **Motions Deadline:**

21 1. Dispositive motions: _____ Responses: _____

22 2. All other prehearing motions to the extent that the basis for the motion is reasonably
23 known: _____ Response: _____

24 **Service:**

25 (Set out any agreement or order as to the method of service, i.e., by email, mail, or other method. Set out
26 whether extra time for mailing is permitted.)

27 **Filing:**

28 (Set out any agreement or order as to the method of filing, i.e., by email, mail, or other method. Set out
29 whether extra time for mailing is permitted.)

30

31 Prehearing Conference:

1 A motions hearing/final prehearing conference is set for _____ at ____ a.m./p.m.
2 at_____.

3 **DONE AND SIGNED**

4 (date)

5
6
7
8

(NAME)
Hearing Officer