

**Preliminary Draft of Proposed Rules**  
**Colorado Department of State**  
**General Policies and Administration Rules, et seq<sup>1</sup>**  
**8 CCR 1505-3, et seq<sup>2</sup>**

**August 15, 2024**

**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.<sup>3</sup>

This is a preliminary draft of the proposed rules that may be revised before the September 17, 2024, 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 **September 12, 2024**.<sup>4</sup>

*Amendments to Rule 1 concerning grammatical changes, technical changes to the numbering format, and repeal of Rule 1.7:*

**Rule 1. Declaratory Orders**

- 1.1 Applicability: Any person may petition the Secretary of State for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions or any rule or order of the Secretary of State as required by CRS-section 24-4-105(11), C.R.S.
- 1.2 Initial determination:
  - 1.2.1(A) The Secretary of State will determine, at their~~her~~ discretion and without notice to petitioner, whether to rule upon the filed petition. ~~If the Secretary decides not to rule upon the petition, the petitioner shall promptly be notified of the action. -The notice shall state the reasons for the action.~~
  - 1.2.2(B) In determining whether to rule upon a petition filed pursuant to this rule, the Secretary will consider the following matters, among others:
    - (A)(1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision, rule or order of the Secretary.

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<sup>1</sup> Additional regulations are amended as a result of this rulemaking. The amended rules are: the rules concerning elections, campaign and political finance, the Colorado Charitable Solicitations Act, lobbyist regulation, and notary program.

<sup>2</sup> The additional regulations' CCR numbers are: 8 CCR 1505-1, 1505-6, 1505-8, 1505-9, and 1505-11.

<sup>3</sup> Sections 24-4-103(2.5) and (3)(a), C.R.S.

<sup>4</sup> Section 24-4-103(4)(a), C.R.S. "[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."

~~(b)(2)~~ Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Secretary or a court involving one or more of the petitioners.

~~(c)(3)~~ Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Secretary or a court but not involving any petitioner.

~~(d)(4)~~ Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

1.3 Content of petition: any petition filed pursuant to this rule shall set forth the following:

~~1.3.1(A)~~ The name and address of the petitioner and the relationship of the petitioner to the Secretary of State whether a licensee, a person required to file with the Secretary of State, a citizen or other relationship:

~~1.3.2(B)~~ The statute, rule or order to which the petition relates: ~~and~~

~~1.3.3(C)~~ A concise statement of all of the facts necessary to show the nature or the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

1.4 Procedure for ruling: ~~if~~ if the Secretary of State decides to rule on the petition, the following procedures shall apply:

~~1.4.1(A)~~ The Secretary may rule upon the petition based solely upon the facts presented in the petition. ~~In such a case:~~

~~(a)(1)~~ Any ruling of the Secretary will apply only to the extent of the facts presented in the petition and any amendment to the petition:

~~(b)(2)~~ The Secretary may order the petitioner to file a written brief, memorandum or statement of position:

~~(c)(3)~~ The Secretary may set the petition, upon due notice to petitioner, for a non-evidentiary hearing:

~~(d)(4)~~ The Secretary may dispose of the petition on the sole basis of the matters set forth in the petition:

~~(e)(5)~~ The Secretary may request the petitioner to submit additional facts, in writing. In that event, the additional facts will be considered as an amendment to the petition:

~~(f)(6)~~ The Secretary may take administrative notice of facts pursuant to ~~the Administrative Procedure Act, section~~ ~~CR~~ 24-4-105(8), ~~C.R.S.~~, and may utilize the experience, technical competence and specialized knowledge of the Secretary in the disposition of the petition: ~~and~~

~~(g)(7)~~ If the Secretary rules upon the petition without a hearing, the petitioner shall be promptly notified of the decision.

~~1.4.2(B)~~ The Secretary, at ~~their~~ her discretion, may set the petition for hearing under ~~CRS 1973, section~~ 24-4-105, ~~C.R.S. as amended~~, upon due notice to petitioner, for the purpose of

obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. -The notice to the petitioner setting the hearing shall set forth, to the extent known, the factual or other matters into which the Secretary intends to inquire. -The petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty, the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Secretary to consider.

- 1.5 Parties and ~~i~~Intervention. ~~¶~~The parties to any proceeding pursuant to this rule shall be the Secretary and the petitioner. -Any other person may seek leave of the Secretary to intervene in the proceedings. -Leave to intervene will be granted at the sole discretion of the Secretary. A petition to intervene shall set forth the same information as required by ~~R~~rule 1.3. -Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Secretary.

- 1.6 ~~Final agency action. A~~Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to Judicial review pursuant to ~~section~~CRS 24-4-106(2), C.R.S.

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*Repeal of Rule 1.7:*

- ~~1.7 Effective date: these rules were adopted as emergency rules on July 9, 1991 and as permanent rules on November 6, 1991, effective January 1, 1992.~~

*Amendments to Rule 2 concerning grammatical changes:*

## **Rule 2. Seal of the ~~S~~state**

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- 2.1 State Seal. -In accordance with section 24-80-901, C.R.S., the seal of the state shall be two and one-half inches in diameter.

*New Rule 3 concerning the general procedural rules for administrative hearings under the purview of the Secretary of State. These rules are inspired by the Rule 24 of 8 CCR 1505-6 (Campaign and Political Finance Rules) and also standardize the administrative hearing process for complaints and requests for hearings submitted to the divisions of the office of the Secretary of State:*

## **Rule 3. General Procedural Rules for Administrative Hearings**

### **3.1 Scope of rules**

3.1.1 The Secretary of State has authority to conduct hearings pursuant to section 24-21-108, C.R.S., and in conjunction with sections 24-4-104 and 24-4-105, C.R.S.

3.1.2 These rules apply to matters that come before a hearing officer under the Secretary of State's authority and the corresponding statutory authority:

(a) For candidate petition protests, section 1-4-909(1.7)(c), C.R.S.:

(b) For campaign finance complaints, sections 1-45-111.5 and 1-45-111.7(5), C.R.S.:

- (c) For charitable solicitations, section 6-16-111(6)(b), C.R.S.;
- (d) For durable medical equipment license complaints, section 24-21-115, C.R.S.,
- (e) For Help America Vote Act (HAVA) complaints, section 1-1.5-105(2)(g), C.R.S.;
- (f) For lobbyist complaints, section 24-6-305(2)(c) and 24-6-308(2), C.R.S.;
- (g) For notary public complaints, section 24-21-523(3), C.R.S.;
- (h) For petition circulator complaints, section 1-40-132, C.R.S.;
- (i) For petition circulator report complaints, sections 1-4-905.7(3), C.R.S.;
- (j) For petition entity complaints, sections 1-4-905.5 and 1-40-135(3)(a), C.R.S.;
- (k) For recall petition protests, section 1-12-108(9)(a)(III), C.R.S.;
- (l) For voter registration drive complaints, section 1-2-703, C.R.S.; and
- (m) Any other complaints filed by a division, or its designee, for which there is statutory authority.

### 3.2 Definitions

- 3.2.1 "Administrative complaint" means a complaint alleging that there have been one or more violations of a constitutional provision, statutory provisions, or rules promulgated by the Secretary of State and is filed with the hearing officer to commence a hearing.
- 3.2.2 "Complainant" means a person filing an administrative complaint to a hearing officer. A "complainant" in these rules does not include an initial complainant who has filed a complaint with a division under section 1-45-111.7(5)(b), C.R.S.
- 3.2.3 "C.R.C.P." means Colorado Rules of Civil Procedure.
- 3.2.4 "Day" means "calendar day" unless otherwise indicated.
- 3.2.5 "Deputy secretary" means the person appointed by the Secretary of State as the deputy secretary of state pursuant to section 24-21-105, C.R.S., or their designee.
- 3.2.6 "Division" means a division within the Secretary of State and includes: the Administration, Elections, and Business and Licensing divisions.
- 3.2.7 "Expedited hearings" include the following:
  - (a) Candidate petition protest hearings;
  - (b) Colorado Charitable Solicitation Act hearings;
  - (c) Petition circulator complaint hearings;

(d) Petition circulator reports complaint hearings;

(e) Recall petition protest hearings; and

(f) Any other requests for expedited hearings upon motion to the hearing officer.

3.2.8 "Hearing officer" means a person authorized to conduct a hearing under section 24-4-105(3), C.R.S. A hearing officer, for the purpose of these rules, is not the division or its designee in which an initial complaint was filed.

3.2.9 "Initial complaint" means a complaint alleging that one or more violations of the Colorado Constitution or Colorado statutes, which are incorporated or referenced in these rules, has occurred, and is filed with a division.

3.2.10 "Licensee" means any person:

(a) Commissioned or approved under the Revised Uniform Law on Notarial Acts (Title 24, Article 21, Part 5);

(b) Licensed under section 24-21-115(1)(a), C.R.S., as a durable medical equipment supplier;

(c) Registered under the Colorado Charitable Solicitations Act (Title 6, Article 16, C.R.S.);

(d) Registered as a petition entity under Title 1, Article 40, C.R.S.;

(e) Registered as a professional lobbyist under section 24-6-303, C.R.S.; and

(f) Who has applied for a license, commission, approval, or registration under the statutes in (a)-(e) above.

3.2.11 "Motion" means a formal, written request or proposal made by any party to the hearing officer for an order, ruling, or decision.

3.2.12 "Pleading" means a document filed with the hearing officer. This includes, but is not limited to, the complaint, answer, reply, motion for entry of default, motion for continuance, and motion to stay proceedings.

3.2.13 "Respondent" means a person or entity that is subject to a complaint filed by the division or its designee to a hearing officer.

3.3 Timing for filing an administrative complaint, request for hearing, or transfer of an initial complaint or protest to a hearing officer

3.3.1 Administrative complaints filed for campaign finance violations must be filed within 30 days after initiating an investigation for a campaign finance violation, in accordance with section 1-45-111.7, C.R.S., or 14 business days after the deputy secretary of state's denial of a motion to dismiss the initial complaint in a campaign finance violation filed under section 1-45-111.7(5), C.R.S.

### 3.3.2 Licensees

(a) Licensees must file a request for a hearing with a hearing officer within:

(i) 30 days of the date of a notice of denial, suspension, or revocation of registration for charitable organization, professional fundraising consultant, or paid solicitor under the Colorado Charitable Solicitations Act.

(ii) 60 days of the date of a notice of a denial of a new license, or a revocation, suspension, annulment, limitation, modification, or nonrenewal of a license from the Secretary of State for all other licensees.

(b) The division must file an administrative complaint with the hearing officer within seven days of the hearing officer's setting and notice of the date of an expedited hearing.

3.3.3 HAVA complainants who want a hearing must request a hearing at the time of filing a complaint, using the HAVA complaint form. The division must file an administrative complaint with a hearing officer if the initial complaint is not resolved within 90 days of the date that it was initially filed with the division.

3.3.4 For candidate petition protests, petition circulator complaints, and petition circulator report complaints, the division will timely determine if an initial complaint or protest will be transferred to the hearing officer to schedule a hearing and, if so, submit a transfer form, along with the petition protest or complaint, to the hearing officer.

3.3.5 A recall petition protest filed with the Secretary of State will be immediately transferred to the hearing officer upon the division's completion of a transfer form, along with the recall petition protest, to schedule a hearing.

### 3.4 Content of administrative complaints and legal representation of a division

3.4.1 An administrative complaint filed with a hearing officer by a division may supplement or amend any initial complaint with additional or alternative factual allegations and legal claims that are supported by the Secretary of State's review and investigations. An administrative complaint also may omit any factual allegations, legal claims, and named respondents from an initial complaint that are not supported by the Secretary of State's review and investigation.

3.4.2 In any proceeding in which the Secretary of State is a party, the Secretary of State will be represented by counsel from the Colorado Department of Law, or such other special assistant attorneys general as may be designated by the Colorado Department of Law.

### 3.5 General filings and service of pleadings and other papers

3.5.1 Any filings made to the hearing officer shall be made to the following email address: AdministrativeHearingOfficer@coloradosos.gov. Service of pleadings will not be

accepted by facsimile copy. Filing and service of pleadings or other papers on a party or on an attorney representing a party may be made by email.

3.5.2 All pleadings or documents submitted by agencies to the hearing officer must be in an accessible format and compliant with section 24-85-103, C.R.S. All pleadings or documents submitted by non-agencies individuals or entities must be submitted to the hearing officer in Word format and checked for accessibility.

3.5.3 Upon receipt by the hearing officer, the case will be assigned a case number, and all future pleadings and papers filed with the hearing officer shall contain that case number.

3.5.4 Pleadings or other papers sent to the hearing officer must contain a certificate of service attesting to service on the opposing party.

(a) In the case of service by mail, pleadings must include the address for service.

(b) In the case of service by email, pleadings must include the email address for service.

3.5.5 Attorneys and parties not represented by attorneys must inform the hearing officer and all other parties, in writing, of their current address and of any change of address during the course of the proceedings.

### 3.6 Filings for answers or other pleadings

#### 3.6.1 Answers

(a) A respondent who is served an administrative complaint is required to file a written answer, a motion under C.R.C.P. 12(b), a motion for enlargement of time, or a motion to stay proceedings due to settlement within 21 days after the service or mailing of notice of the proceeding. If a respondent receiving such notice fails to file an answer, a hearing officer may enter a default against that respondent.

(i) Exception for if a respondent is a licensee. The respondent is required to file a written answer, motion under C.R.C.P. 12(b), a motion for enlargement of time, or a motion to stay proceedings due to settlement within 30 days after the service or mailing of notice of the proceedings.

(ii) Exception for expedited hearings. Answers, if required or requested, will be addressed in the hearing officer's scheduling order.

(b) A respondent may, but is not required to, file a written answer during a stay of proceedings or if the administrative complaint is dismissed. If a stay of proceedings is lifted and complaint proceedings resume, respondent must file a written answer or responsive pleading within 21 days or as provided by the hearing officer.

- (i) Exception for if a respondent is a licensee. The respondent is required to file, if a stay of proceedings is lifted and complaint proceedings resume, a written answer or responsive pleading within 30 days.

3.6.2 Motion for entry of default. A hearing officer will not grant a motion for entry of a default under this rule unless the following requirements are met:

- (a) The motion for entry of a default must be served upon all parties to the proceeding, including the person against whom a default is sought;
- (b) The motion shall be accompanied by an affidavit establishing that both the notice of the proceeding and the motion for entry of default have been personally served upon the person against whom a default is sought or have been mailed by first-class mail to the last address known to the Secretary of State by the person against whom the default is sought; and
- (c) The motion for entry of default requesting a fine or civil penalty shall contain the legal authority for the claim and any applicable calculation thereof.

3.6.3 All other motions

- (a) Every motion must include a certification by the party or counsel filing the motion that they have conferred, or attempted to confer, with opposing counsel and unrepresented parties, and must also include a statement regarding whether the motion is contested, uncontested, or stipulated. If no conference has occurred, an explanation must be included in the motion.
- (b) The motion shall conspicuously state in the caption if the motion is unopposed or stipulated.
- (c) Any motion involving a contested issue of law shall be supported by a recitation of legal authority.
- (d) A responding party shall have 14 days from service, or as specified by the hearing officer, to file and serve a responsive brief. Reply briefs may be filed within seven days of service of the responsive brief, or as specified by the hearing officer.
- (e) If facts not in the record before the hearing officer are to be considered in disposition of the motion, the parties may file affidavits at the time of filing the motion or responsive or reply brief. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.
- (f) If possible, motions will be determined upon the written motion and briefs submitted. The hearing officer may order oral argument or evidentiary hearing on the hearing officer's request. If any party fails to appear at an oral argument or hearing without prior showing of good cause for non-appearance, the hearing officer may proceed to hear and rule on the motion.



(g) An expedited hearing on any motion may be held at the discretion of the hearing officer. If any party requests that a motion be determined immediately with or without a hearing, or that a hearing be held on a motion in advance of a previously set motions date, that party shall:

(i) Inform the hearing officer, in writing, of said request;

(ii) Contact all other parties, determine their position on the motion, and indicate on the face of the motion whether other parties oppose the motion and whether they will request a hearing on the motion; and

(iii) Conference in all other parties to set the matter directly with the hearing officer on an expedited basis, if a hearing is desired by any party and authorized upon advanced notice by the hearing officer.

(h) A hearing officer will issue an order on a motion no later than 21 days after conclusion of the briefings or arguments.

(i) Motions for continuance. Continuances shall be granted only upon a showing of good cause. Motions for continuance must be filed in a timely manner. Stipulations for a continuance shall not be effective unless and until approved by the hearing officer.

(1) Exceptions for a hearing regarding the registration of a charitable organization, professional fundraising consultant, or paid solicitor. A hearing officer may continue a proceeding up to 15 days pursuant to section 6-16-111(6)(b), C.R.S.

### 3.7 Setting of hearings or other proceedings

3.7.1 Within 30 days of the filing of an administrative complaint or request for a hearing, a hearing officer shall set a date for hearing. All hearings must take place within 98 days from when the administrative complaint is filed, unless a stay is entered, the matter is continued, or the hearing officer finds good cause for an enlargement of time. The hearing officer will also provide a scheduling order to the parties.

(a) Exception for denials, suspensions, or revocations of registrations under the Charitable Solicitations Act. A hearing officer will set and give notice of the hearing within seven days of receiving a request for a hearing per section 6-16-111(6)(b), C.R.S. The hearing shall take place within 49 days after a notice of hearing is provided to the parties.

(b) Exception for HAVA complaints. If a HAVA complaint is transferred to the hearing officer for alternative dispute resolution under Rule 13.2.9, 8 CCR 1505-1, a hearing officer shall set a hearing within 14 days of receipt of the complaint. A hearing and order shall take place within 60 days after a receipt of the complaint by the hearing officer.

- (c) Exception for petition circulator complaints. A hearing officer shall set a hearing within three business days of receipt of the administrative complaint. A hearing and order shall take place either 14 days after receipt of the administrative complaint or prior to the final petition review date, whichever is earlier.
- (d) Exception for petition circulator report complaints. A hearing officer shall set a hearing within seven days of the deadline to cure the alleged violation or seven days after the responding party attempted to cure the violation, whichever is earlier. The hearing and order shall take place within 14 days after the deadline to cure the alleged violation or 14 days after the responding party attempted to cure the violation, whichever is earlier.
- (e) Exception for protests for candidate petitions. A hearing officer shall set a hearing within seven days of receipt of the protest. The notice of the hearing must be provided to the parties no later than five days prior to the hearing. The hearing and order must take place no later than seven days prior to the deadline to certify ballot content on the primary election ballot, and no later than 14 days prior to the deadline to certify ballot content for any other candidate in any other election. A hearing concerning a protest for candidate petitions may be conducted solely by paper review upon determination by the hearing officer.
- (f) Exception for protests for recall petitions. A hearing officer shall set a hearing within three business days of receipt of the protest. The hearing and order shall take place between five and 10 days after a notice of the hearing is provided to the parties, and no more than 30 days from the date of the initial protest was file with a division.

3.7.2 For a proceeding that is stayed, or for a hearing that has been continued, any party may file a request to reset the proceedings. The hearing officer may issue a scheduling order during stayed proceedings in the interest of justice or to serve the efficiency of the proceedings.

### 3.8 Mediation for licensees

3.8.1 Upon petition of the licensee or the Secretary of State after the licensee has received the notice of hearing, the hearing officer shall order mediation pursuant to section 24-4-105(4)(b), C.R.S., except if a license is summarily suspended under section 24-4-104(4), C.R.S.

3.8.2 The Secretary of State shall provide a notice of mediation to the hearing officer stating the date of the mediation. This notice shall automatically stay the proceedings.

3.8.3 If mediation fails, the Secretary of State shall notify the hearing officer within seven days, and the hearing officer shall proceed with the hearing.

### 3.9 Settlements

3.9.1 At any time, the parties may enter into a settlement agreement. The settlement agreement must be in writing and signed by the parties.

3.9.2 A division may file a motion to stay proceedings with the hearing officer once good faith settlement negotiations begin. A division shall file a motion of dismissal with the hearing officer if a settlement has been approved by the deputy secretary. If the settlement agreement is not approved and alternative terms cannot be agreed upon, the division will move the hearing officer to lift the stay and resume proceedings before the hearing officer.

3.9.3 The following factors shall be considered in arriving at a settlement agreement:

- (a) Specific fine amounts outlined in statute or rule;
- (b) Any appropriate specific action outlined in statute or rule;
- (c) Any mitigating and aggravating factors in statute or rule to increase or decrease the monetary fine or terms, including the public interest in resolution of the complaint; and
- (d) As justice and equity is served.

3.9.4 The settlement agreement is contingent upon approval by the deputy secretary, who must also consider any factors set forth in statute or rule regarding a fine or action. If the deputy secretary does not approve the settlement agreement, none of the terms nor recitals of the agreement are binding or enforceable by either party.

3.9.5 If a respondent fails to comply with the terms of a settlement agreement, including failure to submit payment, failure to satisfy any registration, filing, or other tasks required by the settlement agreement, or failure to stop an action as required by the settlement agreement, the Secretary of State may pursue an enforcement action in Denver District Court.

3.9.6 The settlement agreement shall become the final agency action under section 24-4-105, C.R.S., upon approval by the deputy secretary. Settlements are not subject to appeal.

### 3.10 Discovery and subpoenas

#### 3.10.1 Discovery

- (a) Discovery may be sought by any party without authorization of the hearing officer.
- (b) Compliance with C.R.C.P. To the extent practicable, C.R.C.P. 26 through 37 and 121, section 1-12, and the duty to confer at C.R.C.P. 121, section 1-15(8), apply to proceedings within the scope of these rules, except to the extent that they provide for or relate to required disclosures, the time when discovery can be initiated, and discovery response times.
  - (1) Upon service of interrogatories and request for production or inspection, answers, responses, and objections if any, must be served upon the initiating party within 21 days.

- (2) Discovery for expedited hearings is not subject to discovery deadlines under the C.R.C.P. The hearing officer may hold a prehearing with the parties to discuss deadlines for discovery and other related issues or require the parties to confer and propose discovery deadlines. A shorter or longer time may be directed by the hearing officer or as agreed upon by the parties.
- (c) In addition to the requirements of C.R.C.P. 36, a request for admission shall explicitly advise the responding party that failure to timely respond to the request may result in all of the matters stated in the request being deemed established unless the hearing officer, on motion, permits withdrawal or amendment of the admission. The failure to comply with this rule may result in the matters contained in the request being deemed denied.
- (d) Discovery requests and responses should not be filed with the hearing officer, except to the extent necessary for the hearing officer to rule upon motions involving discovery disputes, requests for summary judgment, or such other dispositive motions as may depend on a discovery response.
- (e) Either party may move to modify discovery deadlines and limitations in accordance with prehearing procedures as set forth in Rule 3.11.
- (f) Either party may move for a protective order. The motion must specify the disclosure or portion of the disclosure that is to be subject to a protective order, as well as the legal basis for seeking such an order.

#### 3.10.2 Subpoenas

- (a) Upon oral or written request of any party or of counsel for any party, a hearing officer shall sign a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Unless otherwise provided by statute, rule, or regulation, practice before the hearing officer regarding subpoenas shall be governed by C.R.C.P. 45.
- (b) A hearing officer shall designate and authorize specific Secretary of State personnel to use a stamp signature or to otherwise duplicate the signature of a hearing officer on subpoenas completed by the parties. However, no other party or person may duplicate the signature of a hearing officer. Subpoenas issued in contravention of this rule are invalid and may subject the party using them to sanctions.
- (c) Any attorney representing a party before a hearing officer may issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Requests to attend by video conference may be directed to the hearing officer.

#### 3.11 Prehearing procedures, statements, and conferences

3.11.1 Prehearing conferences regarding motions, discovery issues, case management deadlines, or other matters may be held at the request of either party or upon order of the hearing officer.

3.11.2 Unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each other party a prehearing statement in substantial compliance with the form as outlined in Appendix A to these rules.

3.11.3 Prehearing statements shall be filed and served no later than seven days prior to the hearing or such other date as specified by the hearing officer. Exhibits shall not be filed with prehearing statements, unless ordered by the hearing officer. Exhibits shall be exchanged between the parties by the date on which prehearing statements are to be filed and served on such other date as ordered by the hearing officer.

(a) The authenticity of exhibits, statutes, ordinances, regulations, or standards set forth in the prehearing statement shall be admitted unless objected to in a written objection filed with the hearing officer and served on other parties no later than five days prior to hearing.

(b) The information provided in a prehearing statement shall be binding on each party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement and then only if it would not prejudice other parties or necessitate a delay of the hearing. The Secretary of State shall use numbers to identify exhibits and any opposing party shall use letters.

(c) In the event of noncompliance with this rule, the hearing officer may impose appropriate sanctions including, but not limited to, the striking of witnesses, exhibits, claims, and defenses.

(d) Expedited hearings do not require a prehearing statement.

### 3.12 General conduct of hearings

3.12.1 To the extent practicable, and unless inconsistent with these rules and the applicable statute, the C.R.C.P. applies to matters before the hearing officer. Unless the context otherwise requires, whenever the word "court" appears in a rule of civil procedure, that word shall be construed to mean a hearing officer. The following C.R.C.P. rules do not apply:

(a) C.R.C.P. 16;

(b) The filing deadlines for motions and cross motions for summary judgment set forth in C.R.C.P. 56(c); and

(c) Any other C.R.C.P. rule that by its terms necessarily does not apply to the litigation of a disputed administrative complaint.

3.12.2 A hearing officer does not need to strictly comply with the Colorado Rules of Evidence. Such rules shall serve as guidance for the hearing officer who has discretion to admit evidence, not admissible under Colorado Rules of Evidence, that is sufficiently reliable and trustworthy, and is evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

3.12.3 The hearing officer will conduct any hearings at the offices of the Secretary of State at 1700 Broadway, Denver, Colorado, unless exigent circumstances require use of another location. The Secretary of State will provide such administrative, technical, and logistical support to the hearing officer as may be required to facilitate such hearings. Remote hearings by video conference or telephone conference may be conducted as circumstances require.

3.12.4 Any hearing conducted by the hearing officer shall be open to the public, unless closed pursuant to a written order by the hearing officer finding good cause for such closure.

3.12.5 All hearings conducted by the hearing officer shall be audio recorded with an audio recording system provided by the Secretary of State.

(a) The audio recording of the hearing shall be the official record of the proceeding.

(b) Any party may request a copy of the recording at the party's expense.

(c) One party or the other, or by agreement of the parties, may make arrangements for a court reporter transcription of the proceedings.

(1) Neither the Secretary of State nor the hearing officer supplies court reporters. If any party wishes to have all or a portion of a proceeding transcribed by a court reporter, that party may make private arrangements to do so at that party's own expense. The recording of any proceeding made electronically by the hearing officer shall be the official record.

(2) A request to the hearing officer or the Secretary of State for a recording must be in writing and must contain the case number and the date and time of the hearing or conference.

3.12.6 Subject to the exceptions set forth in sections 1-45-111.7(5)(a)(II) and (III), C.R.S., all documents filed with or by the hearing officer shall be open to public inspection, unless otherwise prohibited by law, regulation, or court order, or when upon motion by either party and so ordered by the hearing officer to prohibit public inspection.

### 3.13 Burden of proof

3.13.1 The proponent of a request for remedy or relief shall have the burden of proof, and every party to the proceeding shall have the right to present their case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

3.13.2 Respondent bears the burden of proving any affirmative defenses.

3.13.3 The degree of proof required to prevail on a request for a remedy or relief is a preponderance of the evidence, unless a constitutional or statutory provision sets a different standard.

3.14 Post-hearing procedures. An initial decision shall be issued by a hearing officer within 21 days of the hearing and must be made in accordance with section 24-4-105, C.R.S. The hearing officer may issue an oral decision from the bench at the time of the hearing with a follow-up minute order within one business day. The hearing officer shall serve the initial decision upon the parties and the deputy secretary.

3.14.1 Exception for expedited hearings. An initial decision shall be issued by a hearing officer:

(a) Within 10 days following the hearing or within 10 days of the close of evidence, whichever is later, regarding a denial, suspension, or revocation of registration for a charitable organization, professional fundraising consultant, or paid solicitor under the Colorado Charitable Solicitations Act; and

(b) Within the timelines stated in Rules 3.7.1(a)-(e) for hearing regarding petitions.

3.14.2 In issuing an order that includes sanctions, the hearing officer shall consider the following factors:

(a) Specific fine amounts outlined in statute or rule;

(b) Any appropriate specific action outlined in statute or rule;

(c) Any mitigating and aggravating factors in statute or rule to increase or decrease the monetary fine or terms, including the public interest in resolution of the complaint; and

(d) As justice and equity is served.

3.14.3 Any party who seeks to reverse or modify the initial decision of the hearing officer shall file with the Secretary of State and all parties:

(a) A designation of the relevant parts of the record and transcript of the proceedings within 20 days and at their own expense, and

(b) Exceptions with the deputy secretary within 30 days of the initial decision.

3.14.4 The initial decision in campaign finance cases pursuant to section 1-45-111.7(6)(b), C.R.S., is subject to review by the deputy secretary, including any submission of exceptions filed by the parties.

3.14.5 All final agency action is subject to review under section 24-4-106, C.R.S.

3.15 Entry of appearance and withdrawal of counsel. Entries of appearance and withdrawals of counsel shall be in conformance with C.R.C.P. 121, section 1-1, unless new counsel enters an

appearance at the same time as prior counsel withdraws. Any out-of-state attorney shall comply with C.R.C.P. 221.1.

### 3.16 Ex parte communications

3.16.1 With the exception of scheduling or other purely administrative matters, a party or counsel for a party shall not initiate any communication with a hearing officer pertaining to a matter before that hearing officer unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with that hearing officer or directed to a hearing officer by any party shall be served upon all other parties or their counsel.

3.16.2 During the proceedings under this Rule 3, the deputy secretary, as well as staff directly supporting the deputy secretary or the deputy secretary's designee, shall have no contact regarding the matter with the hearing officer while the matter is pending before the hearing officer. Staff directly supporting the deputy secretary are authorized to contact support staff directly supporting the hearing officer concerning procedural, record-keeping, or other non-substantive matters.

### 3.17 General conduct of the hearing officer

3.17.1 Assignment of cases. Cases will be assigned on a rotating basis to the hearing officer(s) retained by the Secretary of State for purposes of conducting hearings under Rule 3. Should the Secretary of State retain only one hearing officer, that hearing officer will be assigned and will prioritize hearing cases in order of their filing as appropriate.

#### 3.17.2 Substitution of hearing officer

(a) In the event the hearing officer becomes aware of a circumstance that reflects an actual or perceived conflict of interest for the hearing officer to conduct a hearing on an administrative complaint, the hearing officer shall promptly transmit to the deputy secretary a request for the deputy secretary to appoint a substitute hearing officer in their place to conduct the hearing in the matter. The deputy secretary will appoint a substitute hearing officer to conduct the hearing of the pending administrative complaint.

(b) A party may seek substitution of the hearing officer assigned to conduct the hearing on an administrative complaint only upon a verified motion with supporting evidence that is concrete and particular and not speculative, demonstrating that a reasonable person would question the propriety of the hearing officer conducting the hearing on the administrative complaint. Such a request for substitution of the hearing officer will be determined in the first instance by the hearing officer assigned to hear the administrative complaint. If the hearing officer denies the request for a substitute hearing officer, that decision is not subject to review until the hearing officer issues an initial decision for review by the deputy secretary, at which time a party may raise the substitution issue among its exceptions to the initial decision.



(c) By way of illustration, and without limitation, circumstances that may give rise to an actual or perceived conflict of interest requiring the substitution of the hearing officer are the following:

- (1) A familial relationship with a party or the party's counsel;
- (2) A current business or professional relationship with or representation of a party;
- (3) Current representation of a respondent in another case either before the Secretary of State or in a separate hearing; or
- (4) Such other circumstances as would cause a reasonable person to question the propriety of the hearing officer conducting the hearing on the administrative complaint.

## **Appendix A – Example Outline for Prehearing Statement**

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

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

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

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

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

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

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

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

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

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

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

## **Appendix B – Example Outline for Case Management Order**

A case management conference was held on \_\_\_\_\_ at which the following schedule and deadlines were ordered:

### **Hearing:**

The hearing has been scheduled for \_\_\_\_\_ through \_\_\_\_\_ at \_\_\_\_\_ starting at 9:00 a.m.

### **Discovery:**

1. Discovery cutoff, including completion of expert and fact witness depositions and receipt of all written discovery: \_\_\_\_\_
2. The numerical limits on interrogatories, requests forth in C.R.C.P. 26 (b)(2) are/are not adopted. The C.R.C.P. 26 (b)(2)(A) are/are not adopted.
3. Other discovery issues

### **Expert Disclosures:**

1. The Agency's initial disclosure of expert witnesses: \_\_\_\_\_
2. The opposing party's initial disclosure of expert witnesses: \_\_\_\_\_
3. Rebuttal experts: \_\_\_\_\_
4. Expert disclosures shall be filed with the hearing officer, as well as served on the opposing party.

### **Prehearing Statements:**

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

### **Motions Deadline:**

4. Dispositive motions: \_\_\_\_\_ Responses: \_\_\_\_\_
5. All other prehearing motions to the extent that the basis for the motion is reasonably known: \_\_\_\_\_ Response: \_\_\_\_\_

### **Service:**

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

### **Filing:**

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

### **Prehearing Conference:**

A motions hearing/final prehearing conference is set for \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.  
at \_\_\_\_\_.

**Done and Signed:**

(date)

\_\_\_\_\_

(NAME)

Hearing Officer

*Amendments to 8 CCR 1505-1 are as follows:*

*Amendments to Rule 13.2 concerning the inclusion of a reference to 8 CCR 1505-3, Rule 3, for the administrative hearing process and necessary update to the deadline that the Secretary of State shall consider the initial determination by the hearing officer for Help America Vote Act (HAVA) complaints:*

13.2.10 Alternative dispute resolution under section 1-1.5-105(2)(j), C.R.S.

- (a) If the Secretary of State does not resolve the complaint within 90 days of the date that it was filed and the complainant does not consent to an extension of time, the Secretary of State will transfer the complaint to a hearing officer for a hearing as required by 8 CCR 1505-3, Rule 3.
- (b) The Secretary of State will provide the record and any other materials from the proceedings to the hearing officer.
- (c) The Secretary of State will consider the initial determination by the hearing officer and issue a final determination within 30~~60~~ days of the date the determination is received by the Secretary.

*Amendments to Rule 14.5 concerning a grammatical inclusion:*

14.5 Voter Registration Drive (VRD) Complaints and fines

*Amendments to Rule 14.5.5 concerning the administrative hearing process for VRD complaints and the inclusion of a reference to 8 CCR 1505-3, Rule 3, for the administrative hearing process:*

- 14.5.5 The VRD organizer may appeal a fine by requesting a hearing within 60~~and has 30~~ days following receipt of notification of the fine. See 8 CCR 1505-3, Rule 3, for additional information regarding the administrative hearing process to submit a written response setting forth the reasons the VRD organizer is appealing the fine. The VRD organizer may request, within the 30 days, a hearing with a hearing officer to dispute the fine.

*Repeal of Rule 14.5.6 as it does not align with the standardized administrative hearing process outlined in 8 CCR 1505-3, Rule 3, and corresponding statute:*

- ~~14.5.6 Within 30 days after receipt of the written response, or hearing procedures, the Secretary of State will issue and order affirming or dismissing the imposed fine.~~

*Amendments to 8 CCR 1505-6 are as follows:*

*Amendments to Rule 1 are as follows:*

*Repeal of Rule 1.2 as a result of repealing Rule 24:*

~~1.2 —“Agency” or “Department” means the Colorado Department of State.~~

*[Not shown: current Rules 1.3 through 1.6 are renumbered to Rules 1.2 through 1.5.]*

*Repeal of Rule 1.7 as a result of repealing Rule 24:*

~~1.7 —“C.R.C.P.” means Colorado Rules of Civil Procedure.~~

*[Not shown: current Rules 1.8 through 1.14 are renumbered to Rules 1.6 through 1.12.]*

*Repeal of Rule 1.15 as a result of repealing Rule 24:*

~~1.15 —“Hearing officer” has the same meaning as in section 1-45-111.7(1)(d), C.R.S., and is the person who has been retained by the agency to conduct hearings and issue initial decisions under section 1-45-111.7(6), C.R.S.~~

*[Not shown: current Rules 1.16 through 1.18 are renumbered to Rules 1.13 through 1.15.]*

*Repeal of Rule 1.19 as a result of repealing Rule 24:*

~~1.19 —“Initial decision” has the same meaning as section 24-4-102, C.R.S., and includes the initial determination referenced in section 1-45-111.7(6)(b), C.R.S.~~

*[Not shown: current Rules 1.20 through 1.38 are renumbered to Rules 1.16 through 1.34.]*

*Amendments to Rule 4.3.3 concerning an internal rule reference:*

- 4.3.3 For campaign and political finance complaints involving whether the respondent is an organization that has a major purpose of supporting or opposing one or more ballot measures, a rebuttable presumption that the organization met the standard for having a major purpose under section 1-45-103(12)(b), C.R.S., is created if:

*[Not shown: no changes to section (b).]*

- (b) The respondent fails to provide substantial evidence, as defined in Rule ~~4-361.32~~, that they have not met the major purpose standard.

*Amendments to Rule 4.3.4 concerning a reference to 8 CCR 1505-3, Rule 3, for the administrative hearing process:*

- 4.3.4 This presumption will be considered sufficient information to support the filing of an administrative complaint with a hearing officer under section 1-45-111.7(5), C.R.S. The presumption of meeting the major purpose standard can be rebutted by the respondent during the administrative hearing process. The presumption of meeting the major purpose standard no longer applies once the respondent has appeared and answered an administrative complaint in a hearing before a hearing officer. See 8 CCR 1505-3, Rule 3, for additional information regarding the administrative hearing process.

*Amendments to Rule 23 are as follows:*

*Amendments to Rule 23.2.1 concerning a terminology update:*

- 23.2.1 The original complaint, notice of initial review, motion to dismiss, an order issued by the Secretary of State's Office, final agency decision, and any administrative complaint filed by the elections division with a hearing officer will be publicly available at the time the document is provided to the respondent.

*Amendments to Rule 23.3.1 concerning a terminology update and a reference to 8 CCR 1505-3, Rule 3, for the administrative hearing process:*

- 23.3.1 After aan administrative complaint has been filed with a hearing officer, under 8 CCR 1505-3, Rule 3, the elections division may enter into a settlement agreement with the respondent.

*Repeal of all Rules within Rule 24, which includes Rules 24.1 through 24.21 and Appendices A and B, due to the inclusion of the standardized administrative hearing process outlines in 8 CCR 1505-3, Rule 3:*

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

[Reserved.]

~~24.1—Scope of rules~~

- ~~24.1.1—These rules apply to initial complaints filed under section 1-45-111.7(2)(a) and (7), C.R.S., and to administrative complaints filed by the division with a hearing officer pursuant to section 1-45-111.7(5), C.R.S.~~

~~24.2—Filing an administrative complaint~~

- ~~24.2.1—The division shall determine whether it will file an administrative complaint within:~~

- ~~(a)—30 days after initiating an investigation under section 1-45-111.7(5), C.R.S.; or  
(b)—14 business days after the deputy secretary's denial of a motion to dismiss the initial complaint filed under section 1-45-111.7(5), C.R.S.~~

- ~~24.2.2—An administrative complaint may supplement or amend the initial complaint with such additional or alternative factual allegations and legal claims that are supported by the division's review and investigation under sections 1-45-111.7(4) and (5), C.R.S., and also may omit any factual allegations, legal claims, and named respondents in the initial complaint that are not supported by the division's review and investigation.~~

- ~~24.2.3—In any proceedings related to an administrative complaint, the division will be represented by counsel from the Colorado Department of Law, or such other special assistant attorneys general as may be designated by the Colorado Department of Law.~~

- ~~24.2.4—For purposes of this rule, any filings made to the hearing officer shall be made to the following email address: AdministrativeHearingOfficer@coloradosos.gov.~~

~~24.3—General conduct of hearings~~

- ~~24.3.1—To the extent practicable, and unless inconsistent with these rules and the applicable statute, the C.R.C.P. applies to matters before the hearing officer. Unless the context~~

otherwise requires, whenever the word "court" appears in a rule of civil procedure, that word shall be construed to mean a hearing officer. The following C.R.C.P. rules do not apply:

- (a) — C.R.C.P. 16.;
- (b) — The filing deadlines for motions and cross motions for summary judgment set forth in C.R.C.P. 56(c); and
- (c) — Any other C.R.C.P. rule that by its terms necessarily does not apply to the litigation of a disputed administrative complaint.

24.3.2 — A hearing officer need not strictly comply with the Colorado Rules of Evidence. Such rules shall serve as guidance for the hearing officer who has discretion to admit evidence, not admissible under Colorado Rules of Evidence, that is sufficiently reliable and trustworthy, and is evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

24.3.3 — The hearing officer will conduct any hearings at the offices of the Department at 1700 Broadway, Denver, Colorado, unless exigent circumstances require use of another location. The Department will provide such administrative, technical, and logistical support to the hearing officer as may be required to facilitate such hearings. Remote hearings by video conference or telephone conference may be conducted as circumstances require.

24.3.4 — Any hearing conducted by the hearing officer shall be open to the public, unless closed pursuant to a written order by the hearing officer finding good cause for such closure.

24.3.5 — All hearings conducted by the hearing officer shall be audio recorded, with an audio recording system provided by the Department.

- (a) — The audio recording of the hearing shall be the official record of the proceeding.
- (b) — Any party may request a copy of the recording, at the party's expense.
- (c) — One party or the other, or by agreement of the parties, may make arrangements for a court reporter transcription of the proceedings.

24.3.6 — Subject to the exceptions set forth in sections 1-45-111.7(5)(a)(II) and (III), C.R.S., all documents filed with or by the hearing officer shall be open to public inspection, unless otherwise prohibited by law, regulation, or court order, or when upon motion by either party and so ordered by the hearing officer to prohibit public inspection.

24.3.7 — As required by section 1-45-111.7(6)(b), C.R.S., or any successor provision, any initial decision issued by a hearing officer must be made in accordance with section 24-4-105, C.R.S., and is subject to review by the deputy secretary, including any submission of exceptions filed by the parties. The final agency decision is subject to review under section 24-4-106, C.R.S.

#### 24.4 — Assignment of cases

24.4.1 — Cases will be assigned on a rotating basis to the hearing officer(s) retained by the Department for purposes of conducting hearings under this rule. Should the Department retain only one hearing officer, that hearing officer will be assigned and will prioritize hearing cases in order of their filing as appropriate.



#### 24.5 — Setting of hearings or other proceedings

~~24.5.1 Within 30 days of the filing of an administrative complaint, a hearing officer will set a date for hearing unless a stay is entered, the matter is continued, or the hearing officer finds good cause for an enlargement of time.~~

~~24.5.2 For a proceeding that is stayed, or for a hearing that has been continued, any party may file a request to reset the proceedings to set a hearing date with the hearing officer.~~

#### 24.6 — Entry of appearance and withdrawal of counsel

~~24.6.1 Entries of appearance and withdrawals of counsel shall be in conformance with C.R.C.P. 121, section 1-1. Any out-of-state attorney shall comply with C.R.C.P. 221.1.~~

~~24.6.2 Rule 24.7.1 does not apply to a substitution of counsel if new counsel enters an appearance at the same time as prior counsel withdraws.~~

#### 24.7 — Default procedures

~~24.7.1 A person who is served an administrative complaint is required to file a written answer, a motion under C.R.C.P. 12(b), a motion for enlargement of time or a motion to stay due to settlement within 30 days after the service or mailing of notice of the proceeding. If a person receiving such notice fails to file an answer, a hearing officer may enter a default against that person.~~

~~24.7.2 Respondent may, but is not required to, file an answer during a stay or if the administrative complaint is dismissed. If a stay is lifted and complaint proceedings resume, respondent must file an answer, or responsive pleading within 30 days or as provided by the hearing officer.~~

~~24.7.3 A hearing officer will not grant a motion for entry of a default under this rule unless the following requirements are met:~~

- ~~(a) The motion for entry of a default must be served upon all parties to the proceeding, including the person against whom a default is sought;~~
- ~~(b) The motion shall be accompanied by an affidavit establishing that both the notice of the proceeding and the motion for entry of default have been personally served upon the person against whom a default is sought or have been mailed by first-class mail to the last address furnished to the agency by the person against whom the default is sought; and~~
- ~~(c) Any motion for entry of default requesting a fine or civil penalty shall set forth the legal authority for the claim and any applicable calculation thereof.~~

#### 24.8 — Discovery

~~24.8.1 Discovery may be sought by any party without authorization of the hearing officer.~~

~~24.8.2 To the extent practicable, C.R.C.P. 26 through 37 and 121, section 1-12, and the duty to confer at C.R.C.P. 121, section 1-15(8), apply to proceedings within the scope of these rules, except to the extent that they provide for or relate to required disclosures, or the time when discovery can be initiated.~~

~~24.8.3—In addition to the requirements of C.R.C.P. 36, a request for admission shall explicitly advise the responding party that failure to timely respond to the request may result in all of the matters stated in the request being deemed established unless the hearing officer, on motion, permits withdrawal or amendment of the admission. The failure to comply with this rule may result in the matters contained in the request being deemed denied.~~

~~24.8.4—Discovery requests and responses should not be filed with the hearing officer, except to the extent necessary for the hearing officer to rule upon motions involving discovery disputes, requests for summary judgment, or such other dispositive motions as may depend on a discovery response.~~

~~24.8.5—Either party may move to modify discovery deadlines and limitations in accordance with Pre-Hearing Procedures as set forth in Rule 24.12.~~

~~24.8.6—Either party may move for a protective order. The motion must specify the disclosure or portion of the disclosure to be subject to a protective order, as well as the legal basis for seeking such an order.~~

#### ~~24.9—Determination of motions~~

~~24.9.1—Any motion involving a contested issue of law shall be supported by a recitation of legal authority.~~

~~24.9.2—A responding party shall have 14 days from service, or as specified by the hearing officer to file and serve a responsive brief. Reply briefs may be filed within seven days of service of the responsive brief, or as specified by the hearing officer.~~

~~24.9.3—If facts not in the record before the hearing officer are to be considered in disposition of the motion, the parties may file affidavits at the time of filing the motion or responsive or reply brief. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.~~

~~24.9.4—If possible, motions will be determined upon the written motion and briefs submitted. The hearing officer may order oral argument or evidentiary hearing on the hearing officer's request. If any party fails to appear at an oral argument or hearing without prior showing of good cause for non-appearance, the hearing officer may proceed to hear and rule on the motion.~~

~~24.9.5—An expedited hearing on any motion may be held at the instance of the hearing officer. If any party requests that a motion be determined immediately with or without a hearing, or that a hearing be held on a motion in advance of a previously set motions date, that party shall:~~

~~(a)——Inform the hearing officer in writing of said request;~~

~~(b)——Contact all other parties, determine their position on the motion, and indicate on the face of the motion whether other parties oppose the motion and whether they will request a hearing on the motion; and~~

~~(c)——Conference in all other parties to set the matter directly with the hearing officer on an expedited basis, if a hearing is desired by any party and authorized upon advanced notice by the hearing officer.~~

#### ~~24.10—Burden of proof~~

~~24.10.1 The proponent of a request for remedy or relief shall have the burden of proof, and every party to the proceeding shall have the right to present their case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.~~

~~24.10.2 Respondent bears the burden of proving any affirmative defenses.~~

~~24.10.3 The degree of proof required to prevail on a request for a remedy or relief is a preponderance of the evidence, unless a constitutional or statutory provision sets a different standard.~~

~~24.11—Prehearing procedures, statements, and conferences~~

~~24.11.1 Unless otherwise ordered by the hearing officer, each party shall file with the hearing officer and serve on each other party a prehearing statement in substantial compliance with the form as outlined in Appendix A to these rules.~~

~~24.11.2 Prehearing statements shall be filed and served no later than seven days prior to the hearing or such other date as specified by the hearing officer. Exhibits shall not be filed with prehearing statements, unless ordered by the hearing officer. Exhibits shall be exchanged between the parties by the date on which prehearing statements are to be filed and served on such other date as ordered by the hearing officer.~~

~~(a) The authenticity of exhibits, statutes, ordinances, regulations, or standards set forth in the prehearing statement shall be admitted unless objected to in a written objection filed with the hearing officer and served on other parties no later than five days prior to hearing.~~

~~(b) The information provided in a prehearing statement shall be binding on each party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement and then only if it would not prejudice other parties or necessitate a delay of the hearing. The division shall use numbers to identify exhibits and any opposing party shall use letters.~~

~~(c) In the event of noncompliance with this rule, the hearing officer may impose appropriate sanctions including, but not limited to, the striking of witnesses, exhibits, claims, and defenses.~~

~~24.11.3 Prehearing conferences may be held at the request of either party or upon order of the hearing officer.~~

~~24.12—Motions for continuance~~

~~24.12.1 Continuances shall be granted only upon a showing of good cause. Motions for continuance must be filed in a timely manner. Stipulations for a continuance shall not be effective unless and until approved by the hearing officer.~~

~~24.12.2 Good cause may include, but is not limited to:~~

~~(a) Death or incapacitation of a party or an attorney for a party;~~

- (b) ~~Entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing;~~
- (c) ~~A change in the parties or pleadings sufficiently significant to require a postponement;~~
- (d) ~~A showing that more time is necessary to complete mandatory preparation for the hearing;~~
- (e) ~~Agreement of the parties to a settlement of the case which has been submitted for approval to the deputy secretary; or~~
- (f) ~~Discovery.~~

~~24.12.3 Good cause normally will not include the following:~~

- (a) ~~Unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case;~~
- (b) ~~Unavailability of a necessary witness, if the witness's testimony can be taken by telephone or by deposition; or~~
- (c) ~~Failure of an attorney or a party timely to prepare for the hearing.~~

#### ~~24.13 Subpoenas~~

~~24.13.1 Upon oral or written request of any party or of counsel for any party, a hearing officer shall sign a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Unless otherwise provided by statute, rule, or regulation, practice before the hearing officer regarding subpoenas shall be governed by C.R.C.P. 45.~~

~~24.13.2 Hearing officer shall designate and authorize specific Department personnel to use a stamp signature or to otherwise duplicate the signature of a hearing officer on subpoenas completed by the parties. However, no other party or person may duplicate the signature of a hearing officer. Subpoenas issued in contravention of this rule are invalid and may subject the party using them to sanctions.~~

~~24.13.3 Any attorney representing a party before a hearing officer may issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Such attendance may be in person or by video conference as provided by the hearing officer.~~

#### ~~24.14 Settlements~~

~~24.14.1 At any time, the parties may enter into a settlement agreement. The settlement agreement must be in writing and signed by the parties.~~

~~24.14.2 The division shall file a motion to stay proceedings with the hearing officer once good faith settlement negotiations begin. The division shall file a motion of dismissal with the hearing officer if a settlement has been approved by the deputy secretary. If the settlement agreement is not approved and alternative terms cannot be agreed upon, the~~

division will move the hearing officer to lift the stay and resume proceedings before the hearing officer.

24.14.3 The following factors shall be considered in arriving at a settlement agreement:

- (a) Specific fine amounts outlined in Rule 23.3.3;
- (b) Any appropriate specific action in Rule 23.3.4; and
- (c) The mitigating and aggravating factors in Rule 23.3.5 to increase or decrease the monetary fine or terms, including the public interest in resolution of the complaint.

24.14.4 The settlement agreement is contingent upon approval by the deputy secretary, who must also consider the factors set forth in Rule 24.15.3. If the deputy secretary does not approve the settlement agreement, none of the terms or recitals of the agreement are binding or enforceable by either party.

24.14.5 If Respondent fails to comply with the terms of a settlement agreement, including failure to submit payment or satisfy any registration, filing, or other tasks required by the settlement agreement, the division may pursue an enforcement action in Denver District Court.

24.14.6 The settlement agreement shall become the final agency action under section 24-4-105, C.R.S., upon approval by the deputy secretary.

#### 24.15—Ex parte communications

24.15.1 With the exception of scheduling or other purely administrative matters, a party or counsel for a party shall not initiate any communication with a hearing officer pertaining to a matter before that hearing officer unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with that hearing officer or directed to a hearing officer by any party shall be served upon all other parties or their counsel.

24.15.2 During the pendency of an administrative complaint, the deputy secretary, as well as staff directly supporting the deputy secretary or the deputy secretary's designee, shall have no contact regarding the matter with the hearing officer while the matter is pending before the hearing officer. Staff directly supporting the deputy secretary or the deputy secretary's designee are authorized to contact support staff directly supporting the hearing officer concerning procedural, record-keeping, or other non-substantive matters.

#### 24.16—Computation and modification of time

24.16.1 In computing any period of time prescribed or allowed by these rules, the provisions of C.R.C.P. 6 shall apply. The time periods of these rules may be modified at the discretion of the hearing officer.

#### 24.17—Filing of pleadings and other papers

24.17.1 Pleadings and other papers may be filed by email to the hearing officer. Pleadings may not be filed by facsimile copy.

24.17.2 After the case has been assigned a case number, all pleadings and papers filed with the hearing officer shall contain that case number.

~~24.18—Service of pleadings and other papers:~~

~~24.18.1 Service of pleadings or other papers on a party or on an attorney representing a party may be made by email. Service of pleadings will not be accepted by facsimile copy.~~

~~24.18.2 Pleadings or other papers sent to the hearing officer must contain a certificate of service attesting to service on the opposing party and in the case of service by mail providing the address where pleadings or other papers were served.~~

~~24.18.3 Attorneys and parties not represented by attorneys must inform the hearing officer and all other parties of their current address and of any change of address during the course of the proceedings.~~

~~24.19—Court reporters~~

~~24.19.1 Neither the Department nor the hearing officer supplies court reporters. If any party wishes to have all or a portion of a proceeding transcribed by a court reporter, that party may make private arrangements to do so at that party's own expense. The recording of any proceeding made electronically by the hearing officer shall be the official record.~~

~~24.19.2 A request to the hearing officer or the Department for a recording must be in writing and must contain the case number and the date and time of the hearing or conference.~~

~~24.20—Substitution of hearing officer~~

~~24.20.1 In the event the hearing officer becomes aware of a circumstance that reflects an actual or perceived conflict of interest for the hearing officer to conduct a hearing on an administrative complaint, the hearing officer shall promptly transmit to the deputy secretary a request for the deputy secretary to appoint a substitute hearing officer in their place to conduct the hearing in the matter. The deputy secretary will appoint a substitute hearing officer to conduct the hearing of the pending administrative complaint.~~

~~24.20.2 A party may seek substitution of the hearing officer assigned to conduct the hearing on an administrative complaint only upon a verified motion with supporting evidence that is concrete and particular and not speculative, demonstrating that a reasonable person would question the propriety of the hearing officer conducting the hearing on the administrative complaint. Such a request for substitution of the hearing officer will be determined in the first instance by the hearing officer assigned to hear the administrative complaint. If the hearing officer denies the request for a substitute hearing officer, that decision is not subject to review until the hearing officer issues an initial decision for review by the deputy secretary, at which time a party may raise the substitution issue among its exceptions to the initial decision.~~

~~24.20.3 By way of illustration, and without limitation, circumstances that may give rise to an actual or perceived conflict of interest requiring the substitution of the hearing officer are the follow:~~

~~(a)——A familial relationship with a party or the party's counsel;~~

~~(b)——A current business or professional relationship with or representation of a party;~~

~~(c)——Current representation of a respondent in another campaign finance case either before the division or in a separate hearing; or~~

(d) ~~Such other circumstances as would cause a reasonable person to question the propriety of the hearing officer conducting the hearing on the administrative complaint.~~

#### ~~24.21—Transfer~~

~~24.21.1 Upon motion by the division, any administrative complaint pending before the Office of Administrative Courts shall be transferred to a hearing officer as provided for in these rules. The administrative complaint will proceed uninterrupted.~~

## APPENDIX A – OUTLINE FOR PREHEARING STATEMENT

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

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

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

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

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

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

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

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

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

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

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



## APPENDIX B – OUTLINE FOR CASE MANAGEMENT ORDER

A case management conference was held on \_\_\_\_\_ at which the following schedule and deadlines were ordered:

### Hearing:

The hearing has been scheduled for \_\_\_\_\_ through \_\_\_\_\_ at \_\_\_\_\_ starting at 9:00 a.m.

### Discovery:

1. ~~Discovery cutoff, including completion of expert and fact witness depositions and receipt of all written discovery: \_\_\_\_\_~~
2. ~~The numerical limits on interrogatories, requests forth in C.R.C.P. 26 (b)(2) are/are not adopted. The C.R.C.P. 26 (b)(2)(A) are/are not adopted.~~
3. ~~Other discovery issues~~

### Expert Disclosures:

1. ~~The Agency's initial disclosure of expert witnesses: \_\_\_\_\_~~
2. ~~The opposing party's initial disclosure of expert witnesses: \_\_\_\_\_~~
3. ~~Rebuttal experts: \_\_\_\_\_~~
4. ~~Expert disclosures shall be filed with the hearing officer, as well as served on the opposing party.~~

### Prehearing Statements:

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

### Motions Deadline:

1. ~~Dispositive motions: \_\_\_\_\_ Responses: \_\_\_\_\_~~
2. ~~All other prehearing motions to the extent that the basis for the motion is reasonably known: \_\_\_\_\_ Response: \_\_\_\_\_~~
3. ~~Service:~~
4. ~~(Set out any agreement or order as to the method of service, i.e., by email, mail, or other method. Set out whether extra time for mailing is permitted.)~~
5. ~~Filing:~~
6. ~~(Set out any agreement or order as to the method of filing, i.e., by email, mail, or other method. Set out whether extra time for mailing is permitted.)~~

### 7. Prehearing Conference:

8. ~~A motions hearing/final prehearing conference is set for \_\_\_\_\_ at \_\_\_\_ a.m./p.m. at \_\_\_\_\_.~~

**9. ~~DONE AND SIGNED~~**

10. ~~(date)~~

11. ~~\_\_\_\_\_~~

12. ~~\_\_\_\_\_~~

13. ~~\_\_\_\_\_ (NAME)~~

14. ~~\_\_\_\_\_ Hearing Officer~~

*Amendments to 8 CCR 1505-8 are as follows:*

*Amendments to Rule 5 are as follows:*

*Amendments to Rule 5.6.1 concerning the inclusion of a reference to 8 CCR 1505-3, Rule 3, for the administrative hearing process and updating language to be consistent with the administrative hearing process outlined in 8 CCR 1505-3, Rule 3:*

5.6.1 If, after its investigation, the division has reasonable grounds to believe that a violation of section 24-6-301 et seq. C.R.S., has occurred, the division may initiate a hearing with ~~the Secretary of State or their designee~~ a hearing officer under section 24-4-105, C.R.S. and 8 CCR 1505-3, Rule 3.

5.6.2 During the hearing, the division may recommend that the ~~Secretary of State or their designee~~ hearing officer take any one or more of the following actions:

*[Not shown: no changes to sections (a) through (e).]*

(f) Determine another remedy in accordance with section 24-6-301, et seq., C.R.S. and 8 CCR 1505-3, Rule 3.14.2.

*Repeal of Rule 5.6.3 as it is no longer consistent with the administrative hearing process outlined in 8 CCR 1505-3, Rule 3, and these rules:*

~~5.6.3—Following a hearing under Rule 5.6.1, the Secretary of State or their designee may dismiss the complaint or take any of the actions listed in Rule 5.6.1. The decision following a hearing is a final agency decision.~~

*Amendments to 8 CCR 1505-9 are as follows:*

*Amendments to Rule 3 are as follows:*

*Amendments to Rule 3.1 concerning the update to the expedited hearing process for Colorado Charitable Solicitations Act complaints to be consistent with statute and 8 CCR 1505-3, Rule 3:*

- 3.1 The Secretary of State will file an administrative complaint with a hearing officer. The hearing officer must set and give notice of ~~the an expedited~~ hearing within seven days of receiving a request for a hearing per section 6-16-111(6)(b), C.R.S. The hearing must be held within 49 days of service of the notice of hearing, unless parties stipulate otherwise. See 8 CCR 1505-3, Rule 3, for additional information regarding the administrative hearing process~~Secretary will set hearing between 20 and 45 days after the mailing of the notice.~~

*Amendments to Rule 3.3 concerning the date in which a hearing officer will issue an initial decision that is consistent with statute and 8 CCR 1505-3, Rule 3:*

- 3.3 The hearing officer will issue an initial decision, as governed by section 24-4-105(14), C.R.S., within 10 days of a hearing or within 10 days of the close of evidence, whichever is later~~The Secretary will take final agency action within ten days following the hearing.~~

*Amendments to 8 CCR 1505-11 are as follows:*

*Amendments to Rule 3 are as follows:*

*Amendments to Rule 3.1.3 concerning the inclusion of a reference to 8 CCR 1505-3, Rule 3, regarding the administrative hearing process for rejected trainer applications:*

- 3.1.3 Deficient application. The Secretary of State will notify an applicant of any application or curriculum deficiencies. If the applicant fails to cure the deficiency within 30 days after the mailing date of the notice, the Secretary will consider the application rejected. A rejected applicant may request a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.) and 8 CCR 1505-3, Rule 3.

*Amendments to Rule 3.1.3 concerning the inclusion of a reference to 8 CCR 1505-3, Rule 3, regarding the administrative hearing process for curing complaints against vendors or course providers:*

- 3.6.5 Right to respond to and cure noncompliance and right to hearing before terminating, suspending, or imposing conditions on accreditation or approval.
  - (a) Except in cases of deliberate and willful violation or of substantial danger to the public health and safety, the Secretary of State will provide a vendor or course provider with written notice, an opportunity to respond in writing, and a reasonable opportunity to comply with all lawful requirements that may warrant agency proceedings to terminate, suspend, or impose conditions on an existing accreditation of a vendor or approval of a course provider before instituting such proceedings in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.) and 8 CCR 1505-3, Rule 3.
  - (b) Except in cases of deliberate and willful violation or that the public health, safety, or welfare imperatively require emergency action, the Secretary of State will not terminate, suspend, or impose conditions on an existing accreditation of a vendor or approval of a course provider until after holding a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.) and 8 CCR 1505-3, Rule 3.

*[Not shown: no changes to section (c).]*

*Amendments to Rule 5 are as follows:*

*Amendments to Rule 5.3.5 concerning the inclusion of a reference to 8 CCR 1505-3, Rule 3, regarding the administrative hearing process for rejected remote notarization applications:*

- 5.3.5 Deficient provider application. If the Secretary of State denies approval of an applicant, the Secretary of State will notify the applicant of any application deficiencies. A rejected applicant may request a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.) and 8 CCR 1505-3, Rule 3.

*Amendments to Rule 5.3.9 concerning the inclusion of a reference to 8 CCR 1505-3, Rule 3, regarding the administrative hearing process for curing complaints against remote notarization system or storage provider:*

- 5.3.9 Right respond to and cure noncompliance and right to hearing before terminating, suspending, or imposing conditions on approval.
  - (a) Except in cases of deliberate and willful violation or of substantial danger to the public health and safety, the Secretary of State will provide a remote notarization

system or storage provider with written notice, an opportunity to respond in writing, and a reasonable opportunity to comply with all lawful requirements that may warrant agency proceedings to terminate, suspend, or impose conditions on an existing approval before instituting such proceedings in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.) and 8 CCR 1505-3, Rule 3.

- (b) Except in cases of deliberate and willful violation or that the public health, safety, or welfare imperatively require emergency action, the Secretary of State will not terminate, suspend, or impose conditions on an existing approval of a remote notarization system or storage provider until after holding a hearing in accordance with the State Administrative Procedure Act (Article 4 of Title 24, C.R.S.) and 8 CCR 1505-3, Rule 3.

*[Not shown: no changes to section (c).]*