

Preliminary Draft of Proposed Rules

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

Published: June 15, 2023

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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 July 20, 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 **July 15, 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
Shading	Revisions to 6/15/2023 preliminary draft

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

2 *Amendments to Rule 1 include recodifying the definition rules in Rule 24.2, New Rules, and amendments*
3 *to current rules:*

4 *Rule 1.1 is recodified from current Rule 24.2.1 with a citation amendment:*

5 1.124.2.4 “Administrative complaint” means a complaint alleging that one or more violations of
6 COLO. CONST. Article XXVIII of the Colorado Constitution, Article 45 of Title 1, C.R.S., such other
7 constitutional or statutory provisions that are incorporated or referenced therein, or the rules has
8 occurred and that is filed by the division, or its designee, with a hearing officer pursuant to
9 sections 1-45-111.7(5) and (7), C.R.S.

10 *Rule 1.2 is recodified from current Rule 24.2.2:*

11 1.224.2.2 “Agency” or “Department” means the Colorado Department of State.

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 *[Not shown: renumbering current Rule 1.1 to Rule 1.3.]*

2 *Amendments to current Rule 1.2, renumbering to Rule 1.4 and concerning a grammatical change:*

3 ~~1.4.2~~ “Business Activities” for purposes of Colo. Const. Article XXVIII:

4 ~~1.4.14.2.1~~ “Business activities” means providing goods or services that result in income or
5 any other revenue-generating activity not expressly for political purposes.

6 ~~1.4.21.2.2~~ “Cannot engage in business activities,” means that the articles of incorporation
7 and bylaws, either expressly or implicitly, prohibit the corporation from engaging in any
8 business activities.

9 *[McConnell v. Federal Elections Commission, 540 U.S. 93 (2003)]*

10 *[Not shown: renumbering current Rule 1.3 to Rule 1.5.]*

11 *Amendments to current Rule 1.4, renumbering to Rule 1.6 and concerning a grammatical change:*

12 ~~1.6.4~~ “Contribution” has the same meaning as set forth in Colo. Const. ~~a~~Article XXVIII, ~~e~~Section 2(5)(a),
13 and section 1-45-103(6), C.R.S.

14 ~~1.6.14.4.1~~ A contribution does not include an endorsement of a candidate or an issue by
15 any person, or include interest earned in an interest-bearing bank account, dividend
16 income from invested committee funds, earned income from commercially reasonable
17 transactions, or transfers of money within a political party.

18 ~~1.6.21.4.2~~ Volunteer services

19 (a) Time-based services volunteered by an individual are not considered a
20 contribution if the individual receives no direct or indirect compensation for the
21 time volunteered.

22 (b) If an individual volunteers only a portion of his or her time-based services, the
23 volunteered portion is not considered a contribution.

24 (c) Any unpaid services that create a thing of value are not considered a
25 contribution. If volunteer services yield a thing of value, “contribution” only
26 includes the reasonable value of the materials involved, unless the value is de
27 minimis.

28 ~~1.6.31.4.3~~ “Contribution in support of the candidacy” as outlined in Colo. Const. Article
29 XXVIII, Section 2(2), includes all contributions given directly to, or expenditures or
30 spending coordinated with, a candidate for a specific public office, including those to a
31 person who maintains a candidate committee after an election cycle.

32 *Rule 1.7 is recodified from current Rule 24.2.3 and amended:*

33 ~~1.724.2.3~~ “C.R.C.P.” means Colorado Rules of Civil Procedure.

34 *[Not shown: renumbering current Rule 1.5 to Rule 1.8.]*

35 *Rule 1.9 is recodified from current Rule 24.2.4:*

1 1.924.2.4 "Deputy secretary" means the person appointed by the Secretary of State as the deputy
2 secretary of state pursuant to section 24-21-105, C.R.S., with authority under section 1-45-111.7,
3 C.R.S., or such other person as may be designated by the deputy secretary of state as the
4 deputy secretary's designee under section 1-45-111.7(1)(b), C.R.S.

5 *New Rule 1.10, concerning the definition of direct ballot measure expenditure throughout 8 CCR 1505-6:*

6 1.10 "DIRECT BALLOT MEASURE EXPENDITURE" MEANS A DIRECT BALLOT ISSUE EXPENDITURE OR A DIRECT
7 BALLOT QUESTION EXPENDITURE.

8 *New Rule 1.11, concerning the definition of direct spending throughout 8 CCR 1505-6:*

9 1.11 "DIRECT SPENDING", AS USED IN SECTION 1-45-103(7.2), C.R.S., INCLUDES BOTH A MONETARY AND
10 NON-MONETARY PURCHASE, PAYMENT, DISTRIBUTION, LOAN, ADVANCE, DEPOSIT, MONETARY OR NON-
11 MONETARY GIFT, CONTRACT, PROMISE, OR AGREEMENT TO EXPEND FUNDS.

12 *Rule 1.12 is re-codified from current Rule 24.2.5 and amended:*

13 1.1224.2.5 "Division" OR "ELECTIONS DIVISION" has the same meaning as in section 1-45-111.7(1)(c),
14 C.R.S., which is commonly known as the Elections Division of the Colorado Department of State.

15 *[Not shown: renumbering current Rule 1.6 to Rule 1.13.]*

16 *New Rule 1.14, concerning the definition of funding intermediary throughout 8 CCR 1505-6:*

17 1.14 "FUNDING INTERMEDIARY", AS USED IN SECTION 1-45-103(12)(B)(II)(E), C.R.S., MEANS ACTING AS A
18 PASS-THROUGH FOR CONTRIBUTIONS EARMARKED FOR AN ISSUE COMMITTEE. A PERSON BECOMES AN
19 INTERMEDIARY WHEN THEY ACCEPT AN EARMARKED CONTRIBUTION FROM ONE PERSON AND THEN MAKE A
20 CONTRIBUTION TO AN ISSUE COMMITTEE AS DIRECTED.

21 *Rule 1.15 is re-codified from current Rule 24.2.6:*

22 1.1524.2.6 "Hearing officer" has the same meaning as in section 1-45-111.7(1)(d), C.R.S., and is the
23 person who has been retained by the agency to conduct hearings and issue initial decisions
24 under section 1-45-111.7(6), C.R.S.

25 *[Not shown: renumbering current Rules 1.7 through 1.8 to Rule 1.16 through 1.17.]*

26 *Rule 1.18 is re-codified from current Rule 24.2.7:*

27 1.1824.2.7 "Initial complaint" means a complaint alleging that one or more violations of COLO. CONST.
28 Article XXVIII of the Colorado Constitution, Article 45 of Title 1, C.R.S., such other constitutional
29 or statutory provisions that are incorporated or referenced therein, or the rules has occurred and
30 that is filed by any person, including the division, with the division pursuant to section 1-45-
31 111.7(2)(a) and (7), C.R.S.

32 *Rule 1.19 is re-codified from current Rule 24.2.8:*

33 1.1924.2.8 "Initial decision" has the same meaning as section 24-4-102, C.R.S., and includes the
34 initial determination referenced in section 1-45-111.7(6)(b), C.R.S.

35 *[Not shown: renumbering current Rules 1.9 through 1.13 to Rule 1.20 through 1.24.]*

36 *New Rule 1.25, concerning the definition of organization throughout 8 CCR 1505-6:*

1 1.25 "ORGANIZATION", AS USED IN SECTION 1-45-103(12)(B)(II), C.R.S., MEANS A PERSON OTHER THAN A
2 NATURAL PERSON OR TWO OR MORE NATURAL PERSONS THAT WORK TOGETHER WITH A PARTICULAR
3 PURPOSE.

4 *[Not shown: renumbering current Rules 1.14 through 1.16 to Rule 1.26 through 1.28.]*

5 *Amendments to current Rule 1.17, renumbered to Rule 1.29, fixing a grammatical error:*

6 1.294.47 "Political committee" has the same meaning as set forth in Colo. Const. Article XXVIII,
7 Section 2(12), and does not include a married couple.

8 *[Not shown: renumbering current Rules 1.18 through 1.21 to Rule 1.30 through 1.33.]*

9 *New Rule 1.34, concerning the definition of respondent throughout 8 CCR 1505-6:*

10 1.34 "RESPONDENT" MEANS A PERSON OR ENTITY WHO IS THE SUBJECT OF A CAMPAIGN AND POLITICAL
11 FINANCE COMPLAINT.

12 *Amendments to current Rule 1.22, renumbered to Rule 1.35 concerning a grammatical change:*

13 1.354.22 "Standalone Candidate" means a candidate without a committee who does not accept
14 contributions.

15 *New Rule 1.36, concerning the definition of substantial evidence throughout 8 CCR 1505-6:*

16 1.36 "SUBSTANTIAL EVIDENCE", AS USED IN THESE RULES, MEANS EVIDENCE THAT IS PROBATIVE, CREDIBLE,
17 AND COMPETENT AND OF SUCH WEIGHT AS TO BE ADEQUATE FOR THE DIVISION TO ACCEPT A FACT AS
18 TRUE. THIS STANDARD OF PROOF REQUIRES A GREATER WEIGHT OF EVIDENCE THAN THAT WHICH IS
19 REQUIRED FOR FINDING "PROBABLE CAUSE".

20 *Amendments to current Rule 1.23, including renumbering to Rule 1.37:*

21 1.374.23 "Support or oppose", for the purpose of DETERMINING IF A PERSON OR GROUP OF PERSONS IS
22 A POLITICAL COMMITTEE AS DEFINED BY Colo. Const. Article XXVIII, Section 2(12)(a), means that
23 the ~~entity~~ PERSON OR GROUP OF PERSONS that contributed or made an expenditure did so in
24 coordination with the candidate or candidate committee. ~~If no such coordination exists, the entity~~
25 ~~is not a political committee.~~

26 *[Not shown: renumbering current Rule 1.24 to Rule 1.38.]*

27 *Amendments to Rule 2:*

28 *Amendments to Rule 2.1 pertaining to a grammatical change:*

29 2.1 Standalone Candidates

30 *[No changes to Rules 2.1.1-2.1.2.]*

31 *Amendments to Rule 2.2.4 updating the management of unexpended campaign funds, in accordance*
32 *with the passage of Senate Bill 23-276. This includes amending subsections (a) and (c) and the repeal*
33 *and replacement of subsection (d):*

34 2.2.4 Managing unexpended campaign contributions

1 (a) ~~A candidate committee must report its unexpended balance as the ending~~
2 ~~balance at the end of the election cycle. A candidate committee must report its~~
3 ~~unexpended balance from the report filed 35 days after the major election as the~~
4 ~~beginning balance in the next election cycle. A CANDIDATE COMMITTEE'S ENDING~~
5 ~~BALANCE ON THE REPORT FILED 35 DAYS AFTER THE MAJOR ELECTION MUST REFLECT~~
6 ~~THE COMMITTEE'S UNEXPENDED BALANCE AND THAT TOTAL IS REPORTED AS THE~~
7 ~~BEGINNING BALANCE ON THE FIRST REPORT DUE IN THE NEXT ELECTION CYCLE. The~~
8 ~~candidate committee's beginning balance must reflect what amount is retained~~
9 ~~for use in a subsequent election cycle and what amount is retained for use as~~
10 ~~unexpended funds.~~

11 *[No changes to subsection (b).]*

12 (c) Candidates seeking election to a different office

13 (1) A candidate committee may transfer funds to a NEW candidate committee
14 established by the same candidate for a different public office, subject to
15 the political party contribution limit for the ~~new~~PRIOR office sought. [Colo.
16 Const. Article XXVIII, Section 3, AND SECTION 1-45-103.7(12)(B), C.R.S.]

17 (A) FUNDS HELD IN EXCESS OF THE PARTY LIMIT MUST BE DISBURSED
18 BEFORE THE NEW ELECTION CYCLE IN ACCORDANCE WITH SECTION 1-
19 45-106(5), C.R.S., AND CANNOT BE ROLLED OVER.

20 (B) FUNDS PREVIOUSLY DESIGNATED AS UNEXPENDED FUNDS FROM A
21 PRIOR ELECTION CYCLE CANNOT BE TRANSFERRED TO THE NEW
22 COMMITTEE AND MUST BE DISBURSED AS SPECIFIED IN SECTION 1-45-
23 106(1)(A) AND (B), C.R.S.

24 (2) Contributions from persons or committees made to the prior candidate
25 committee do not apply toward the contribution limits for the new
26 candidate committee.

27 (3) A candidate committee transferring funds to a candidate committee for a
28 different office must terminate within ten days of registering the new
29 candidate committee.

30 (4) A candidate seeking election to a state, county, or local office may not
31 transfer funds from a federal candidate committee to a Colorado
32 candidate committee that is subject to the provisions of the Fair
33 Campaign Practices Act.

34 (5) ~~If a candidate committee transfers funds in excess of the political party~~
35 ~~contribution limit, the candidate committee may only retain them for use~~
36 ~~in accordance with section 1-45-106(1)(b), C.R.S. if applicable. The~~
37 ~~committee may also contribute the funds to a political party, donate the~~
38 ~~funds to a charitable organization recognized by the Internal Revenue~~
39 ~~Service, or return the funds to contributors.~~

40 (d) ~~Candidates not seeking re-election or election to a new office~~

41 (1) ~~A candidate committee that wishes to terminate and will not transfer~~
42 ~~funds to a new candidate committee may give remaining contributions to:~~

1 (A) ~~A political party, in an amount not to exceed the limit in Colo.~~
2 ~~Const. Article XXVIII Section 3(3) (as adjusted by Rule 10.17);~~

3 (B) ~~A charitable organization recognized by the I.R.S.;~~

4 (C) ~~The original contributors; or~~

5 (D) ~~If elected to office, the candidate may use the remaining~~
6 ~~contributions for voter registration, political issue education,~~
7 ~~postsecondary educational scholarships, communication with~~
8 ~~constituents, or for expenses directly related to the officeholder's~~
9 ~~official duties.~~

10 ~~[Section 1-45-106(1)(a)(I) and (b), C.R.S.]~~

11 (D) FUNDS ROLLED OVER, UP TO THE POLITICAL PARTY LIMIT OF A NEW CANDIDATE
12 COMMITTEE, FROM A CANDIDATE'S PRIOR CANDIDATE COMMITTEE WILL HAVE THE
13 EFFECT OF OFFSETTING HOW MUCH THE CANDIDATE MAY RECEIVE IN PARTY
14 CONTRIBUTIONS DURING THAT ELECTION CYCLE BY THE AMOUNT OF THE ROLLOVER.

15 *Amendments to Rule 2.4 concerning personal financial disclosures, including New Rule 2.4.2, pertaining*
16 *to failing to file personal financial disclosures and necessary amendments and renumbering, and*
17 *repealing Rule 2.4.6 due to being duplicative of statute:*

18 2.4 Personal financial disclosures

19 2.4.1 FILING OF PERSONAL FINANCIAL DISCLOSURES

20 2.4.1(A) A candidate need not file a new personal financial disclosure statement if the
21 candidate filed either a full or amended disclosure statement less than 90 days
22 before filing a candidate affidavit. [Section 1-45-110(2)(a) and (b), C.R.S.]

23 2.4.2(B) An amended or updated disclosure statement satisfies the full disclosure
24 statement requirement if all required amended statements have been filed since
25 the filing of the full disclosure statement. [Sections 1-45-110 and 24-6-202,
26 C.R.S.]

27 2.4.3(C) If a candidate withdraws his or her candidacy by submitting appropriate
28 documentation before filing the disclosure statement required in section 1-45-
29 110(2)(a), C.R.S., the candidate need not file a disclosure statement. Any
30 **DELINQUENT FILING** fines that the candidate accrued before withdrawing may be
31 waived by the appropriate filing office.

32 2.4.4(D) ALL personal financial disclosures FILINGS REQUIRED UNDER SECTIONS 1-45-110
33 AND 24-6-202, C.R.S., MUST BE FILED ELECTRONICALLY ~~may be submitted by fax or~~
34 ~~email and are considered timely if received by 11:59 p.m. MT on the date due~~
35 AND WILL BE PUBLICLY AVAILABLE ONLINE.

36 2.4.5(E) Incumbents seeking re-election need not file a new personal financial disclosure
37 statement if they have already filed their annual personal financial disclosure
38 statement. [Section 24-6-202(4)(b), C.R.S.]

39 2.4.6 ~~A person who sits on a board or committee need not disclose the board or~~
40 ~~committee membership on a personal finance disclosure if the person does not:~~

- 1 ~~(a) Receive compensation; or~~
- 2 ~~(b) Individually control board funds.~~

3 *New Rule 2.4.2:*

4 2.4.2 FAILURE TO FILE

5 (A) IF A COMPLAINT IS FILED ALLEGING THAT THE PERSONAL FINANCIAL DISCLOSURE WAS
6 INCOMPLETE, INACCURATE, OR NOT UPDATED, THE DIVISION MAY CONSIDER THE
7 FOLLOWING RESPONSES FROM THE CANDIDATE OR INCUMBENT, WITHOUT LIMITATION, IN
8 DETERMINING WHETHER THE PERSONAL FINANCIAL DISCLOSURE, AMENDMENT, OR
9 UPDATE MEETS STATUTORY REQUIREMENTS:

10 (1) DOCUMENTATION REFUTING THE ALLEGATION OF INACCURACY OR
11 INCOMPLETENESS, INCLUDING WITHOUT LIMITATION, FOR EXAMPLE:

12 (A) FEDERAL TAX RETURNS;

13 (B) BANKING, INVESTMENT, OR OTHER FINANCIAL STATEMENTS;

14 (C) DEEDS OF TRUST OR OTHER PROPERTY RECORDS;

15 (D) A FINANCIAL MANAGER’S OR AUDITOR’S CERTIFIED STATEMENT OF THE
16 CANDIDATE’S OR INCUMBENT’S FINANCIAL HOLDINGS; OR

17 (E) OTHER INDEPENDENTLY VERIFIABLE DOCUMENTARY EVIDENCE; OR

18 (2) A SIGNED AFFIRMATION UNDER PENALTY OF PERJURY FROM THE CANDIDATE
19 OR INCUMBENT ATTESTING THAT THE ALLEGATION OF INACCURACY OR
20 INCOMPLETENESS IS NOT TRUE AND THE SUBSTANCE OF THE PERSONAL
21 FINANCIAL DISCLOSURE, INCLUDING AMENDMENTS AND ANNUAL UPDATE, IS
22 COMPLETE AND ACCURATE.

23 (B) IF THERE IS EVIDENCE OF WILLFUL BEHAVIOR OUTLINED IN SECTION 24-6-202(7),
24 C.R.S., SUCH COMPLAINT MAY BE REFERRED TO THE APPLICABLE LAW ENFORCEMENT
25 WITHOUT PREJUDICE TO THE DIVISION’S CONCURRENT INVESTIGATION OF THE MATTER
26 AND THE PURSUIT OF CIVIL OR ADMINISTRATIVE PENALTIES INDEPENDENT OF ANY
27 CRIMINAL SANCTION.

28 (C) IF A PERSON SUBJECT TO A COMPLAINT RELATED TO A PERSONAL FINANCIAL
29 DISCLOSURE UNDER SECTION 1-45-110(2), C.R.S., MEETS THE CRITERIA OF SECTION
30 1-45-110(5), C.R.S., AND IS DEFEATED OR WITHDRAWS FROM THE CANDIDACY, THAT
31 PERSON WILL NOT BE REQUIRED TO FILE, SUPPLEMENT, OR CORRECT A PERSONAL
32 FINANCIAL DISCLOSURE AFTER THE ELECTION BUT MAY STILL BE SUBJECT TO A
33 COMPLAINT AND POTENTIAL MONETARY PENALTY.

34 *Amendments to Rule 4, including New Rule 4.3 regarding the major purpose standard and necessary*
35 *renumbering:*

36 4.3 MAJOR PURPOSE STANDARD

37 4.3.1 FOR AN ORGANIZATION SUPPORTING OR OPPOSING A NON-STATEWIDE BALLOT MEASURE, A
38 MAJOR PURPOSE OF THE ORGANIZATION AS THAT PHRASE IS USED IN COLO. CONST. ARTICLE
39 XXVIII, SECTION 2(10)(A), IS DETERMINED BASED ON THE CONSIDERATION OF:

- 1 (A) THE ORGANIZATION'S SPECIFICALLY IDENTIFIED OBJECTIVES IN ITS ORGANIZATIONAL
2 DOCUMENTS AT THE TIME IT IS ESTABLISHED OR AS SUCH DOCUMENTS ARE LATER
3 AMENDED; OR
- 4 (B) THE ORGANIZATION'S DEMONSTRATED PATTERN OF CONDUCT, AS REFLECTED
5 THROUGH THE FOLLOWING NON-EXCLUSIVE SET OF FACTORS, INCLUDING:
- 6 (1) THE SCOPE OF THE ISSUES ADDRESSED IN THE ORGANIZATION'S PRINT AND
7 ELECTRONIC PUBLICATIONS;
- 8 (2) THE LENGTH OF TIME THE ORGANIZATION HAD EXISTED;
- 9 (3) THE ORGANIZATION'S ORIGINAL PURPOSE;
- 10 (4) THE ORGANIZATION'S ORGANIZATIONAL STRUCTURE;
- 11 (5) THE VARIOUS ISSUES IN WHICH THE ORGANIZATION HAD BEEN INVOLVED; AND
- 12 (6) THE AMOUNT OF MONEY THE ORGANIZATION HAD SPENT ON THE ISSUE IN
13 QUESTION IN RELATION TO ITS ANNUAL BUDGET.

14 [CERBO V. PROTECT COLO. JOBS, INC., 240 P.3D 495, (COLO. APP. 2010)]

15 4.3.2 FOR AN ORGANIZATION SUPPORTING OR OPPOSING A STATEWIDE BALLOT MEASURE, A MAJOR
16 PURPOSE AS OUTLINED IN SECTION 1-45-103(12)(B), C.R.S., IS DETERMINED AS FOLLOWS:

- 17 (A) THE ORGANIZATION'S SPECIFICALLY IDENTIFIED OBJECTIVES IN ITS ORGANIZATIONAL
18 DOCUMENTS AT THE TIME IT IS ESTABLISHED OR AS SUCH DOCUMENTS ARE LATER
19 AMENDED; OR
- 20 (B) THE ORGANIZATION'S DEMONSTRATED PATTERN OF CONDUCT WHICH IS EVIDENCED BY
21 ITS SPENDING. SPECIFICALLY,
- 22 (1) DURING THE CURRENT AND TWO PRECEDING YEARS, DID THE ORGANIZATION:
- 23 (A) MAKE CONTRIBUTIONS TO A SINGLE STATEWIDE ISSUE COMMITTEE OR
24 MAKE DIRECT BALLOT MEASURE EXPENDITURES IN SUPPORT OF OR
25 OPPOSITION ~~OF TO~~ ONE STATEWIDE BALLOT MEASURE THAT,
26 COMBINED, EXCEEDED 20% OF THE ORGANIZATION'S TOTAL
27 SPENDING (IN ANY LOCATION AND FOR ANY REASON) DURING THE
28 CURRENT AND TWO PRECEDING YEARS; OR
- 29 (B) MAKE CONTRIBUTIONS TO MORE THAN ONE STATEWIDE ISSUE
30 COMMITTEE OR MAKE DIRECT BALLOT MEASURE EXPENDITURES IN
31 SUPPORT OF MORE THAN ONE STATEWIDE BALLOT MEASURE THAT
32 COMBINED EXCEEDED 30% OF THE ORGANIZATION'S TOTAL SPENDING
33 (IN ANY LOCATION AND FOR ANY REASON) DURING THE CURRENT AND
34 TWO PRECEDING YEARS; OR
- 35 (2) DOES THE ORGANIZATION HAVE A PATTERN OF CONDUCT AS ACTING AS A
36 FUNDING INTERMEDIARY BY MAKING EARMARKED CONTRIBUTIONS TO AN ISSUE
37 COMMITTEE.

38 4.3.3 FOR CAMPAIGN AND POLITICAL FINANCE COMPLAINTS INVOLVING WHETHER THE RESPONDENT IS
39 AN ORGANIZATION THAT HAS A MAJOR PURPOSE OF SUPPORTING OR OPPOSING ONE OR MORE

1 BALLOT MEASURES, A REBUTTABLE PRESUMPTION THAT THE ORGANIZATION MET THE STANDARD
2 FOR HAVING A MAJOR PURPOSE UNDER SECTION 1-45-103(12)(B), C.R.S., IS CREATED IF:

3 (A) A CAMPAIGN AND POLITICAL FINANCE COMPLAINT HAS BEEN FILED AND THE DIVISION
4 INITIALLY DETERMINES THAT THE COMPLAINT ALLEGES A POTENTIAL VIOLATION IN WHICH
5 THE RESPONDENT MAY HAVE A MAJOR PURPOSE OF SUPPORTING OR OPPOSING ONE OR
6 MORE BALLOT MEASURES; AND

7 (B) THE RESPONDENT FAILS TO PROVIDE SUBSTANTIAL EVIDENCE, AS DEFINED IN RULE
8 1.36, THAT THEY HAVE NOT MET THE MAJOR PURPOSE STANDARD.

9 4.3.4 THIS PRESUMPTION WILL BE CONSIDERED SUFFICIENT INFORMATION TO SUPPORT THE FILING OF
10 AN ADMINISTRATIVE COMPLAINT WITH A HEARING OFFICER UNDER SECTION 1-45-111.7(5),
11 C.R.S. THE PRESUMPTION OF MEETING THE MAJOR PURPOSE STANDARD CAN BE REBUTTED BY
12 THE RESPONDENT DURING THE ADMINISTRATIVE HEARING PROCESS. THE PRESUMPTION OF
13 MEETING THE MAJOR PURPOSE STANDARD NO LONGER APPLIES ONCE THE RESPONDENT HAS
14 APPEARED AND ANSWERED AN ADMINISTRATIVE COMPLAINT IN A HEARING BEFORE A HEARING
15 OFFICER.

16 *[Not shown: renumbering current Rules 4.3 through 4.5 to Rules 4.4 through 4.6.]*

17 *Amendments to Rule 5.1, including New Rules 5.4.1 through 5.1.6 and concerning the amount that an*
18 *independent expenditure committee is required to report:*

19 5.1 An independent expenditure committee must report donations over ~~twenty dollars~~ \$20 given for
20 the purpose of making an independent expenditure.

21 5.1.1 An independent expenditure committee must itemize donations of \$250 or more per year
22 given for the purpose of making an independent expenditure and include the name and
23 address of the donor.

24 5.1.2 If the committee is unable to gather the information required by section 1-45-
25 107.5(4)(b)(II), or (III), C.R.S., within 30 days after receipt of the donation, the committee
26 must return the donation to the donor no later than the 31st day after receipt.

27 5.1.3 An independent expenditure committee must itemize independent expenditures made in
28 an aggregate amount of \$1,000 in any one calendar year and include the information
29 required by section 1-45-107.5, C.R.S.

30 5.1.4 AN INDEPENDENT EXPENDITURE COMMITTEE MUST LIST ALL EXPENDITURES OF \$250 OR MORE
31 DURING A REPORTING PERIOD, INCLUDING THE NAME AND ADDRESS OF PAYEES. THE COMMITTEE
32 MAY REPORT ANY DISBURSEMENT NOT DEFINED AS AN EXPENDITURE TO THE APPROPRIATE
33 OFFICER.

34 5.1.5 AN INDEPENDENT EXPENDITURE COMMITTEE MUST LIST INDIVIDUAL EXPENDITURES IN AMOUNTS
35 OF LESS THAN \$250 THAT AGGREGATE TO TOTAL OF \$250 OR MORE TO THE SAME PAYEE
36 DURING THE REPORTING PERIOD.

37 5.1.6 AN INDEPENDENT EXPENDITURE COMMITTEE MAY REPORT ALL OTHER EXPENDITURES OF LESS
38 THAN \$250 DURING A REPORTING PERIOD, IN TOTAL, AS NON-ITEMIZED EXPENDITURES.

39 *Amendments to Rule 10.1, concerning an outdated language and inclusion of statutory references:*

40 10.1 Unexpended campaign contributions.

1 10.1.3 Unexpended contributions may not be used for personal purposes except, ~~on or after~~
2 ~~September 1, 2019~~, to reimburse a candidate OR INCUMBENT for reasonable and
3 necessary expenses for the care of a child or a dependent as allowed under SECTIONS 1-
4 45-103.7(6.5) AND 1-45-106(1)(B)(VI), C.R.S.

5 *New Rule 10.19, concerning the reporting of a direct ballot measure expenditure:*

6 10.19 REPORTING A DIRECT BALLOT MEASURE EXPENDITURE

7 10.19.1 THE DISCLOSURE REPORT REQUIRED BY SECTION 1-45-108(1)(A)(VI), C.R.S.

8 (A) THE AGGREGATE OF \$5,000 IN DIRECT BALLOT MEASURE EXPENDITURES CAN BE MET
9 WITH EXPENDITURES OF ANY AMOUNT.

10 (B) ANY SINGLE DIRECT BALLOT MEASURE EXPENDITURE THAT IS \$6,000 OR MORE MUST BE
11 DISCLOSED.

12 ~~(A)(C)~~ ONCE A PERSON MAKES \$5,000 IN DIRECT BALLOT MEASURE EXPENDITURES IN THE
13 AGGREGATE WITHIN A CALENDAR YEAR, EACH ADDITIONAL EXPENDITURE OF \$1,000 OR
14 MORE MUST BE REPORTED.

15 ~~(B)~~ FOR ANY DIRECT BALLOT MEASURE EXPENDITURE THAT IS \$1,000 OR MORE AND
16 RESULTS IN A PERSON EXCEEDING \$5,000 IN AGGREGATE DIRECT BALLOT MEASURE
17 EXPENDITURES WITHIN A CALENDAR YEAR, THAT ENTIRE EXPENDITURE MUST BE
18 DISCLOSED.

19 ~~(C)~~ THE AGGREGATE OF \$5,000 IN DIRECT BALLOT MEASURE EXPENDITURES CAN BE MET
20 WITH EXPENDITURES OF ANY AMOUNT.

21 (D) A SINGLE DIRECT BALLOT MEASURE EXPENDITURE OF LESS THAN \$1,000 DOES NOT
22 NEED TO BE REPORTED.

23 (E) DIRECT BALLOT MEASURE EXPENDITURE DISCLOSURE REPORTS MUST BE FILED WITHIN
24 48 HOURS OF WHEN THE DIRECT SPENDING OCCURS OR WHEN A CONTRACTUAL
25 AGREEMENT IS MADE.

26 (F) EXPENDITURES BY AN ISSUE COMMITTEE ARE NOT DIRECT BALLOT MEASURE
27 EXPENDITURES AND SHOULD BE REPORTED IN ACCORDANCE WITH RULE 10.3 AND
28 SECTION 1-45-108(1), C.R.S.

29 (G) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A FOREIGN GOVERNMENT, FOREIGN
30 CORPORATION, OR NATURAL PERSON WHO IS NOT A UNITED STATES CITIZEN MAY NOT
31 MAKE A DIRECT BALLOT MEASURE EXPENDITURE, AND A PERSON MAKING A DIRECT
32 BALLOT MEASURE EXPENDITURE MAY NOT KNOWINGLY ACCEPT FUNDS FROM A FOREIGN
33 GOVERNMENT, FOREIGN CORPORATION, OR A NATURAL PERSON WHO IS NOT A CITIZEN
34 OF THE UNITED STATES FOR THE PURPOSE OF MAKING A DIRECT BALLOT MEASURE
35 EXPENDITURE.

36 10.19.2 EACH DIRECT BALLOT MEASURE EXPENDITURE DISCLOSURE MUST INCLUDE:

37 (A) THE NAME AND ADDRESS OF THE PAYOR;

38 (B) THE NAME AND ADDRESS OF PAYEE;

- 1 (C) THE NAME OF THE ORIGINAL SOURCE OF THE FUNDS, IF THE DIRECT BALLOT MEASURE
2 EXPENDITURE WAS PAID WITH EARMARKED FUNDS;
- 3 (D) THE AMOUNT OF THE DIRECT BALLOT MEASURE EXPENDITURE;
- 4 (E) THE DATE OF THE DIRECT BALLOT MEASURE EXPENDITURE;
- 5 (F) THE PURPOSE FOR WHICH THE DIRECT BALLOT MEASURE EXPENDITURE WAS MADE
6 INCLUDING THE BALLOT MEASURE AND WHETHER THE DIRECT BALLOT MEASURE
7 EXPENDITURE WAS IN SUPPORT OR OPPOSITION OF THE BALLOT MEASURE; AND
- 8 (G) AN AFFIRMATION SIGNED BY AN AUTHORIZED REPRESENTATIVE ON A FORM PROVIDED
9 BY THE DEPARTMENT OR APPROPRIATE OFFICER THAT THE FILER DOES NOT MEET THE
10 DEFINITION OF AN ISSUE COMMITTEE AND ONLY USED PERMISSIBLE SOURCES FOR THE
11 EXPENDITURE.

12 *New Rule 10.20, regarding earmarked contributions:*

13 10.20 EARMARKED CONTRIBUTIONS

14 10.20.1 A CONTRIBUTION WILL BE CONSIDERED EARMARKED IF IT INCLUDES OR IS ACCOMPANIED BY A
15 DIRECTION OR INSTRUCTION WHICH RESULTS IN ALL OR ANY PART OF A CONTRIBUTION OR
16 EXPENDITURE BEING MADE TO, OR EXPENDED ON BEHALF OF, A CANDIDATE, COMMITTEE, OR
17 BALLOT MEASURE.

18 10.20.2 DISCLOSURE REPORTS OF EARMARKED CONTRIBUTIONS MUST INCLUDE THE ORIGINAL SOURCE
19 OF THE FUNDS AS WELL AS CONDUITS, FUNDING INTERMEDIARIES, OR OTHER PERSONS INVOLVED
20 IN THE TRANSACTION.

21 10.20.3 RECIPIENTS OF EARMARKED CONTRIBUTIONS MUST DISCLOSE THE ORIGINAL SOURCE OF THE
22 CONTRIBUTION AND THE PERSON WHO MADE THE CONTRIBUTION.

23 *Amendments to Rule 12.3, including New Rule 12.3.5 and concerning the termination of candidate*
24 *committees as required by Senate Bill 23-276:*

25 12.3 A committee may file a termination report terminating the committee if the following conditions are
26 met:

27 12.3.1 The committee no longer intends to receive contributions or make expenditures;

28 12.3.2 The committee's TRACER account has a zero balance, indicating it has no cash or
29 assets on hand and there are no outstanding debts, penalties, or obligations;

30 12.3.3 A committee may dispose of assets remaining in its possession before termination in the
31 same manner as allowed for unexpended contributions; ~~and~~

32 12.3.4 The committee has no pending campaign and political finance complaints or related
33 proceedings pending before the elections division or any court; AND

34 12.3.5 IN ADDITION TO THE REQUIREMENTS OUTLINED IN THIS RULE 12.3, CANDIDATE COMMITTEES
35 MUST TERMINATE WITHIN:

36 (A) ONE YEAR AFTER THE ELECTION, IF THE CANDIDATE WAS NOT ELECTED; OR

37 (B) ONE YEAR AFTER AN ELECTED CANDIDATE LEAVES OFFICE.

1 [SECTIONS 1-45-103.7(12)(A)(I) AND (II), C.R.S.]

2 *Amendments to Rule 19.1, concerning the removal of outdate language with the passage of Senate Bill*
3 *23-276 and a grammatical change:*

4 19.1 All disclosure reports filed with the Secretary of State under Colo. Const. Article XXVIII and Article
5 45 of Title 1, C.R.S., must be filed electronically on the Secretary of State's ~~Tracer~~TRACER
6 system, except as provided in Rule 19.2. Paper reports will not be accepted. ~~This rule does not~~
7 ~~apply to personal financial disclosure reports required by section 1-45-110, C.R.S.~~

8 *Amendments to Rule 23.1, concerning filing initial complaints and including New Rule 23.1.3 and*
9 *necessary renumbering:*

10 23.1 Filing INITIAL ~~C~~complaints

11 23.1.1 Campaign AND POLITICAL finance complaints must be filed in writing and can be submitted
12 by hardcopy or electronically. ~~E~~electronic signatures are permitted for any complaint
13 documentation that requires a signature by complaint, respondent, or the elections
14 division.

15 23.1.2 A complaint must identify both a respondent and a complainant. Anonymous complaints
16 or complaints that fail to identify a complainant and respondent may be rejected and not
17 reviewed by the elections division.

18 23.1.3 COMPLAINTS MUST MEET THE PLAUSIBILITY PLEADINGS STANDARD BY PRESENTING A PLAUSIBLE
19 BASIS, BASED ON CONCRETE, NON-CONCLUSORY ALLEGATIONS OF PARTICULARIZED FACTS, TO
20 SUPPORT THE ALLEGATIONS THAT A POTENTIAL CAMPAIGN AND POLITICAL FINANCE VIOLATION
21 OCCURRED. THE PLAUSIBILITY OF AN ALLEGATION IS DETERMINED WHILE ACCEPTING AS TRUE
22 THE CONCRETE, NON-CONCLUSORY ASSERTIONS OF FACT UPON WHICH THE ALLEGATION IS
23 BASED.

24 ~~23.1.3~~23.1.4 Complaints that stem from a common set of operative facts as a pending
25 complaint will be consolidated when practicable. When consolidation is not practicable
26 and the outcome of the initial case will be determinative of the later case, a complaint will
27 be stayed until a final agency decision issues on the initial complaint and any appeals are
28 resolved.

29 ~~23.1.4~~23.1.5 Violations stemming from late or missing filings that have had A LATE FILING
30 PENALTY ASSIGNED OR THE ASSIGNED PENALTY HAS BEEN WAIVED ~~or are pending a waiver~~
31 ~~decision~~ under Rule 18 are not subject to ADDITIONAL MONETARY PENALTIES UNDER RULE
32 23.3 FOR THE LATE FILING VIOLATION~~the complaint process outlined in section 1-45-111.7,~~
33 ~~C.R.S.~~

34 *Amendments to Rule 23.3, regarding the settlement of complaints and fine structure for violations, and*
35 *including necessary renumbering and grammatical changes:*

36 23.3 Settlement of complaints and fine structure for violations

37 23.3.1 After a complaint has been filed with a hearing officer the elections division may enter
38 into a settlement agreement with the respondent.

39 23.3.2 In ASSESSING A FINE AMOUNT OR APPROVING ~~reaching~~ a settlement ~~and fine amount~~, the
40 deputy secretary of state or a hearing officer, AS APPLICABLE, will consider all of the
41 following factors:

- 1 (a) Specific fine amounts outlined in Rule 23.3.3; ~~and~~
- 2 (b) Any appropriate specific action in Rule 23.3.4; ~~and~~
- 3 (c) WHETHER RULE 18 LATE FILING PENALTIES HAVE BEEN ISSUED AND IF A WAIVER WAS
- 4 GRANTED;
- 5 (d) SANCTIONS AVAILABLE UNDER SECTION 1-45-111.5, C.R.S.; AND
- 6 ~~(e)~~(E) The mitigating and aggravating factors, INCLUDING THOSE LISTED in Rule 23.3.5, to
- 7 increase or decrease the monetary fine or terms.

8 23.3.3 Fine amounts

9 *[No changes to subsection (a).]*

- 10 (b) Failure to file complete and accurate AFFIDAVITS, DISCLOSURES, ~~OR~~
- 11 CONTRIBUTIONS, EXPENDITURES, OR OTHER FINANCE reports
- 12 (1) Failure to file complete and accurate reports is a \$100 fine per report
- 13 plus 5 percent of the activity not accurately or completely reported;
- 14 (2) Failure to ~~file, or~~ file an accurate, candidate affidavit
- 15 (A) If THE affidavit is submitted within 14 days of registration
- 16 deadline, the fine is at least \$50; or
- 17 (B) If THE affidavit is submitted after 14 days post deadline, the fine
- 18 is at least \$100.
- 19 (3) FAILURE TO FILE AN ACCURATE OR COMPLETE INITIAL, UPDATED, OR AMENDED
- 20 PERSONAL FINANCIAL DISCLOSURE AS REQUIRED UNDER SECTION 1-45-110,
- 21 C.R.S., WHICH INCLUDES CONTENT REQUIRED BY SECTION 24-6-202(2),
- 22 C.R.S.
- 23 (A) IF THE PERSONAL FINANCIAL DISCLOSURE IS FILED OR CORRECTED
- 24 WITHIN 14 DAYS OF THE APPLICABLE FILING DUE DATE, THE FINE IS AT
- 25 LEAST \$50;
- 26 (B) IF THE PERSONAL FINANCIAL DISCLOSURE IS FILED OR CORRECTED
- 27 PRIOR TO THE FILING OF ANY COMPLAINT ALLEGING AN INSUFFICIENT
- 28 FILING OF A PERSONAL FINANCIAL DISCLOSURE, SO LONG AS THE
- 29 DISCLOSURE IS SUBMITTED AT LEAST 30 DAYS PRIOR TO THE ~~FIRST~~
- 30 ELECTION IN WHICH THE CANDIDATE IS RUNNING, THE FINE IS AT LEAST
- 31 \$100;
- 32 (C) IF THE PERSONAL FINANCIAL DISCLOSURE IS FILED OR CORRECTED
- 33 AFTER THE FILING OF ANY COMPLAINT ALLEGING AN INSUFFICIENT
- 34 FILING OF A PERSONAL FINANCIAL DISCLOSURE, SO LONG AS THE
- 35 DISCLOSURE IS SUBMITTED AT LEAST 30 DAYS PRIOR TO THE ~~FIRST~~
- 36 ELECTION IN WHICH THE CANDIDATE IS RUNNING, THE FINE IS AT LEAST
- 37 \$250;

- 1 (D) IF THE PERSONAL FINANCIAL DISCLOSURE IS FILED OR CORRECTED
 2 FEWER THAN 30 DAYS BEFORE THE ELECTION IN WHICH THE
 3 CANDIDATE IS RUNNING, THE FINE IS AT LEAST \$500;
- 4 (E)(D) IF THE CANDIDATE OR INCUMBENT IS DEFEATED OR WITHDRAWS AND
 5 THE PERSONAL FINANCIAL DISCLOSURE WAS NOT CORRECTED, THE
 6 FINE WILL BE AT LEAST \$500; OR
- 7 (F)(E) IF THE PERSONAL FINANCIAL DISCLOSURE IS CORRECTED AFTER THE
 8 ELECTION, AND THE RESPONDENT WAS NOT DEFEATED OR DID NOT
 9 WITHDRAW, THE FINE IS AT LEAST \$1,000.
- 10 (4) FAILURE TO FILE AN INITIAL DISCLOSURE REPORT OR AN ANNUAL UPDATE AS
 11 REQUIRED UNDER SECTION 24-6-202, C.R.S.
- 12 (A) IF THE DISCLOSURE REPORT IS FILED WITHIN 14 DAYS OF DUE DATE,
 13 THE FINE IS AT LEAST \$50;
- 14 (B) IF THE DISCLOSURE REPORT IS FILED WITHIN 28 DAYS OF DUE DATE,
 15 THE FINE IS AT LEAST \$100;
- 16 (C) IF THE DISCLOSURE REPORT IS FILED MORE THAN 28 DAYS LATE BUT
 17 AT LEAST 30 DAYS PRIOR TO AN ELECTION IN WHICH THE OFFICIAL IS
 18 RUNNING, THE FINE IS AT LEAST \$500; OR
- 19 (D) IF THE DISCLOSURE REPORT IS FILED AFTER AN ELECTION IN WHICH
 20 THE OFFICIAL IS RUNNING, THE FINE IS AT LEAST \$1,000.
- 21 (5) FILING AN INACCURATE OR INCOMPLETE PERSONAL FINANCIAL DISCLOSURE OR
 22 FAILURE TO CORRECT AN INACCURATE OR INCOMPLETE PERSONAL FINANCIAL
 23 DISCLOSURE COULD RESULT IN CRIMINAL AND CIVIL PENALTIES UNDER SECTION
 24 24-6-202(7), C.R.S.

25 *[No changes to subsections (c) and (d).]*

26 *New subsection (e) including fines for violations by the state or political subdivisions:*

- 27 (E) VIOLATIONS BY THE STATE OR A POLITICAL SUBDIVISION UNDER SECTION 1-45-117,
 28 C.R.S.
- 29 (1) IF THE VIOLATION IS CURED BEFORE THE ELECTION BUT THERE WAS NO
 30 SUBSTANTIAL COMPLIANCE, THE FINE WILL BE AT LEAST \$500;
- 31 (2) IF THE VIOLATION IS NOT CURED BEFORE THE ELECTION, THE FINE WILL BE AT
 32 LEAST \$1,000; OR
- 33 (3) IF THE AMOUNT OF FUNDS IMPROPERLY USED IS ASCERTAINABLE, THE FINE
 34 WILL BE AT LEAST THREE TIMES THE AMOUNT OF THE IMPROPERLY USED
 35 FUNDS.
- 36 (e)(F) Other violations of campaign and political finance rules and regulations will be
 37 assessed penalties based on the circumstances of the violations and factors
 38 outlined in Rule 23.3.4.

39 *Amendments to Rule 23.3.4, including a grammatical change:*

1 23.3.4 Specific AAction(s)

2 *[No changes to subsections (a)-(c).]*

3 *[Not shown: current Rule 24.2 is repealed and re-codified throughout Rule 1.1. This is shown at the*
4 *beginning of the document.]*

5 *[Not shown: renumbering of current Rules 24.3 through 24.22 to Rules 24.2 through 24.21.]*