

August 20, 2014

Dear Secretary of State Gessler, Deputy Secretary Staiert, and Members of the Rule-Making Group,

Thank you for the opportunity to comment and make suggestions on the rules for the upcoming General Election. As you may know, I have been an election judge, watcher, and canvass board member in Boulder County (and a watcher in Jackson, Kiowa, and Douglas counties and an observer in Broomfield County in 2013). Other watchers and I have been affected by inadequate protections as we exercised Colorado watcher rights, and I hope the protections you are empowered to make will be strengthened by this current rule-making. It has become clear that mail-ballot elections can have no integrity and cannot be certified by canvass boards unless watchers from all sides keep track of what election staff is doing with ballots at all times.

For Rules 8, 9, and 10, I used a variety of means to explain my concerns and make suggestions for additions and deletions. For the other rules, I have just listed the line or lines, noted the page number, and made whatever suggestion or change seems needed below in this file. For the record, this latter approach is tedious and inadequate. I hope that we can work together to find a better method for dealing with proposed rule changes. That said, I so appreciate all the efforts of Andrea Gyger and Troy Bratton to assist me in the work of reviewing the proposed rules.

Please feel free to discuss any of my input with me, whether the content or the methods. I hope that although the methods for some of the rules may not be your favorite, the meaning is clear and you have no difficulty in finding the notes in the files. Word comments, both mine and copied sections of statute, are in the Rule 8 file, which shows all the Rule 8 rules, not just those with proposed revisions. I think it would help the public if some easy means of viewing any statute mentioned in a rule were provided. A certified pdf of a (tracked changes) Word document that shows all the current rules and all the additions, deletions, and movements from place to place would be useful. Also, somewhat on another note, all statute titles referenced in the rules regarding elections would be more accessible to the public if the titles were posted in a searchable pdf on the SOS website, as Title 1 is. The LexisNexis approach is difficult for those who do not use it a lot.

Important: Please realize that my suggestions on the following pages and the three separate files for Rules 8, 9, and 10 are absolutely not imagined by me to be all the changes needed to achieve election integrity. Remember the elephant story. There are so many parts to the election process creature.

Thank you again,

Mary

Mary C. Eberle

[REDACTED]
[REDACTED]
[REDACTED]

Rule 1. Why not list “cast” and cross reference to new Rule 10.1.1? But see Al Kolwicz’s email of today, August 21, 2014, for a better idea that honors the difference between “cast” and “received” and lets the canvass board honor it as well. Also, please see Harvie Branscomb’s comments.

Rule 2.1.7 (deleted). Page 8, Lines 28-29: Why delete the “Intent to move to a new district or county, in and of itself, is not enough to establish residency.”—I like the idea of keeping it in the rules as reinforcement.

Rule 2.1.5. Page 8, Lines 30-31: Why not add something requiring the counties to file a plan for accomplishing this with your office? Also have your office see if the plan filed would actually work?

Rule 2.2.2. Page 9, Lines 5-10: Please see comments by Denver Clerk and Recorder Debra Johnson and Denver Director of Elections Amber McReynolds.

Rule 2.2.3 (deleted). Page 9, Lines 11-16: What about Home Rule entities that have not changed their durational residency requirement?

Rule 2.10. Page 9, Line 36: Add “and provides an ID at a VPSC or with a mail ballot at the next election” or something like that. Otherwise, this rule provides an opportunity for people to falsely register and then vote a mail ballot with no check of the ID.

Rule 2.13.2(a)(2). Page 10, Lines 19-21: This rule almost tripped up me and my ACN Canvass Board partner, Jim Remmert, when the clerk’s election judges and staff told me that Jim’s affiliation could not be changed in SCORE until after the election was certified. Changing a voter’s registration record can involve more than changing the voter’s address. I see Sen. Ulibarri’s note on this rule, but am not sure how you might address it.

Rule 2.13.4. Page 11, Lines 16-17: “Cancellation” usually has two els.

Rule 2.14.1(b). Page 11, Lines 24-28: Why delete part of the rule? I think it would be better to keep the current rule.

Also, I noted the argument made during the Thursday, August 14, hearing that watchers did not have to pass background checks. It seems, from looking at the rules, that “regular” judges do not have to pass those background checks either. But all judges and watchers must take oaths, and in the Rule 8 file I am sending you, I have suggested better wording for an oath that both election judges and watchers could take.

Rule 4.1.3. Page 12, Lines 9-12: What method do they have to use? Is it reliable?

Rule 4.8.4(1). Page 12, Lines 30-31: Ten is too few. Fifty would be better. Alternatively, require counties to shuffle envelopes as soon as they are disassociated from ballots (which should at that point still be in their secrecy sleeves) so that ballot anonymity is possible.

Rule 5.4.4. Page 17, Lines 1-4: Concern over confidential information is often used as the means to keep watchers from watching escalated signature verification. An additional sentence would be useful: “The designated election official must devise a means for watchers to see SCORE and

other government databases during signature verification in such a way that confidential information is protected; the means may be mechanical such as covering part of the monitor with one or more Post-Its so long as the watcher can see the signature to be compared.”

Rule 7.1.1. Page 18, Line 24. I think you should leave in “or envelope.” If envelopes were required and the style and precinct numbers were placed so that the folded ballot would show those numbers through a hole in the envelope, we could stop the snoopiness of election judges’ peeking at how people have voted while checking that the ballot is for the voter’s precinct and style. I watched much snoopiness during style checking during the Boulder County 2014 Primary; it didn’t help that the Republican governor’s race was at the top right, just under the style designation. As that race’s results could have been guessed at after a day’s worth of style checking, and then told or sold to someone who would benefit from early knowledge of the race’s likely end, this problem really does infringe on election integrity and needs to be solved.

Rule 7.2.5. Page 18, Lines 33-36: Great new rule, except it needs to be in effect now for the upcoming General Election. Already-printed envelopes can be run through printers again to add the information, or hand-stamped with the information, or affixed with a sticky label printed with the information. It is too important to wait for this election-integrity fix. Instead of “drop off,” the verb should be “receive,” as in “receive ballots from more than ten voters in any election.”

Rule 7.2.6. Page 19, Lines 1-7: Please make this effective immediately except please also require the third party to provide name and current address; Ralph Shnelvar’s suggestion that the last four digits of the third party’s social security number also be required on the ballot envelope is a good one and indicates how serious the situation is. It would be best if the third party had to be a Colorado registered elector. Ralph’s suggestion about validation is excellent also; could the clerk have to write the voter a letter just as in signature verification cures? The name and address information needs to be placed in SCORE so that massive collections by the same person do not occur. We do not need a new job category of professional third-party ballot collector/deliverer in Colorado. I heard the complaints about this rule at the hearing, but I support it as a way to increase election integrity. Ballot-box stuffing and vote buying are historically the most successful means to corrupt elections.

I am not as exercised about the second part of Rule 7.2.6—concerning marking ballot in private—but I think Elena Nunez of Common Cause stated the statutes on this well and gave some alternative wording that would be helpful.

Pam Anderson, Jeffco Clerk and Recorder, wants a delay of the whole rule and an educational effort. Election integrity would support the latter but not the former. Reprinting envelopes is the least of the worries about the November 2014 election.

Rule 7.4.6. Page 19, Line 9: I disagree with the deletion. Please retain “a bipartisan team.”

Rule 7.5.7. Page 20, Lines 24-27: This is a great new rule; Harvie Branscomb likes it too. You might consider a slight addition: “in a manner that ensures no person is able, either during the dissociation or later, to determine how an individual voted.” But is there a rule requiring a check of the returned ballot style? As I noted above, in Boulder County all the Republican voters had

their votes for governor visible while the election judge checked the style. I think the style should be checked, but some method needs to be devised to protect ballot anonymity during the process. Requiring “tall headers” on ballots so that the votes would be better hidden by the secrecy sleeve would be helpful.

Rule 7.5.9. Page 20, Lines 30-33: Because Boulder County counts batches that are (mainly? Or totally?) one style, the batch number is not hazardous to ballot anonymity. It would be better if Boulder County shuffled the ballots more thoroughly than they do before scanning them, however, to assure that their order does not match the envelope order. Envelope shuffling would also be helpful. Can you encourage clerks to adopt the “count single-style batches” approach? Also, I like what Harvie Branscomb has written about this rule. He has some suggested wording.

Rule 7.5.10. Page 21, Lines 2-5. Good rule. It would have enfranchised some Broomfield voters in 2013.

Rule 7.6.1. Page 21, Lines 8-16. Harvie Branscomb’s objections should be seriously considered.

Rule 7.8.9. Page 21, Lines 19-21: Good rule but “drop off” needs to be replaced with “receive,” as in “receive ballots from more than ten voters in any election.”

Rule 7.13.2(b). Page 23, Line 9. It would be good to work with the legislature to change the usage of “signature card” to “sign-in card” or something equivalent. It misleads people who think that those “signatures” are checked. And why not require a recheck of all the mail ballot envelopes, including those with signatures that were not cured or that had other problems (no ID, two ballots, etc.).

Rule 8. Please see separate file, because the proposed changes were few and the current rule needs some serious work, I believe. Without better information and oversight by watchers, there cannot be election integrity in the mail ballot environment.

Rule 9. Please see separate file.

Rule 10. Please see separate file. It is critical to make the canvass board functional, so this rule needs major work.

Rule 11.3.2(b). Page 34, Lines 29-33: Why delete “the media and the public to”? Leaving it in makes clearer who can be present to take advantage of the required “openness” of the test process. I think you should not delete that phrase. In addition, it would be good to modify the last sentence: “~~The designated election official~~ COUNTY CLERK may limit the number of representatives from each group because of space limitations, BUT THE COUNTY CLERK IS ENCOURAGED TO MAKE ACCOMMODATIONS TO INCLUDE AS MANY REPRESENTATIVES FROM EACH GROUP AS POSSIBLE.”

Rule 11.3.2(c)(2). Page 35, Lines 11-15: I think you should leave the “as defined in section 1-1-104(22), C.R.S.,” in for this fall’s election. Why remove it?

Rule 11.3.2(c)(3). Page 35, Lines 18-20: For years, election integrity activists have complained that the 25 ballots are too “perfectly marked.” Could you add language that specifies the group of

at least 25 should be perfectly marked, and another group of 25 should be imperfectly marked? Use your voter intent guidelines to indicate how some voters mark their ballots, perhaps hard for a machine to read but fine for a human to read. The LAT should explore the capabilities of the machine in use.

Rule 11.3.2(d)(4)(A)(ii). Page 36, Lines 15-16: Please define in rule a way to do this; dice come to mind.

Rule 11.3.2(d)(4)(B)(ii). Page 36, Lines 24-25: Please define in rule a way to do this; dice come to mind.

Rule 11.3.2(e)(1). Page 37, Lines 4-10: This description would work well in the “Watcher” Rule 8 where original watchers’ reports could be kept under lock and key. Of course, the watchers’ must be given copies of the reports to take away with them. Watchers’ reports of the chain-of-custody of ballots moving through the clerk’s processes would be so beneficial to the canvass board.

Rule 11.3.2(e)(5). Page 37, Lines 22-25: I understand the need for the SOS to be able to authorize corrections and upgrades. However, I think another rule needs to be added that instructs the county clerk to, prior to any changes in software, bring the LAT board back to the election department for an orientation to the changes and to view their installation on all affected machines. Software experts would be valuable watchers during the orientation and installation.

Rule 11.4. Page 37, Lines 27-28: The timing seems off. Why not require this report immediately after the LAT? Scanning starts so early (though it should not; especially tabulation should not where that is a separate process—how can we make the pre-Election Day process have higher integrity so that “news” doesn’t leak out?).

Rule 11.10. Page 37, Lines 30-31: What happened to the ENR for the Boulder County Primary? Al Kolwicz has submitted as part of his complaint/rules comments that there were egregious errors posted.

Rule 11.10.1(e). Page 38, Lines 6-7: There seems to be a word missing or other mistake.

Rule 11.10.3(c). Page 38, Lines 20-21: What happens when a county cannot finish “on election night”—i.e., before midnight? I think that is typical for Boulder. If you mean something like “before daybreak on the day after election day,” please clarify.

Rule 11.10.4. Page 38, Lines 22-25: There needs to be a modification of this rule to take into account the situation if the canvass board has not certified. In that case, the clerk should delay until the SOS has investigated, etc., and determined the next step.

Rule 12. OK.

Rule 13. Page 39, Lines 7-8: Please put the articles of Title 1 that form the UEC of 1992 in parentheses.

Rule 13.1.6(a)(3). Page 40, Lines 14-15: I do not think the deletion looks responsible.

Rule 13.2.6(b)(3). Page 40, Lines 26-27: I do not think the deletion looks responsible.

Rule 14.4.6. Page 41, Lines 11-13: I heard the conflicting views about this new rule. I think the VRD organizer might use a highlighter to underline instead of draw through the items that must be filled in. Alternatively, could you make a new form that puts the items that must be filled in as boxes? I have never seen the form, so perhaps this input is not useful. Sorry. Also, if the VRD person wants to add information after the voter has affirmed what the voter has written, you could require the VRD person to use a red or green pen and such added info could be verified with the voter or checked by the SOS staff. I liked the letter you received from Michael J. Weissman on this topic.

Rule 15. I have not read this rule carefully.

Rule 16.1.4. Page 48, Lines 4-8. I do not understand whether this rule applies to “any unregistered elector” or an overseas or otherwise covered unregistered elector. Could you please add language to make the meaning clear?

Rule 16.1.6(b). Page 48, Lines 18-20: To preserve voter secrecy—actually “secrecy in voting” according to the state constitution, the ballots reserved for counting should be of the same style (including precinct) as the one delivered by the SOS to the clerk. Thus, the clerk should be reserving ten ballots of each style to count together with any late-arriving ballots. And, a very important point, the audit and the canvass should not start until the late-arriving and late-counted ballots have arrived and been counted.

Rule 16.1.7. Page 48, Line 23: Please add a period after “Inactive.” The *Chicago Manual of Style* places periods and commas inside quotation marks in all cases.

Rule 16.2.1 and its subrules. Page 49, Lines 16-27 (and any subrules not shown in the proposed rules document): The lack of a firm statement that echoes statute on the requirement for the voter to return a ballot (however received) electronically only if there is no more secure means available must be remedied. Please see extensive presentation by Margit Johansson on this topic. I completely support her input to you, and I hope that this omission will finally be corrected.

I also think that many voters who were overseas at one point are continuing to vote electronically although they are now back in their Colorado home location. Can you create a rule to address and correct this possibility? A required statement in the ballot-bearing email from the clerk could warn voters that when they return to Colorado or indeed to any of the United States, they may not continue as a UOCAVA voter (unless they are military—isn't that right?), though they may receive a mail ballot as anyone else if they remain a Colorado elector. Any electronic return of ballots undercuts election integrity because the current Internet is not safe for that purpose.

Rule 16.2.1(e). Page 49, Lines 24-27: Why make this rule? Convenience is a weak reason. It would be better if the voter had to confirm the desire for the ballot to be sent electronically for each election, for improved election integrity.

Here is what Harvie Branscomb says, and I heartily agree: “Note capitalization of E. This rule reveals a problem with the UOCAVA process. The intention of UOCAVA is to provide extra

affordance to electors who are in difficult situations. The rule as written provides for the elector to continue on as if a UOCAVA voter forever regardless of eligibility. This should be corrected and a continued check for eligibility for UOCAVA access provided”—and why not?

Rule 16.2.6. Page 49, Lines 29-32. I suggest adding the following: “Watchers may witness and verify the duplication process for UOCAVA ballots in a manner to assure themselves that no errors were made. If an error is detected, the supervising election official must be informed by the watcher, who has the right ‘to assist in the corrections of discrepancies.’ Watchers are under oath not to reveal how the voter voted.” Also, Harvie Branscomb is concerned about ballot anonymity with duplicated ballots; I am concerned also. If more watchers could closely view duplication and affirm the accuracy of the task, labeling duplicated ballots so that they could be tracked back to the original would be unnecessary.

Rule 17. No changes proposed by the SOS office. Please add a rule that states essentially the following: “Watchers may witness and verify the duplication process for provisional ballots in a manner to assure themselves that no errors were made. If an error is detected, the supervising election official must be informed by the watcher, who has the right ‘to assist in the corrections of discrepancies.’ Watchers are under oath not to reveal how the voter voted.”

18.3.2 Central Count Optical Scan Procedures. Please add a rule that states essentially the following: “(a) Each ballot batch must be shuffled by two judges.” Also wherever log creation, signature verification, duplication, resolution board, and the like are mentioned anywhere in the rules, please add language that indicates that watchers have the statutory right to witness and verify and assist in the correction of discrepancies. Some people (like me) read only a few parts of the rules, so it pays to repeat this information that assists people who are not clerks or election staff.

Rule 19. Please be sure that all instruction (including online instruction) supports watcher rights. In general in the rules, please use “witness and verify” instead of something nonstatutory such as “observe” whenever verbs are needed for watcher actions.

Rules 20-22 I have not evaluated. However, I noted misspellings in (new) Rule 21.7.3. It would help if acronyms were explained more often.

I like the idea of minimizing early scanning and tallying. Jack Matthews’s emailed time frame pictures suggests that starting scanning on election night is the right approach (or maybe at 4:00 p.m., which is when Boulder County starts tallying via the Hart Tally software, separate from the scanning process). Now that there are so few provisional ballots, the time between election day night and when UOCAVA and cured ballots are counted is rather wasted. That eight days could be used for the counting and tallying. It seems that if we are to have mail ballots, we should get some benefit on the election integrity side of the equation, and no early ballot opening, scanning, and tallying would go a long way in that direction.

I like the idea of required canvass board training. The document on the SOS website about canvass boards is not quite sufficient. We could talk more about this.

I also like the idea of requiring that the correct style has been returned by the voter, while still maintaining the anonymity of the ballot. This latter may require stubs or at least tall “headers” on ballots so that election judges do not see the voter’s marks when the style is checked.

Please require clerks to provide flat ballots at all VSPCs.

Please see also the three files for Rules 8, 9, and 10.

_____ end of Eberle comments/suggestions _____

Tuesday, August 12, 2014

Dear Members of the SOS's Rule-Making Staff,

This file covers just Rule 8 (original pages 33–37 in official pdf of all rules). I have used the current Rules from file 8 CCR 1505-1.pdf and saved that file to a Word .doc file. Then I deleted the other rules and used the result as the beginning step in my comment and suggestion process.

I do not mean to imply that fixing the rule as shown here leaves no room for improvement. As repeatedly pointed out by Al Kolwicz, the glossary (Rule 1) is inconsistent, inaccurate, and incomplete, so that problem propagates into the subsequent rules, for example.

For some reason, Rule 8 contains much redundancy. That is not helpful to readers who try to understand the rule. I have shown where redundancy can be eliminated by using ~~double strike through lines and purple color~~.

For other kinds of deletions, I have used ~~single strike through lines and red color~~.

Additions are in blue. Underlined blue is an addition in a section I have copied from a preexisting rule. I'm using underlined green for occasional purposes that will be obvious.

Comments are in Word comments. Be sure to see these, please.

I am sorry not to show line numbers, but the pagination is consistent, and the pages and your proposed changes are few. Thank you for your indulgence. Please feel free to call to discuss suggestions. It is not fair not to give watchers a level playing field—that is the basis for my concerns that have resulted in the suggestions, probably incomplete, in this document.

Mary

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DEPARTMENT OF STATE
Secretary of State
ELECTIONS
8 CCR 1505-1

Rule 8. Watchers, Media Observers, and Official Observers

8.1 Watchers must affirm that they are qualified under sections ~~1-1-104(51), 1-7-105, 1-7-106, 1-7-107, and 1-7-108(2), C.R.S.~~, as applicable. Watchers must take the oath described in section ~~1-7-108(1), C.R.S.~~ and, upon first entering ~~the polling~~ any election location where the watcher is designated to observe, surrender the certificate of appointment to the supervisor judge ~~at each location where the watcher is designated to observe~~.

8.1.1 If a watcher leaves ~~a polling~~ an election location but returns to the same location, another certificate of appointment is not necessary.

8.1.2 A new watcher who is replacing an original watcher must provide an original certificate of appointment for that ~~polling~~ election location.

8.1.3 A certificate of appointment as a watcher is not transferable to another individual.

8.2 A political party attorney may not be in the ~~polling~~ election location unless he or she is a duly appointed watcher or is casting his or her ballot.

8.3 The supervisor judge must provide to each watcher on request a list, log, check-in card, or other

Code of Colorado Regulations

Commented [M1]: (51) "Watcher" means an eligible elector other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy, or nonpartisan election, or by a person designated by either the opponents or the proponents in the case of a ballot issue or ballot question. If selected by a political party chairperson, a party candidate, or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder.

Commented [M2]: 1-7-105. Watchers at primary elections.

(1) Each political party participating in a primary election shall be entitled to have a watcher in each precinct in the county. The chairperson of the county central committee of each political party shall certify the persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson shall submit the names by the close of business on the Friday immediately preceding the election.
(2) In addition, candidates for nomination on the ballot of any political party in a primary election shall be entitled to appoint some person to act on their behalf in every precinct in which they are a candidate. Each candidate shall certify the persons appointed as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate ...

Commented [M3]: 1-7-106. Watchers at general and congressional vacancy elections. Each participating political party or issue committee whose candidate or issue is on the ballot, and each unaffiliated and write-in candidate whose name is on the ballot for a general or congressional vacancy election, is entitled to have no more than one watcher at any one time in each voter service and polling center in the county and at each place where ...

Commented [M4]: 1-7-107. Watchers at nonpartisan elections. Candidates for office in nonpartisan elections, and proponents and opponents of a ballot issue, are each entitled to appoint one person to act as a watcher in every polling place in which they are a candidate or in which the issue is on the ballot. The candidates or proponents and opponents shall certify the names of persons so appointed to the designated election official on forms provided ...

Commented [M5]: 1-7-108. Requirements of watchers. (2) Neither candidates nor members of their immediate families by blood, marriage, or civil union to the second degree may be poll watchers for that candidate

Commented [M6]: 1-7-108. Requirements of watchers. (1) Watchers shall take an oath administered by one of the election judges that they are eligible electors, that their name has been submitted to the designated election official as a watcher for this election, and that they will not in any manner make known to anyone the result of counting votes until the polls have closed ...

Commented [M7]: I think "polling location" gives too narrow a focus for this introductory rule. "Election location" could be broadly and inclusively defined in Rule 1. "Election location" would mean the obvious places where voters may vote or drop off their ballot and also the stations (not whole buildings or entire rooms) where ballot processing occurs.

Commented [M8]: How is this different from any other person? Can this rule be omitted?

Commented [M9]: Please consider a better approach to help watchers with respect to their receiving a list of voters. This list requirement provides an opportunity for watchers to receive a printout from a ballot envelope processing device such as the Bell & Howell device in Boulder County. The printout could contain the voters' names on the batch of envelopes, in the order that the envelopes will be processed for signature verification. Having su ...

similar information of voters appearing in the polling location to vote. The watcher may not remove the information or documents from the polling location. ~~A watcher may maintain a list of eligible electors who have voted by using only information provided by the supervisor judge or a list of electors previously maintained by the watcher. [Section 1-7-108(3), C.R.S.]~~

Commented [M10]: I think "polling location" is fine here.

8.4 Watchers in polling locations are subject to the provisions of section 1-5-503, C.R.S. Watchers also have the rights enumerated in section 1-7-108(3), C.R.S.

Commented [M11]: I think this statement can be deleted. It is now meaningless. Another place must be found to cite Section 1-7-108(3). Perhaps insert it in an extension to the 8.4 rule and switch 8.4.1 and 8.4.2 as shown.

8.4.1 Watchers must be permitted access that would allow them to attest to the accuracy of all election-related activities, ~~including recall elections~~. "Witness and verify" means to personally observe actions of election officials in each step of the conduct of an election. The right "to assist in the correction of discrepancies" means that the watcher may ask the election judges to review a step that the watcher thinks may have been in error. These rights include personal visual access at a reasonable proximity (generally two to two and one-half feet) and along a direct, horizontal sight line to read documents, writings, or electronic screens and at a reasonable proximity to hear election-related discussions between election judges and electors. ~~Witness and verify means to personally observe actions of election officials in each step of the conduct of an election. The designated election official must position the voting equipment, voting booths, and the ballot box so that they are in plain view of the election officials and watchers.~~

Commented [M12]: (3) Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.

Commented [M13]: 1-5-503. Arrangement of voting equipment or voting booths and ballot boxes. The voting equipment or voting booths and the ballot box shall be situated in the polling location so as to be in plain view of the election officials and watchers. No person other than the election officials and those admitted for the purpose of voting are permitted within the immediate voting area, which is considered as within six feet of the voting equipment or voting booths and the ballot box, except by authority of the election judges or the designated election official, and then only when necessary to keep order and enforce the law.

8.4.2 The designated election official must position the voting equipment, voting booths, and the ballot box so that they are in plain view of the election officials and watchers. ~~Watchers must be permitted access that would allow them to attest to the accuracy of election related activities, including recall elections. This includes personal visual access at a reasonable proximity to read documents, writings or electronic screens and reasonable proximity to hear election related discussions between election judges and electors. Witness and verify means to personally observe actions of election officials in each step of the conduct of an election.~~

Commented [M14]: (3) Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.

- (a) Election-related activities that watchers may witness and verify and/or may assist in the correction of discrepancies regarding ~~include all activities in a polling location and ballot processing and counting, such as:~~
- (1) ~~Observing~~ The setup and breakdown of polling locations.
 - (2) ~~Witnessing~~ Voter check-in and registration activities.
 - (3) ~~Witnessing~~ Ballot receipt, bundling (or batching), opening, style checking, and any other processing.
 - (2) (4) ~~Witnessing the s~~ Signature verification of mail ballot envelopes, including escalated double checks of questioned signatures in SCORE by a second team of two other election judges of different political party affiliations ~~at close enough distance to verify or challenge the signature~~. See Rule 9.2 and my comment that much (all?) confidential information is not needed by either election judges or watchers and can be masked on a monitor.
 - (3) (5) ~~Witnessing b~~ Provisional ballot processing, UOCAVA ballot processing, and ballot duplication ~~to verify accuracy according to voter intent~~.
 - (4) (6) ~~Observing t~~ The tabulation process or display screens of voting equipment at any time that an elector is not in the immediate voting area for purposes of voting or casting a ballot.

~~(5)~~ (7) ~~Witnessing-h~~ Hand count tabulations as they are being conducted.

~~(6)~~ (8) ~~Observing-a~~ All documents and materials used during the LAT and post-

[page 34 continued]

election audit.

(9) The operation of the canvass board.

(10) The operation of any recount or recall election.

(b) Watchers must remain outside the immediate voting area while an elector is voting.

~~(c) Watchers may be present at each stage of the conduct of the election, including the setup and breakdown of polling locations and ballot receipt and processing.~~

~~(d) Watchers may be present during provisional ballot processing, signature verification, and UOCAVA ballot processing, but may not have access to confidential voter information.~~

~~(e)~~ (c) The number of watchers permitted in any room at one time is subject to local safety codes, but should be maximized otherwise.

8.4.3 A watcher may witness and verify activities described in Title 1, C.R.S., that are outside the immediate voting area, including ballot processing and counting. If election officials

PAGE 34

are conducting elections activities in separate rooms or areas of a building or buildings, the county clerk must allow additional watchers to observe and verify each separate activity in each room or area in the building or buildings. If election activities are conducted at multiple stations, a watcher may be present at each station.

~~8.4.4 Watchers appointed under this Rule 8 may observe the canvass board while it performs its duties. [Combine with election activities in Rule 8.4.2.]~~

~~8.4.5 A watcher may track the names of electors who have cast ballots, challenge electors under section 1-9-203, C.R.S., and Rule 9, and submit written complaints in accordance with section 1-1.5-105, C.R.S., and Rule 13. A watcher may observe all activities in a polling location and the processing and counting of ballots. A watcher may be present at each stage of the election including the receiving and bundling of the ballots.~~

~~8.5 In addition to the oath required by section 1-7-109(1), C.R.S., a watcher must affirm that he or she will not:~~ [Fix oath to mirror election judges' oath, which also needs improvement. See Comment 18 for better language for the oath.]

~~8.5.1 Attempt to determine how any elector voted or review confidential voter information;~~

Commented [M15]: In order to fulfill their election-integrity and statutory role, watchers need to have access to all information that an election judge would have access to. Confidential information (DL or social security number, etc.) is not needed by election judges or watchers and can be hidden on a computer monitor by Post-Its or tape.

Commented [M16]: 1-9-203. Challenge questions asked person intending to vote. [I believe that this statute has been amended by HB14-1164.]

Commented [M17]: HAVA complaint: 1-1.5-105. Complaint procedure. (1) Subject to the requirements of this section, in accordance with section 402 of HAVA, the secretary may establish by rule a uniform administrative complaint procedure to remedy grievances brought under Title III of HAVA.

Commented [M18]: The oath content specified in section 1-7-109(1), C.R.S., is inadequate to cover the rights and responsibilities of watchers. Watchers should take the same oath as election judges (in green; from the 8/9/13 form):
I, , affirm that I am an eligible elector, that my name has been submitted to the designated election official, and that I will not in any manner make known to anyone the result of counting votes until the polls have closed and the designated election official has formally announced results. Additionally, I affirm that I will not attempt to determine how any elector voted or review confidential information or disclose any confidential voter information I may observe.

This oath language is actually inadequate for election judges and watchers, and it gives the designated election official too much wiggle room. It should be revised as follows:

I, , affirm that I am an eligible elector, that my name has been submitted to the designated election official, and that I will not in any manner make known to anyone the result of counting votes until the polls have closed and the designated election official has formally announced results. Additionally, I affirm that I will not attempt to determine how any elector voted or review confidential information or disclose any confidential voter information I may observe.

This revised language protects voters by allowing election judges and watchers to perform their election-integrity roles. Of course it may become obvious how a voter voted or a voter's confidential information may be revealed during election processing, but all election judges and watchers must be sworn not to disclose these things if they become known. Processes must be devised by the designated election official to minimize these hazards to anonymous ballots and confidential information. Finally, it is important to mirror statutory language reflecting the 7:00 p.m. poll closing on election day and not give election officials time to hide preliminary election results.

~~8.5.2—Disclose or record any confidential voter information that he or she may observe; or~~

~~8.5.3—Disclose any results before the polls are closed.~~

8.6 A watcher may not:

~~8.6.1—Interrupt or disrupt the processing, verification, and counting—or any other stage of the election.~~

8.6.2 Write down any ballot numbers or any other identifying information about the electors, except that names and voter ID numbers on ballot return envelopes may be recorded.

8.6.3 Touch or handle the official signature cards, ballots, mail ballot envelopes, provisional ballot envelopes, voting or counting machines, or machine components.

8.6.4 Interfere with the orderly conduct of any election process, including issuance of ballots, receiving of ballots, and voting or counting of ballots, except that a watcher who has detected a discrepancy may seek, by requesting to stop the process, to correct the discrepancy.

8.6.5 Interact with election judges except for the supervisor judge, except to correct a discrepancy.

8.6.6 Use a mobile phone or other electronic device to make or receive a call in any polling location or other place election activities are conducted.

8.6.7 Use any electronic device to take or record pictures, video, or audio of ballots or discussions that reveal how voter(s) have voted in any polling location or other place election activities are conducted.

[Proposed Rules 8.6.8–8.6.10 are redundant and should not be included [here](#).]

~~8.6.8—ATTEMPT TO DETERMINE HOW ANY ELECTOR VOTED OR OBTAIN CONFIDENTIAL VOTER INFORMATION.~~

[page 35 continued]

~~8.6.9—DISCLOSE OR RECORD ANY CONFIDENTIAL VOTER INFORMATION THAT HE OR SHE MAY OBSERVE.~~

~~8.6.10—ATTEMPT TO DETERMINE OR DISCLOSE ANY RESULTS BEFORE THE POLLS HAVE CLOSED.~~

8.7 The Secretary of State must approve Official Observers appointed by the federal government. Official Observers are subject to Colorado law and ~~these Rules 8 as they apply to Watchers. But an Official Observer is not required to be an eligible elector in the jurisdiction. This except that~~ Rule 8 does not apply to Official Observers appointed by the United States Department of Justice. Official Observers appointed by the Secretary of State are subject to ~~Rule 8, the rules and regulations as prescribed by the Secretary of State.~~ Official Observers must obtain a letter of authority from the Secretary of State and surrender the letter to the county clerk. PAGE 35

Commented [M19]: This rule, with or without the addition of "STOP" in the proposed change, creates an impediment to the watchers' effectiveness and violates the watchers' statutory right to assist in the correction of discrepancies. In particular, the watcher must be able to ask for a review of an election judge's decision about a signature, just as in a precinct-based polling place a watcher could challenge an in-person would-be voter and an election judge would have to question that would-be voter to determine his or her eligibility. The watcher must have the ability to question the acceptance of the ballot into the election at the point of signature verification. Restricting the challenge procedure to a paper-based form that is sent to the DA after the ballot is irretrievably accepted by hurried, inadequately trained, or, worse, corrupt election judges.
Please delete Rule 8.6.1 and renumber.

Commented [M20]: Redundancy in proposed rules, p. 23 (line numbers in green):
22 8 6 8 ATTEMPT TO DETERMINE HOW ANY ELECTOR VOTED OR OBTAIN CONFIDENTIAL
23 VOTER INFORMATION
24 8 6 9 DISCLOSE OR RECORD ANY CONFIDENTIAL VOTER INFORMATION THAT HE OR SHE
25 MAY OBSERVE
26 8 6 10 ATTEMPT TO DETERMINE OR DISCLOSE ANY RESULTS BEFORE THE POLLS HAVE
27 CLOSED

Commented [M21]: Which watchers or observers are required to be eligible electors in the jurisdiction?

~~8.8 Watchers, Official Observers, and Media Observers may be present during a recount. Watchers, Official Observers, and Media Observers must be qualified and sworn in for a recount as described in Rule 8.1 and are subject to all other provisions related to the recount process. Any political party or candidate involved in the a recount or proponents or opponents of an issue or~~

Commented [M22]: Is the first part of Rule 8.8 necessary? Just put recount under election activities and it's obvious that Watchers may be present. Are Official Observers and Media Observers qualified and sworn in for recounts but not for the rest of the election process? I don't see that in the statutes referred to in Rule 8.8. They are certainly not mentioned in Rule 8.1.

PAGE 35

question involved in the a recount may appoint one or more watchers to be present at any time during the recount. A candidate who is subject to a recount may appoint himself or herself, or a member of the candidate's family, as a watcher at the recount. [Sections 1-7-105 and 1-7-106, C.R.S.]

8.9 Media Observers may witness all election activities. A county clerk may, in his or her discretion, require a Media Observers to appoint a pool reporter and a pool photographer to represent all Media Observers. All Media Observers are subject to the Guidelines established by the Colorado Press Association in conjunction with the Colorado County Clerks' Association and the Secretary of State as outlined below:

Guidelines for Member of the Media Who Observe Election Counts and Recounts (to be distributed to members of the Colorado Press Association):

The Colorado State Association of County Clerks and Recorders, Colorado Broadcasters' Association and Colorado Press Association have collaborated to develop the following guidelines and protocols for use when members of the media observe the counting or recounting of ballots. You are strongly encouraged to follow these guidelines to allow meaningful media access while not disrupting the work of county clerks to count ballots or doing anything to compromise the integrity of the election process.

- 1. If practical, please contact the county clerk's office prior to coming to observe the counting of ballots. If the county clerk knows you are coming, it will be easier to accommodate your request for a place to observe the count or to interview an election official.*
- 2. At the discretion of the county clerk, a specific viewing area for members of the media and other observers may be available. To the extent practicable, the area will have been designated with sight lines to allow you to observe and take pictures or video of the counting process. If there are insufficient sight lines for you to take the photos or video you need, the county clerk may be able to make arrangements to accommodate your needs.*
- 3. Please observe counting procedures without disrupting the count. Please take pictures or video without the use of supplemental lighting. Do not talk to people participating in counting ballots. There may be workers who ask you not to include their images in your pictures or video. We encourage you to honor those requests if you can reasonably do so.*
- 4. The Secretary of State's Election Rules state that if observers leave the area during a recount, they may not reenter without the consent of the county clerk. If you have occasion to leave the area, you may be denied re-admittance.*
- 5. Please do not use the information you see when observing vote counts to report on partial election results. Please do not report anything that could be used to identify the person who casts a particular ballot.*

The Colorado State Association of County Clerks and Recorders, Colorado Broadcasters' Association and Colorado Press Association are all committed to working together to ensure the media has access to election counts and recounts, but that access is afforded in manners that do not disrupt the counts and do nothing to compromise the integrity of the process. Your cooperation in following these standards will help us to meet all these goals.

PAGE 36

8.10 To assist Watchers in performing their tasks ~~at a polling location~~, the county clerk must ~~provide~~ ~~make~~ a list of all voters who have voted or returned a ballot in the county. ~~The county clerk must~~ ~~make the list~~ available at least daily at the clerk's main office or provide the list electronically.

8.11 The county clerk must promptly accept the appointment of all eligible watchers duly certified by a political party, candidate, or committee under sections 1-1-104(51), 1-7-105, 1-7-106, or 1-7-107, C.R.S.

Commented [M23]: A very good rule.

8.12 Removal of Watchers.

8.12.1 A county clerk or his or her designee may remove a watcher upon finding that the watcher:

- (a) Commits or encourages fraud in connection with his or her duties;
- (b) Violates any of the limitations outlined in Rule 8.6;
- (c) Violates his or her oath; or
- (d) Is abusive or threatening toward election officials or voters.

8.12.2 Upon removal of a watcher, the county clerk must inform the political party, candidate, or committee who appointed the watcher.

8.12.3 A removed watcher may appeal to the Secretary of State for reinstatement.

8.12.34 A removed watcher may be replaced by an alternate watcher duly certified in accordance with sections 1-7-105, 1-7-106, or 1-7-107, C.R.S.

8.13 Watchers may be certified to observe more than one polling location. See section 1-7-106, C.R.S.

8.14 Watchers may be appointed to observe recall elections held under Article 12, Title I, C.R.S., and must be certified in accordance with sections 1-7-106 and 1-7-107, C.R.S.

Commented [M24]: Is this rule needed?

Main document changes and comments

Page 33: Commented **Mary** **8/12/2014 5:09:00 PM**

(51) "Watcher" means an eligible elector other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy, or nonpartisan election, or by a person designated by either the opponents or the proponents in the case of a ballot issue or ballot question. If selected by a political party chairperson, a party candidate, or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder.

Page 33: Commented **Mary** **8/12/2014 5:10:00 PM**

1-7-105. Watchers at primary elections. (1) Each political party participating in a primary election shall be entitled to have a watcher in each precinct in the county. The chairperson of the county central committee of each political party shall certify the persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson shall submit the names by the close of business on the Friday immediately preceding the election.

(2) In addition, candidates for nomination on the ballot of any political party in a primary election shall be entitled to appoint some person to act on their behalf in every precinct in which they are a candidate. Each candidate shall certify the persons appointed as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate shall submit the names by the close of business on the Friday immediately preceding the election.

Page 33: Commented **Mary** **8/12/2014 5:10:00 PM**

1-7-106. Watchers at general and congressional vacancy elections. Each participating political party or issue committee whose candidate or issue is on the ballot, and each unaffiliated and write-in candidate whose name is on the ballot for a general or congressional vacancy election, is entitled to have no more than one watcher at any one time in each voter service and polling center in the county and at each place where votes are counted in accordance with this article. The chairperson of the county central committee of each major political party, the county chairperson or other authorized official of each minor political party, the issue committee, or the write-in or unaffiliated candidate shall certify the names of one or more persons selected as watchers on forms provided by the county clerk and recorder and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the chairperson, authorized official, issue committee, or candidate shall submit the names by the close of business on the Friday immediately preceding the election. The watchers shall surrender the certificates to the election judges at the time they enter the voter service and polling center and are sworn by the judges. This section does not prevent party candidates or county party officers from visiting voter service and polling centers or drop-off locations to observe the progress of voting.

Page 33: Commented **Mary** **8/12/2014 5:11:00 PM**

1-7-107. Watchers at nonpartisan elections. Candidates for office in nonpartisan elections, and proponents and opponents of a ballot issue, are each entitled to appoint one person to act as a watcher in every polling place in which they are a candidate or in which the issue is on the ballot. The candidates

or proponents and opponents shall certify the names of persons so appointed to the designated election official on forms provided by the official and submit the names of the persons selected as watchers to the county clerk and recorder. To the extent possible, the candidate, proponent, or opponent shall submit the names by the close of business on the Friday immediately preceding the election.

Page 33: Commented **Mary** **8/12/2014 5:12:00 PM**

1-7-108. Requirements of watchers. ... (2) Neither candidates nor members of their immediate families by blood, marriage, or civil union to the second degree may be poll watchers for that candidate.

Page 33: Commented **Mary** **8/12/2014 7:18:00 PM**

1-7-108. Requirements of watchers. (1) Watchers shall take an oath administered by one of the election judges that they are eligible electors, that their name has been submitted to the designated election official as a watcher for this election, and that they will not in any manner make known to anyone the result of counting votes until the polls have closed.

[See further discussion of oath under Rule 8.4.](#)

Page 33: Commented **Mary** **8/12/2014 5:43:00 PM**

I think "polling location" gives too narrow a focus for this introductory rule. "Election location" could be broadly and inclusively defined in Rule 1. "Election location" would mean the obvious places where voters may vote or drop off their ballot and also the stations (not whole buildings or entire rooms) where ballot processing occurs.

Page 33: Commented **Mary** **8/12/2014 5:33:00 PM**

How is this different from any other person? Can this rule be omitted?

Page 33: Commented **Mary** **8/12/2014 8:24:00 PM**

Please consider a better approach to help watchers with respect to their receiving a list of voters. This list requirement provides an opportunity for watchers to receive a printout from a ballot envelope processing device such as the Bell & Howell device in Boulder County. The printout could contain the voters' names on the batch of envelopes, in the order that the envelopes will be processed for signature verification. Having such a list would greatly assist the watchers in identifying voters' names that need to be challenged or otherwise reviewed. Please revise this rule to specify the requirement to provide such a list if the technology exists within a county. Furthermore, please provide such lists of all batches to the canvass board. It will be most helpful if the names are sequentially numbered within each list. Require watchers to sign, print their name, and date the list(s) so provided, and require the election judges to retain the list for the canvass board's use.

Rule 8.10 is partially redundant with this list provision. I think that Rule 8.10 really benefits political parties, not watchers. Please consider the purpose of Rule 8.10.

Page 34: Commented **Mary** **8/12/2014 5:44:00 PM**

I think "polling location" is fine here.

Page 34: Commented **Mary** **8/19/2014 9:11:00 PM**

I think this statement can be deleted. It is now meaningless. Another place must be found to cite Section 1-7-108(3). Perhaps insert it in an extension to the 8.4 rule and switch 8.4.1 and 8.4.2 as shown.

Page 34: Commented **Mary** **8/12/2014 5:47:00 PM**

(3) Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the

completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.

Page 34: Commented **Mary** **8/12/2014 5:48:00 PM**

1-5-503. Arrangement of voting equipment or voting booths and ballot boxes. The voting equipment or voting booths and the ballot box shall be situated in the polling location so as to be in plain view of the election officials and watchers. No person other than the election officials and those admitted for the purpose of voting are permitted within the immediate voting area, which is considered as within six feet of the voting equipment or voting booths and the ballot box, except by authority of the election judges or the designated election official, and then only when necessary to keep order and enforce the law.

Page 34: Commented **Mary** **8/12/2014 6:41:00 PM**

(3) Each watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.

Page 35: Commented **Mary** **8/21/2014 5:13:00 PM**

In order to fulfill their election-integrity and statutory role, watchers need to have access to all information that an election judge would have access to. Confidential information (DL or social security number, etc.) is not needed by election judges or watchers and can be hidden on a computer monitor by Post-Its or tape.

Page 35: Commented **Mary** **8/12/2014 6:51:00 PM**

1-9-203. Challenge questions asked person intending to vote. [I believe that this statute has been amended by HB14-1164.]

Page 35: Commented **Mary** **8/12/2014 6:51:00 PM**

HAVA complaint: **1-1.5-105. Complaint procedure.** (1) Subject to the requirements of this section, in accordance with section 402 of HAVA, the secretary may establish by rule a uniform administrative complaint procedure to remedy grievances brought under Title III of HAVA.

Page 35: Commented **Mary** **8/21/2014 5:21:00 PM**

The oath content specified in section 1-7-108(1), C.R.S., is inadequate to cover the rights and responsibilities of watchers. Watchers should take the same oath as election judges (in green; from the 8/9/13 form):

I, , affirm that I am an eligible elector, that my name has been submitted to the designated election official, and that I will not in any manner make known to anyone the result of counting votes until the polls have closed and the designated election official has formally announced results. Additionally, I affirm that I will not attempt to determine how any elector voted or review confidential information or disclose any confidential voter information I may observe.

This oath language is actually inadequate for election judges and watchers, and it gives the designated election official too much wiggle room. It should be revised as follows:

I, , affirm that I am an eligible elector, that my name has been submitted to the designated election official, and that I will not in any manner make known to anyone the result of counting votes until the polls have closed ~~and the designated election official has formally announced results.~~ Additionally, I affirm that I will not ~~attempt to determine~~ ~~disclose~~ how any elector voted or ~~review confidential information or disclose~~ any confidential voter information I may observe.

This revised language protects voters by allowing election judges and watchers to perform their election-integrity roles. Of course it may become obvious how a voter voted or a voter's confidential information may be revealed during election processing, but all election judges and watchers must be sworn not to disclose these things if they become known. Processes must be devised by the designated election official to minimize these hazards to anonymous ballots and confidential information. Finally, it is important to mirror statutory language reflecting the 7:00 p.m. poll closing on election day and not give election officials time to hide preliminary election results.

Page 36: Commented **Mary** **8/12/2014 7:59:00 PM**

This rule, with or without the addition of "STOP" in the proposed change, creates an impediment to the watchers' effectiveness and violates the watchers' statutory right to assist in the correction of discrepancies. In particular, the watcher must be able to ask for a review of an election judge's decision about a signature, just as in a precinct-based polling place a watcher could challenge an in-person would-be voter and an election judge would have to question that would-be voter to determine his or her eligibility. The watcher must have the ability to question the acceptance of the ballot into the election at the point of signature verification. Restricting the challenge procedure to a paper-based form that is sent to the DA after the ballot is irretrievably accepted by hurried, inadequately trained, or, worse, corrupt election judges.

Please delete Rule 8.6.1 and renumber.

Page 36: Commented **Mary** **8/12/2014 7:58:00 PM**

Redundancy in proposed rules, p. 23 (line numbers in green):

22 8.6.8 ATTEMPT TO DETERMINE HOW ANY ELECTOR VOTED OR OBTAIN CONFIDENTIAL
23 VOTER INFORMATION.

24 8.6.9 DISCLOSE OR RECORD ANY CONFIDENTIAL VOTER INFORMATION THAT HE OR SHE
25 MAY OBSERVE.

26 8.6.10 ATTEMPT TO DETERMINE OR DISCLOSE ANY RESULTS BEFORE THE POLLS HAVE
27 CLOSED.

Page 36: Commented **Mary** **8/12/2014 8:06:00 PM**

Which watchers or observers are required to be eligible electors in the jurisdiction?

Page 37: Commented **Mary** **8/12/2014 7:50:00 PM**

Is the first part of Rule 8.8 necessary? Just put recount under election activities and it's obvious that Watchers may be present.

Are Official Observers and Media Observers qualified and sworn in for recounts but not for the rest of the election process? I don't see that in the statutes referred to in Rule 8.8. They are certainly not mentioned in Rule 8.1.

Page 38: Commented **Mary** **8/12/2014 8:38:00 PM**

A very good rule.

Page 38: Commented **Mary** **8/12/2014 8:37:00 PM**

Is this rule needed?

Header and footer changes

Text Box changes

Header and footer text box changes

Footnote changes

Endnote changes

Revised Draft of Proposed Rules

Office of the Colorado Secretary of State Election Rules 8 CCR 1505-1

August 7, 2014

Disclaimer:

The proposed draft rules have changed. This draft supersedes the Preliminary Draft that was issued with the Notice of Proposed Rulemaking on July 15, 2014. These revised proposed rules will be considered at the August 14, 2014 rulemaking hearing.

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

Please note the following formatting key:

| Font effect | Meaning |
|------------------------------|---|
| Sentence case | Retained/modified current rule language |
| SMALL CAPS | New language |
| Strikethrough | Deletions |
| <i>Italic blue font text</i> | Annotations |
| Shading | Revisions to the July 15, 2014 preliminary draft. |

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(end of p. 1)

THIS FILE CONTAINS ONLY Rule 9 and is very short.

Green is added, ~~struck through red is deleted.~~

—Mary Eberle

28 *Amendments to Rule 9*

29 **Rule 9. Voting Challenges**

30 9.1 CHALLENGING AN IN-PERSON VOTER *OR A MAIL BALLOT SIGNATURE*

1 ~~9.19.1.1~~ Under Section 1-9-201, C.R.S., an election official, watcher, or eligible
2 elector **of the precinct** may challenge an elector's right to vote. A person whose
3 eligibility is challenged while voting in-person, must be offered a regular ballot
4 by an election judge if the person satisfactorily answers the applicable challenge
5 questions specified in section 1-9-203, C.R.S., and **this Rule**. If the person
6 challenged **provides unsatisfactory answers** or refuses to answer the challenge
7 questions, an election judge must offer the person a provisional ballot.

Line 2: Was the phrase "of the precinct" changed by 2014 legislation? Are the questions in Rule 9 consistent with 2014 legislation?

Line 3: No comma.

Line 5: Instead of "this Rule" it would be clearer to say "Rule 9" wherever that type of phrasing appears.

Line 6: Please provide the satisfactory answers and the unsatisfactory answers for each question.

8 ~~9.29.1.2~~ Citizenship. The election judge must ask the elector, "Are you a citizen of
9 the United States?"

10 ~~9.39.1.3~~ Residency. The election judge must ask the elector the following
11 questions:

12 ~~9.3.1(A)~~ "Will you have resided in Colorado for the 22 days before election
13 day?"

14 ~~9.3.2(B)~~ "Do you reside at the address stated in your voter registration
15 record?"

Lines 14-15: This rule needs to ask how long the voter has resided at the address on the voter's registration record. If the date that the voter appears to vote is previous to election day, the election judge must calculate how many days the voter could be credited with, counting the days beginning on the day that the voter appears up to and including election day. Then the judge needs to consider whether there are durational residency requirements, for example, for coordinating jurisdictions, that are longer than 22 days; if so and the voter does not meet these, then the judge must give the voter a ballot with a style that includes just the ballot content that the voter is eligible to vote on. Some home rule cities and other jurisdictions have not changed their durational residency for voter eligibility to 22 days.

16 ~~9.3.3(C)~~ "Have you been absent from Colorado during the past 22 days?" If
17 the elector responds that he or she was absent during the 22-day period,
18 the election judge must also ask the following questions:

19 ~~(a)~~(1) "Have you been absent for a temporary purpose with the intent of
20 returning, or did you intend to remain outside Colorado?"

- 1 9.2.2 IF BOTH ELECTION JUDGES DETERMINE THE SIGNATURE ON THE RETURN
2 ENVELOPE DOES NOT MATCH THE ELECTOR’S SIGNATURE IN SCORE, THE
3 JUDGES MUST FOLLOW THE PROCEDURES IN SECTION 1-7.5-107.3(2), C.R.S.,
- 4 9.2.3 IF BOTH ELECTION JUDGES DETERMINE THE ELECTOR IS ELIGIBLE AND THAT
5 ELECTOR’S SIGNATURE IS VALID, THE ELECTION JUDGES MUST COUNT THE
6 ELECTOR’S BALLOT.

[End of Rule 9]

Revised Draft of Proposed Rules

Office of the Colorado Secretary of State Election Rules 8 CCR 1505-1

August 7, 2014

Disclaimer:

The proposed draft rules have changed. This draft supersedes the Preliminary Draft that was issued with the Notice of Proposed Rulemaking on July 15, 2014. These revised proposed rules will be considered at the August 14, 2014 rulemaking hearing.

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

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| <i>Italic blue font text</i> | Annotations |
| Shading | Revisions to the July 15, 2014 preliminary draft. |

1 *[Amendments to 8 CCR 1505-1]*

2 *Amendments to Current Rule 1:*

3 *[Current Rules 21.1.1, 21.1.2, 21.1.3, 21.1.4, 21.1.5, 21.1.6, 21.1.9, 21.1.10, 21.1.13, 21.1.18,*

4 *21.1.21 are amended and incorporated into Rule 1 as follows]*

. (end of p. 1)

THIS FILE CONTAINS ONLY Rule 10. I don't pretend to have all the answers here!

Green is added text or comments, ~~struck through red is deleted~~. The yellow highlighting makes it easy to find my input.

Pagination (p. 25-34) is the same as in the current rule; there were only a few proposed changes to this rule.

—Mary Eberle

7 *Amendments to Rule 10:*

8 **Rule 10. Canvassing and Recount**

9 *[Current Rule 10.1 is relocated to New Rule 10.2]*

10 *[New Rule 10.1 includes relocated portions of Current Rules 10.3, 10.4, and 10.5 as shown*
11 *below]*

12 10.1 PRECANVASS ACCOUNTING

13 10.1.1 FOR PURPOSES OF ARTICLE 10 OF TITLE 1, “BALLOTS CAST IN AN ELECTION” OR
14 “BALLOTS CAST IN EACH PRECINCT” MEANS PAPER OR DRE BALLOTS VOTED IN
15 PERSON BY ELECTORS AT A VOTER SERVICE AND POLLING CENTER AND VOTED MAIL
16 BALLOTS RECEIVED FOR PROCESSING BY THE COUNTY CLERK.

17 ~~10.3~~ 10.1.2 Detailed Ballot Log. The designated election official must keep a detailed
18 ballot log that accounts for every ballot issued and received beginning when
19 ballots are ordered and received. The election officials must reconcile the log at
20 the conclusion of each workday.

Where are the citizens (as watchers)? This process in Rule 10.1.2 must not be done by “election officials” in the dark. Watchers should witness and verify the data leading up the creation of the ballot log. See suggested Rule 8.4.2(a)(3) in Rule 8 file.

21 ~~10.4~~ 10.1.3 Daily voter service and polling center ballot accounting. ~~10.4.1~~ The
22 designated election official must supply each polling location with a Statement of
23 Ballots form. Election judges must record the following information on a separate
24 Statement of Ballots form for each day that the polling location is open:

Watchers should be able to witness and verify the Rule 10.1.3 data and sign off on it.

- 25 (a) The name or number of the polling location;
26 (b) The number of ballots provided to or printed on-demand at the polling
27 location;
28 (c) The number of ballots cast by in-person voters;
(d) The number of mail ballots dropped off.
(e) The number of flat ballots requested.
(f) The number of requested flat ballots given out.
29 (g) The number of unvoted ballots;
30 (h) The number of damaged or spoiled ballots;
31 (i) The number of voted provisional ballots; and
32 (j) The date.

End of page 25 of 65

1 ~~10.4.2~~10.1.4 After a polling location closes for the day, election judges must complete
2 the following tasks, which watchers if present may witness and verify:

3 (a) Reconcile the total number of voted ballots with the number of voters who
4 voted. [There needs to be a rule prohibiting mid-day ballot collection or
election judges (and watchers) cannot reconcile these numbers.]

5 (b) Verify that the total number of voted ballots, spoiled or damaged ballots,
6 provisional ballots, and unvoted ballots is the same as the number of total
7 ballots supplied to or printed at the polling location.

8 (c) Reconcile the number of people who signed signature cards to the total
9 number of ballots cast. [There needs to be a rule prohibiting mid-day ballot
collection or election judges (and watchers) cannot reconcile these numbers.]

10 (d) Provide a written explanation of any discrepancy in the numbers on the
11 Statement of Ballots form; (for example, the voter signed in but left the
12 polling location without voting, etc.). [Omit comma before (.)]

13 (e) ~~Return~~ AFTER THE VOTER SERVICE AND POLLING CENTER CLOSES ON
14 ELECTION NIGHT, ELECTION JUDGES MUST RETURN the completed Statement
15 of Ballots form FOR EACH DAY THE LOCATION WAS OPEN ALONG WITH ALL
16 and voted, unvoted, spoiled, and provisional ballots to one of the election
17 offices designated in the mail ballot plan. [Do not allow clerks to leave
voted ballots and the Statement of Ballots forms in “safe” locations overnight during the election period.
Voters deserve to know that the clerk has those election materials in an actual safe under video plus
strong locks with only known personnel having access.]

18 ~~10.5~~10.1.5 Designated Election Official’s disposition of forms

19 ~~10.5.1~~(A) The designated election official must review the Statement of
20 Ballots form FORMS for completion and accuracy.

21 ~~10.5.2~~(B) If the designated election official or the canvass board discovers a
22 problem with the A Statement of Ballots form that cannot be easily
23 resolved, they may contact the election judges for an explanation or
24 correction.

25 *[Current Rules 10.1 and 10.9 are amended and renumbered as New Rule 10.2 as follows:]*

26 ~~10.1~~10.2 Appointment to the Canvass Board

27 ~~10.1.1~~10.2.1 In all cases, the canvass board must consist of an odd number of members,
28 and each member has equal voting rights. [I agree with Al Kolwicz’s suggestions
for the composition of the canvass board. Yes, the statute says the clerk is a member of the canvass
board, but does not specify the clerk is a voting member. The statute is contradictory about “each party
having an equal number of representatives” when the clerk is almost always a member of one or the

other major party, so as a practical matter, under normal circumstances, there is no way for the canvass board not to certify even if major malfeasance or serious mistakes are discovered.]

29 ~~10.1.2~~10.2.2 For a partisan election, each major party may have no more than two
30 representatives on the canvass board. The board must include an equal number of
31 representatives from each major party, unless a major party fails to certify
32 representatives for appointment. [This requirement makes it necessary for the
clerk's party to "win over" at least one member of the opposing party's canvass board members in order
to have the election certified by the canvass board, if the clerk cannot vote. In the case of a tie, the SOS]

33 ~~10.1.3~~10.2.3 Each major party representative on the canvass board must be registered to
34 vote in the county where the representative will serve and affiliated with the party
35 he or she represents. [This requirement was appropriate when the electorate was
largely affiliated as either D or R. That is no longer the case. The statute does not require affiliation with
the major party that will do the appointing. A cracker jack corporate auditor who is unaffiliated or
affiliated with a minor party would make a wonderful addition to any canvass board. I suggest that the
rule be revised as follows:

33 ~~10.1.3~~10.2.3 Each major party may be represented by a person who is registered to vote
34 in the county and who is affiliated with that party or a minor party or is
35 unaffiliated. ~~representative on the canvass board must be registered to~~
~~vote in the county where the representative will serve and affiliated with the party~~
~~he or she represents.~~

]

End of page 26 of 65

1 ~~10.1.4~~10.2.4 A candidate for office and members of the candidate's immediate family
2 may not serve on the canvass board.

3 ~~10.9~~10.2.5 Appointment of Canvass Workers. The designated election official may
4 appoint canvass workers to help prepare and conduct the canvass.

5 *[Current Rules 10.2 and 10.12 are amended renumbered as New Rule 10.3 as follows:]*

6 ~~10.2~~10.3 Duties of the Canvass Board

7 ~~10.2.1~~10.3.1 The canvass board must make its determinations by majority vote [I
think that "majority vote" implies Robert's Rules of Order, which implies the election of a chair and a
secretary for the group] in
8 accordance with section 1-10-101.5(1)(c), C.R.S.

9 ~~10.2.2~~10.3.2 The canvass board's duties are to: [No colon after a preposition.]
[Reordering the statements below to match statute and actual timing would benefit the users of this
rule.]

10 (ac) Conduct the canvass in accordance with section 1-10-101.5, C.R.S.,
11 including: [No colon after a participle.]

12 (13) ~~Account and balance~~ Balance the election and certify the official
abstract of
13 votes;

14 (21) Reconcile the number of ballots counted to the total number of
ballots
15 cast by in-person voters and mail ballots received; and

16 (32) Reconcile by precinct or ballot style, where applicable (see Rule
10.5.1), the number of ballots cast by in-person voters and mail
ballots received to the number of voters who
17 voted by reviewing the reconciled detailed ballot logs and
18 Statement of Ballots forms; and

19 (ba) Observe the post-election audit in accordance with section 1-7-514(4),
20 C.R.S., and Election Rule 11.3.3(k);

21 (eb) In coordination with the county clerk, investigate and report discrepancies
22 found in the audit under section 1-7-514(2), C.R.S.; and

[Harvie Branscomb's note on this rule (was c, but I recommend making it
b) is excellent; please take it into account.]

23 (d) Conduct any recount in accordance with section 1-10.5-107, C.R.S., and
24 this Rule. The canvass board's role in conducting a recount includes
25 selecting ballots for the random test, observing the recounting of ballots,
26 and certifying the results **as specified in Rule 10.3.2(c)**.

27 ~~10.2.3~~10.3.3 If the board identifies a discrepancy in ~~the~~ A Statement of Ballots FORM,
28 the board may review the particular ballots [**←If the Statement of Ballots form
refers to early in the process (such as mail ballots from a drop-off box), this
wording implies that the ballots have remained in the batches originally made when
the ballots were received by the DEO. If no rule requires that the envelopes in those
original batches be shuffled and even batches shuffled together, the ballots remain
traceable in many cases. Can you add a rule about shuffling (lots of shuffling)?**] at
issue to identify, correct, and
29 account for the error.

30 ~~10.2.4~~10.3.4 The canvass board may not perform duties typically reserved for election
31 judges, including:

- 32 (a) Determining voter intent;
- 33 (b) Evaluating voter eligibility; and

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~~1 (e) Requesting new logs or reports that were not created to conduct the~~
~~2 election. [Bad rule—where is this in statute? Please delete.]~~

3 ~~10.12~~10.3.5 Role of Watchers. Watchers appointed under section 1-10-101(1)(a),
4 C.R.S., may **observe witness and verify the actions of** the board while it performs
its duties, subject to Rule 8.

5 *Current Rule 10.3 is amended and renumbered as New Rule 10.1. **2**.*

6 *Current Rules 10.4 and 10.4.1 are amended and renumbered as New Rule 10.1. **23**.*

7 *Current Rule 10.4.2 is amended and renumbered as New Rule 10.1. **34**.*

8 *Current Rule 10.5 is amended and renumbered as New Rule 10.1. **45**.*

9 *Current Rules 10.6, 10.7.2(e)-(7h[but see suggested changes below to remove redundancy, which*
then require relettering, so this would be 7f]) and 10.11 are amended and renumbered as New
Rule 10.4 as

10 *follows:*

11 ~~10.6~~10.4 Procedures for the day **or days** of the Canvass

12 ~~10.6.1~~10.4.1 The designated election official must provide the following information to
13 the canvass board:

14 (a) The name of each candidate, office, and votes received;

15 (b) The number or letter of each ballot issue or question and votes received;

~~16 (c) The number of ballots cast, including the number of accepted and rejected~~
~~17 mail ballots; and~~

~~18 (d) The number of provisional ballots cast, including the number accepted and~~
~~19 rejected.;~~

20 *[Current Rules 10.7.2(e)-(h) are relocated to this New Rule 10.4.1 (e)-(h) as*
21 *follows:]*

22 **(ec)** The number of mail ballots **received**, counted, and **the number** rejected;

23 **(fd)** The number of **in-person** ballots **cast in person** counted;

24 **(ge)** The number of provisional ballots **cast in person**, counted, and **the number**
25 rejected, listed
by each rejection code; and

26 **(hf)** The number of damaged and spoiled ballots.

27 ~~10.6.2~~10.4.2 Any written documentation regarding official ~~numbers is~~ RESULTS MUST
28 BE included as part of the canvass.

29 ~~10.11~~10.4.3 Written Complaints

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1 ~~10.8.1~~10.6.1 The designated election official must keep all official canvass reports and
2 forms as part of the official permanent election record.

3 ~~10.8.2~~10.6.2 Once the canvass board certifies the abstract it may not withdraw the
4 certification. In the event of a recount, the canvass board may only affirm or
5 amend the abstract.

6 *Current Rule 10.9 is renumbered as New Rule 10.2.5.*

7 *Current Rule 10.10 is relocated and incorporated into New Rule 7.13*

8 *Current Rule 10.11 is renumbered as New Rule 10.4.3.*

9 *Current Rule 10.12 is renumbered as New Rule 10.3.5.*

10 ~~10.13~~10.7 Role of the Secretary of State

11 ~~10.13.1~~10.7.1 As part of the Secretary's duties under section 1-1-107, C.R.S., the
12 Secretary may provide guidance and investigate imperfections as outlined below.

13 ~~10.13.2~~10.7.2 The county clerk or the canvass board may request that the Secretary of
14 State provide guidance and support to the canvass board in the exercise of the
15 board's duties.

16 ~~10.13.3~~10.7.4 If, in the course of assisting a canvass board, the Secretary of State
17 discovers an imperfection that the Secretary believes may affect the conduct of
18 other canvass boards, the Secretary may provide notice to other counties
19 regarding the nature of the imperfection.

20 ~~10.13.4~~ ——— Imperfect returns or failure to certify

21 (a) ——— ~~If the canvass board fails to certify or certifies imperfect returns that have~~
22 ~~no reasonable potential to change the outcome of any race or ballot~~
23 ~~measure, the Secretary of State and county clerk must certify the election~~
24 ~~and order recounts, if any, in accordance with Part 1, Article 11 of Title 1,~~
25 ~~C.R.S.~~

26 (b) ——— ~~If the canvass board fails to certify or certifies imperfect returns that have~~
27 ~~a reasonable potential to change the outcome of any race or ballot~~
28 ~~measure, the Secretary of State will conduct an investigation to identify~~
29 ~~the nature of, and advise the county clerk in correcting, the inaccuracy.~~

30 *[Current Rule 10.13.4 is repealed; this information is addressed by Article 10, of Title 1,*
31 *C.R.S.]*

32 ~~10.14~~10.8 Recount generally

33 ~~10.14.1~~10.8.1 The purpose of a recount is to re-tabulate the ballots. **[This purpose is overly
obvious and quite minimal. A better statement would be "The purpose of a recount is to review the
election procedures beginning with the receipt of mail ballots and the casting of in-person ballots,
including recounting all ballots, to assure that an incorrect outcome has not been certified." Also, please
see Harvie Branscomb's suggested wording. More adequate explanation is needed in this rule.]**

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1 ~~10.14.2~~10.8.2 For statewide or federal races, ballot issues or ballot questions, the county
2 clerk must coordinate scheduling the recount through the Secretary of State’s
3 office so that it can ensure adequate observer coverage.

4 ~~10.15~~10.9 Recount cost estimates and reimbursements

5 ~~10.15.1~~10.9.1 A county must submit a request for reimbursement for a mandatory
6 recount of a state or federal race or ballot measure using the Secretary of State
7 approved form. The county may not request reimbursement for meals or normal
8 overhead costs or regular employee compensation. The county must include
9 itemized costs for reasonable expenditures, including:

- 10 (a) Mailings and notices;
- 11 (b) Election judges, temporary staff, canvass board pay, and overtime pay;
12 and
- 13 (c) Copies and other office expenses related to the recount.

14 ~~10.15.2~~10.9.2 Requested recounts

- 15 (a) The county clerk must provide an itemized cost estimate in accordance
16 with section 1-10.5-106, C.R.S., upon submission of a formal request for a
17 recount.
- 18 (b) In preparing a cost estimate for a requested recount, the county must use
19 the Secretary of State approved form. The estimate must include
20 reasonable itemized costs for conducting the recount. The county may not
21 request reimbursement for normal overhead costs.
- 22 (c) The county clerk must submit a cost estimate to the Secretary of State
23 when the clerk provides it to a requesting party.

24 ~~10.16~~10.10 In accordance with section 1-10.5-107, C.R.S., and Rule ~~10.2.2(d)~~–
25 10.3.2(D[**lowercase d, don’t forget.**]), the
26 canvass board’s role in conducting a recount includes selecting ballots for the test,
 observing the recounting of ballots, and certifying the results.

27 ~~10.17~~10.11 Watchers and observers DURING A RECOUNT

28 ~~10.17.1~~10.11.1 The Secretary of State may appoint official observers in any
29 recount.

30 ~~10.17.2~~10.11.2 Each candidate or the candidate’s watcher, media observers, and
31 official observers, may be present and witness the recount in accordance with
32 Rule 8.

1 ~~10.17.3~~-10.11.3 The recount board must take the canvass board oath, assisting
2 election judges must take the election judge’s oath, and any person observing the
3 recount must take a watcher’s oath.

4 ~~10.17.4~~-10.11.4 Complaints. A watcher may submit a complaint in writing to the
5 county clerk or designee. Written complaints during a recount will be addressed
6 in accordance with Rule 13.

7 ~~10.18~~-10.12 Testing recount equipment [Please see Harvie Branscomb’s excellent comments,
and adjust accordingly. Thank you. I and many, many others would appreciate a hand recount if it
comes to that. With sort and stack, hand recounts are even more accurate than machine counts because
voter intent can be viewed on each ballot under several sets of eyes.]

8 ~~10.18.1~~-10.12.1 The canvass board must review the post-election audit before
9 selecting the equipment for testing under section 1-10.5-102(3), C.R.S. To the
10 extent feasible, the board must select equipment for testing that was not included
11 in the post-election audit.

12 ~~10.18.2~~-10.12.2 The county clerk must test all scanners that will be used in the
13 recount. The purpose of the test is to ensure that the tabulation machines are
14 counting properly.

15 (a) The test deck must include 50 ballots or 1% of the total number of ballots
16 cast in the election, whichever is greater, except that the total number of
17 ballots tested may not exceed the total number of ballots comprising the
18 county’s test deck for the Logic and Accuracy test before the election. The
19 ballots must be marked to test every option for the race or measure that
20 will be recounted.

21 (1) In a mandatory recount, the canvass board must select the ballots
22 to be tested from the county’s test deck for the Public Logic and
23 Accuracy test.

24 (2) In a requested recount, the person requesting the recount may mark
25 up to 25 ballots. Any other candidate in the race may also mark up
26 to 25 ballots. The canvass board must randomly select ballots from
27 the county’s test deck for the Public Logic and Accuracy test to
28 ensure the minimum number of test ballots required by this Rule.

29 (b) Sworn judges or staff must hand tally the test ballots for comparison to the
30 tabulation results.

31 (c) The test is limited to the race or measure that is recounted.

32 ~~10.18.3~~-10.12.3 The county clerk must test the VVPAT records from 1% of the
33 DREs that had votes cast for the race or measure being recounted.

34 (a) Sworn judges or staff must manually verify the results on the machines
35 selected for the test.

36 (b) The test is limited to the race or measure that is recounted.

1 ~~10.19~~-10.13 Counting ballots DURING A RECOUNT [Great comment and example by Harvie
Branscomb. Please take this concern into account and add rule language.]

2 ~~10.19.1~~-10.13.1 In accordance with section 1-10.5-102(3)(b), C.R.S., if there are no
3 discrepancies in the test under Rule ~~10.18~~ 10.12, the recount must be conducted in
4 the same manner as the ballots were counted in the election except as outlined in
5 this Rule. If there are unresolvable discrepancies in the test, the recount must be
6 conducted as a hand count under Rule ~~10.19.5~~ 10.13.5.

7 ~~10.19.2~~-10.13.2 A clear audit trail must be maintained throughout the recount
8 including, but not limited to, a log of seal numbers on transfer cases or ballot
9 boxes, and the corresponding numbered seal for each transfer case or ballot box.

10 ~~10.19.3~~-10.13.3 Ballots must be reviewed for voter intent using the standards in
11 Rule 18.

12 (a) Every over-vote or under-vote in the race(s) or measure(s) subject to the
13 recount must be reviewed for voter intent under Rule 18.

14 (b) The judges conducting the voter intent review may resolve the intent
15 differently than the judges in the election.

16 ~~10.19.4~~-10.13.4 To recount ballots using “Ballot Now”:

17 (a) Back up the official election database.

18 (b) Open Ballot Now with an unused Mobile Ballot Box (MBB) from the
19 election and create a Ballot Now recount database.

20 (c) Scan and resolve all recount ballots according to this Rule 10.

21 (d) Save all recount Cast Vote Records to the MBBs after verifying that the
22 number of ballots processed matches the number of ballots cast in the
23 recount contest.

24 (e) Open a new recount election in “Tally” and process the recount MBBs
25 following the tabulation procedures above.

26 (f) Compare recount results to original results and document any differences.

27 (g) Backup the test database and the official recount database.

28 ~~10.19.5~~-10.13.5 To recount ballots by hand count.

29 (a) If the tabulation of the original count was conducted by hand count, the
30 recount must be conducted by hand count.

31 (b) Ballots must be counted in batches of 25 to ensure that the number of
32 ballots recounted matches the number originally counted. [I could not agree
more with Harvie Branscomb’s comment. We need to use sort and stack for speed and accuracy. It is
very easy to “revisit” a stack of ballots that someone has sorted so that all the votes for the recounted
contest are identical (for a given candidate, or Yes vs. No for a question). Double checking is what a
recount is all about.]

1 (c) Votes must be counted by individual hash marks in 25-count sections by
2 two different judges.

3 ~~10.19.6~~10.13.6 For tabulation of DREs, if there are no discrepancies in the test
4 under Rule ~~10.18.3~~ 10.12.3, the county clerk must upload the memory cards.

5 ~~10.19.7~~10.13.7 Tabulation of ballots cast must be completed through a precise,
6 controlled process that ensures each container of ballots is retabulated and
7 resealed before tabulation of the next container begins.

8 ~~10.19.8~~10.13.8 The number of ballots counted according to the final results for
9 that race or measure must be available during the recount for comparison
10 purposes.

11 ~~10.20~~10.14 Canvass and reporting results FOR A RECOUNT

12 ~~10.20.1~~10.14.1 Totals of recounted ballots must be reported in summary form as
13 follows:

14 (a) Sum total of votes cast for each race or measure recounted, under-votes,
15 and over-votes for each location;

16 (b) The totals must be a combined total, not totaled by individual precincts or
17 location, unless the tabulation system allows. **[Please see and incorporate
Harvie Branscomb's suggestion.]**

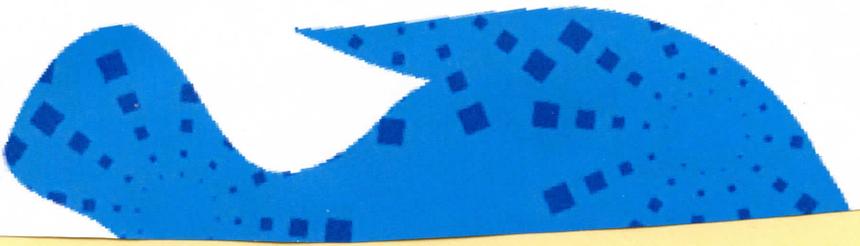
18 ~~10.20.2~~10.14.2 In accordance with section 1-10.5-107, C.R.S., and this Rule 10,
19 the canvass board must amend, if necessary, and re-submit the abstract of votes
20 cast.

End of Rule 10

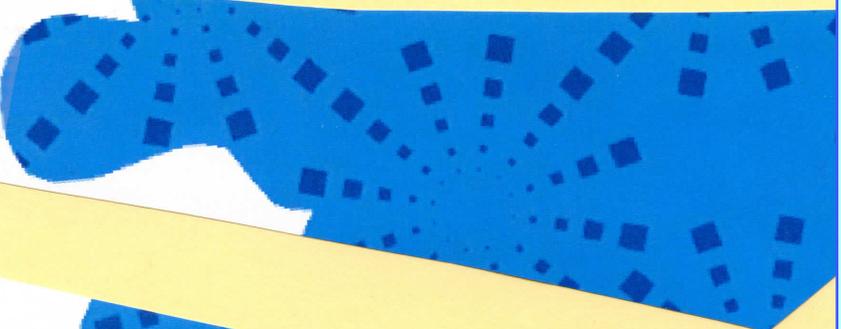
End of page 34 of 65

CREATING AN ELECTION PROCESS

VOTERS' THINKING ABOUT THEIR LIVES A LOT AND ONLY A LITTLE ABOUT WHAT METHOD THEY USE TO VOTE AND HOW SAFE THAT METHOD IS



MISCELLANEOUS INFLUENCES



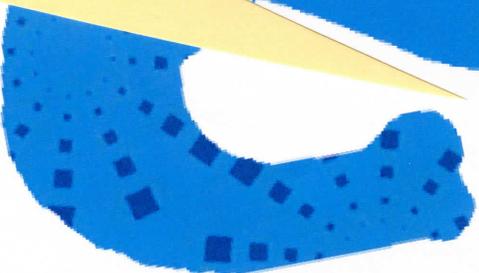
CLERKS AND THE SOS AND THEIR STAFFS



ACTIVISTS FOR MAXIMUM TURNOUT



ACTIVISTS FOR ELECTION INTEGRITY



THE LEGISLATURE

All the parts are important to get a good picture of the whole process.