CITIZENS CLEAN ELECTIONS COMMISSION

EXECUTIVE DIRECTOR REPORT

October 29, 2015

Announcements:

- Tuesday, November 3, 2015 is Election Day. Several local jurisdictions are conducting elections and voters can visit our web site, www.azcleanelections.gov, for additional information.

Voter Education:

- On October 1, 2015, Tom and Gina attended a KJZZ/Rio Salado College panel discussion, "Cutting through the Rhetoric", and provided voter education materials and information to participants.

- On October 20, 2015, Tom participated in a panel discussion on campaign finance for ASU's The Voice of the People Association event, "New York Times Talk".

- On October 31, 2015, Tom will headline a seminar discussing voting rights before and since 1965 as part of a celebration of the Voting Rights Act, hosted by ASU's New College of Interdisciplinary Arts and Sciences. U.S. Attorney General Loretta Lynch is a special guest speaker and will host a Q&A session.

- On November 7, 2015, Gina and Alec will attend the San Carlos Apache Tribe Veterans' Fair & Rodeo to provide voter education materials and information to fair attendees.

- On November 12, 2015, Clean Elections and the Morrison Institute for Public Policy will present the findings of and conduct a panel discussion on the Independent Voter Study.

- On November 18, 2015, Tom will participate in a community wide forum on Money and Politics, hosted by the League of Women Voters at the City of Surprise, City Hall, Council Chambers.

- **Candidate Information – 2016 Election Cycle:**

- Participating Legislative Candidates: 25

- Participating Statewide Candidates: 4

- Clean Elections Training Workshops:

    - 12 participating candidates have attended a candidate training workshop.

    - 13 members of the public have attended a Clean Elections training workshop.

Enforcement – 2014 Election Cycle:

- Complaints Received: 27 (24 accounting for consolidations)

- Complaints Pending: 3
    - MUR 14-006, -015 (consolidated/conciliated): Horne - pending completion of items in conciliation agreement.
    - MUR 14-007: Legacy Foundation Action Fund (LFAF)

A copy of the Commission's Motion to Dismiss LFAF's Appeal is attached as part of this Report.

- MUR 14-027: Veterans for a Strong America
  Received response and correspondence from Attorney General.

Enforcement – 2016 Election Cycle: None

Miscellaneous:

Commission staff completed the agency's 5 year rule review report for the Governor's Regulatory Review Council. Every 5 years the agency must review all rules and rulemaking actions and provide a written report to the Council. We anticipate the Council will place the report on their meeting agenda soon but we do not have a timeline for that. A copy of the report is attached as Attachment 1.

We have been working with Central Services Bureau on financial reporting issues with the State's new financial processing system, which replaced an antiquated system in July. A budget update is attached as Attachment 2. Please speak with Sara if you have any questions regarding the budget. We will have the 2016 budget presentation in December and our 2015 budget review in January.

FIVE YEAR REVIEW – October 2015
Citizens Clean Elections Commission

This report covers all rules in Title 2, Chapter 20, all articles. The Citizens Clean Elections Commission (the "Commission") adopted these rules to further the goals of the Citizens Clean Elections Act ("Act"). The Act was passed by the voters in 1998 and created the clean elections system to diminish the influence of special-interest money, including the opportunities for and appearance of *quid pro quo* corruption, and to thereby promote the integrity of Arizona state government. The Act promotes freedom of speech under the United States and Arizona Constitutions. It also created a voluntary system wherein "participating" candidates receive public funds to finance campaigns. To qualify for funding, participating candidates must follow additional rules and reporting requirements. The Act also applies to candidates who are nonparticipating candidates and independent spenders in elections. The Rules implement the provisions of the Act. All rules created or amended prior to June 25, 2013 have been "pre-cleared" by the U.S. Department of Justice pursuant to Section Five of the Federal Voting Rights Act.

The Commission reports the following analysis of its rules in the order required by Arizona Administrative Code ("A.A.C.") R1-6-301. Pursuant to A.A.C. R1-6-301(B), Part I includes information pertaining to all, or a great number, of the rules. Part II reports information unique to the listed rules.

Part I: Analysis Which Is Identical Within Groups of Rules

1. General statutes authorizing the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The Commission's general rulemaking authority is found in A.R.S. § 16-956 (C). This statute allows the Commission to adopt rules to carry out the purposes of the Article and to govern procedures of the Commission. A.R.S. § 16-956 (C) provides:

> The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. Commission rule making is exempt from title 41, chapter 6, article 3. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The Commission shall also file a notice of exempt rule making and the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty-day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the Secretary of State's Office for publication in the Arizona Administrative Register. Any rules adopted

by the Commission shall only be applied prospectively from the date the rule was adopted.

The Commission is governed by the Act codified at Title 16, Chapter 6, Article 2. The Act includes A.R.S. §§ 16-940 through -961. A copy of the Act is attached hereto as Attachment A. Attachment B is a copy of the rules covered by this report.

2. The objective of the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The objective of each rule is to further the objective of the Act, which as stated in A.R.S. § 16-940 (A) is:

> to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions.

3. Effectiveness of the rule in achieving the objective

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule is effective in achieving the above-stated objective.

4. Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The rules are consistent with state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

All rules are fairly and consistently enforced by the Commission.

6. Clarity, conciseness, and understandability of the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The Commission finds all of its rules to be clear, concise, and understandable.

7. Summary of the written criticisms of the rule received by the agency within five years

This information is provided in Part II for individual rules that were the subject of written criticism in the last five years. For rules with no entry under item 7 in Part II, the Commission did not receive any written criticism of the rule.

8. Estimated economic, small business, and consumer impact

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Economic, small business and consumer impact statement

The rules proposed and adopted by the Commission between January 2010 and July 23, 2015 create no economic impact for small businesses or consumers provided participating candidates abide by the rules. Failure to abide by any of the statutes or rules may create an economic impact on those subject to the penalties the Commission may impose.

The Commission receives funds from the following sources.

- A 10 percent surcharge imposed on all civil and criminal fines and penalties collected pursuant to A.R.S. § 12-116.01;
- A $5 voluntary contribution per taxpayer ($10 when married and filing jointly) who files an Arizona state income tax return and marks an optional check-off box on the first page of the form. A taxpayer who checks this box receives a $5 reduction in tax liability and $5 goes to the Clean Elections Fund (NOTE: As of August 2, 2012, the Commission only receives $5 voluntary taxpayer contributions from individuals filing tax returns for tax years 2012 and earlier.);
- A voluntary donation to the Clean Elections Fund by designating the Fund on an income tax return form filed by the individual or business entity, or by making a payment directly to the Fund. Any taxpayer making a donation shall receive a dollar-for-dollar tax credit not to exceed 20 percent of the tax amount on the return or $680 per taxpayer, whichever is higher (NOTE: As of August 2, 2012, the Commission no longer accepts donations for the dollar-for-dollar tax credit.);
- Qualifying contributions received by participating candidates;
- Civil penalties assessed against violators of the Citizens Clean Elections Act.

9. Analysis submitted by another person on the rules' impact on competitiveness

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

No such analysis has been submitted to the Commission for any of its rules.

10. Course of Action from Last Review

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

All corrective action from the previous report was completed at the Commission meeting on July 21, 2011 and reported on the April 18, 2011 Five Year Report Progress Report.

11. Least Burden and Costs

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule achieves its underlying regulatory objective with the least burden and cost possible, and the probable benefits of each rule outweigh its probable costs.

12. Determination to corresponding federal law

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The rules are consistent with federal law and state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

13. A.R.S. § 41-1037

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Commission rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Course of action the agency proposes to take regarding each rule

This information is provided in Part II for individual rules for which the Commission proposes to take action. For rules with no entry under item 10 in Part II, the Commission proposes no course of action.

Part II: Analysis of Individual Rules

ARTICLE 1 – GENERAL PROVISIONS

R2-20-101 Definitions

2. Objective

Supplement the definitions provided in A.R.S. §§16-901 and 16-961 for Chapter 20 of the Commission rules.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission struck the definition of "election cycle" from the rule because the definition is found in statute. (19 A.A.R. 3515)

On September 27, 2013, the Commission adopted final amendments to the rule that added the definitions of "person," "candidate for statewide office," and "legislative candidate." The Commission also adopted final amendments to the rule that clarified the definition of "candidate" as a person and, if not specifically stated, "candidate" includes a candidate for statewide or legislative office. The Commission also adopted final amendments to the rule that changed the definition of "expressly advocates" by removing the language from (10)(b)(ii) that states "in the 16 week period immediate preceding a general election." (19 A.A.R. 3515)

b. Action Proposed

None.

R2-20-102 Applicability

2. Objective

Specify to which candidates the Act and rules apply.

14. Course of Action

a. Action Taken

On September 27, 2013, the Commission unanimously repealed the applicability rule to eliminate potential confusion. (19 A.A.R. 3518)

b. Action Proposed

None.

R2-20-103 Time Calculations

2. Objective

Clarify procedures for computing periods of time and methods of communicating between the candidate and the Commission.

R2-20-104 Certification as a Participating Candidate

2. Objective

Provide guidance on filing an application for certification and electronic campaign finance reports; accepting contributions and making expenditures; and requirements for a nonparticipating candidate to be eligible for participating candidate status.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final rule amendments to (C)(8) clarifying the rule by removing the language "equalizing fund payments" as the Commission no longer issued equalizing funding at that time and inserted the language "primary and general election funding" to clarify the funding type. (19 A.A.R. 1685)

On May 9, 2013, the Commission adopted final rule amendments to (D)(5) requiring participating candidates to attend a candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified prior to the start of the qualifying period. (19 A.A.R. 1685)

b. Action Proposed

None.

R2-20-105 Certification for Funding

2. Objective

Provide the process for certifying clean elections candidates.

14. Course of Action

a. Action Taken

On January 19, 2012, the Commission adopted final amendments to the rule adding a new subsection (C) to allow participating candidates to collect up to 50% of the number $5 qualifying contributions required to qualify for funding through a secured electronic portal maintained by the Secretary of State's Office known as E-Qual. (19 A.A.R. 1688)

On February 9, 2012, the Commission adopted final amendments to subsection (D) of the rule to clarify that solicitor information is not required for $5 qualifying contributions collected in accordance with subsection (C). (19 A.A.R. 1688)

On May 9, 2013, the Commission adopted final amendments to subsection (J) of the rule increasing the minimum number of $5 qualifying contributions required for all statewide and legislative offices. (19 A.A.R. 1688)

b. Action Proposed

None.

R2-20-106 Distribution of Funds to Certified Candidates

2. Objective

Provide the process and criteria for the Commission to evaluate a candidate's application for funding.

R2-20-107 Candidate Debates

2. Objective

Provide procedures for conducting debates, for candidates seeking to be excused from participation in the debates and the penalty for failing to participate in the debates.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to subsection (E) of the rule by removing reference to equalizing funds as the Commission no longer issued equalizing funds at that time. (19 A.A.R. 1690)

On November 21, 2013, the Commission adopted final amendments to subsections (A), (D), and (K) to outline the timelines and procedures for the Commission to invite participating and non-participating candidates to Commission sponsored debates and for allowing non-participating candidates to request a Commission sponsored debate even if there is not a participating candidate in the race. (19 A.A.R. 4213)

On July 23, 2015, the Commission adopted final amendments subsection (D)(3) to clarify the procedures in which a nonparticipating candidate may participate in a Commission sponsored debate and/or request the Commission sponsor a debate. (21 A.A.R. 1627)

b. Action Proposed

None.

R2-20-108 Termination of Participating Candidate Status

2. Objective

Provide a method for candidates to withdraw their application for certification or funding.

14. Course of Action

a. Action Taken

On May 20, 2011, the Commission adopted final amendments to the rule to permit a participating candidate to terminate the candidate's participation in the Arizona's public financing program. The Commission also removed language from subsection (A) stating that "the candidate shall immediately begin the process of returning public funds to the Fund" in order to clarify that once a candidate has received public funds, the candidate may not withdraw from participation in the program. The Commission amended subsection (C) to include language permitting a person who has withdrawn from participation to reapply provided the candidate is in compliance with other rules relating to the certification of participating candidates. (17 A.A.R. 1950)

b. Action Proposed

None.

R2-20-109 Reporting Requirements

2. Objective

Provide the requirements for candidates and independent expenditures committees to file campaign finance reports.

7. Written Criticism

Prior to the September 27, 2013 Commission meeting, Sam Wercinski of Arizona Advocacy Network submitted written public comment in support of the Commission proposed rule changes. Mr. Wercinski proposed a change to subsection (B)(3)(d) to clarify that the joint expenditure should fairly allocated to the "obligated candidate" rather than "candidate."

Prior to the May 22, 2014 Commission meeting, the Commission received public comment regarding the rule. Senator Steve Pierce and the Elect Steve Pierce Committees, through their legal counsel, Michael Liburdi, submitted a petition for a rule change proposing the Commission repeal R2-20-109(G). Mr. Liburdi stated the rule "is an extra-legal exercise of the Commission's rulemaking power and established bad public policy for regulators and non-participating candidates." The Citizens Clean Elections staff recommended the Commission not repeal the provision. Robyn Prud'homme-Bauer from the League of Women Voters of Arizona provided written public comment supporting the Commission staff's position to R2-20-109 stating the rule changes aligned with the League's positon on full disclosure. Sam Wercinski of the Arizona Advocacy Network also submitted written public comment in support of the staff recommendation of amendments to R2-20-109(G) and in opposition to the petition for a rule change submitted by Senator Pierce. Finally, Tim Hogan from the Arizona Center for Law in the Public Interest submitted written public comment in opposition to Senator Pierce's petition for a rule change for the fact that "the plain language of the Clean Elections Act does not support Pierce's interpretation."

On July 23, 2015, the Commission considered discussion and possible action on proposed amendments to the rule that were presented at the Commission's May 14, 2015 public meeting. Prior to the meeting the Commission received numerous written public comments with 152 individuals supporting the Commission proposed rule changes and 6 individuals opposing the Commission proposed rule changes, including Connie Wilhelm Garcia, President and Executive Director of the Home Builders Association of Central Arizona. Louis Hoffman, a former Commissioner, provided substantial written public comment in regard to the rule revisions. Mr. Hoffman proposed removing the A.R.S. § 16-913 citation from subsection (F)(6) and adding clarifying language regarding independent expenditures to subsection (F)(3). Mr. Hoffman's proposal also clarifies that the Commission may audit exempt entities in subsection (F)(8). He also adds additional detailed language regarding civil penalties in a new subsection (F)(12).

On August 19, 2015, the Secretary of State submitted a petition for a rule change proposing the Commission removes from R2-20-109(F)(3) entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

Prior to the August 20, 2015 Commission meeting, the Commission received public comment from 33 individuals. Substantive written public comments were received from the Center for Competitive Politics and their counsel, Kory Langhofer, Eric Spencer, Louis Hoffman, the Arizona Chamber of Commerce and Industry, and Saman Golestan. The Commission considered all public comment and proposed revisions to the rules.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to subsection (A) of the rule clarifying campaign finance reports will be filed electronically with the Secretary of State's office and that participating candidates must have sufficient funds in their campaign accounts to pay for the total amount of the expenditure at the time it is made. The Commission also eliminated subsections (B-D) which pertained to equalizing funding and independent expenditures (subsections (E-F) were re-codified). Subsection (E) was added to clarify reporting requirements for participating candidates. (19 A.A.R. 2923)

On August 29, 2013, the Commission adopted final amendments to subsection (A) of the rule clarifying that participating candidate must make reimbursements to authorized agents within seven calendar days of the expenditure is deemed an in-kind contribution. In addition, the Commission added language to subsection (C) requiring candidates to maintain a travel log and reimburse mileage or air travel within seven calendar days. (19 A.A.R. 2923)

On September 27, 2013, the Commission adopted final amendments to the rule. The final adopted rule includes the following amendments:

Subsection (A) – amended to make clear the section applies to all persons obligated to file any campaign finance report subject to the Act and Rules.

Eliminates R2-20-109(A)(3)

Re-codified R2-20-109(A)(1-6) as R2-20-109(B)(1-5)

Subsection (B) - amended to further define joint expenditures and the allocation and reimbursement for joint expenditures.

Re-codified subsection(B) as subsection (C).

Subsection (C) - amended to clarify the timing of reporting expenditures for participating candidates.

Re-codified R2-20-109(C) as R2-20-109(D).

Subsection (D) - amended to clarify the transportation requirements for participating candidates.

Re-codified R2-20-109(D) as R2-20-109(E).

Subsection (E) – amended to clarify participating candidates' reports and refunds of excess monies.

Subsection (F) – added to clarify reporting requirements for independent expenditures.

Subsection (G) – added to clarify reporting requirements and campaign finance limits applicable to non-participating candidates. (19 A.A.R. 3519)

On May 22, 2014, the Commission adopted final amendments to subsection (G) of the rule to clarify the Commission's enforcement of contribution limits and reporting requirements related to non-participating candidates under the Citizens Clean Elections Act, rules, and related penalties. (20 A.A.R. 1329)

On September 11, 2014, the Commission adopted final emergency amendments to the rule. Subsection (F) was amended to clarify language related to the Commission's enforcement of reporting requirements and exceptions under the Clean Elections Act, rules and related penalties. Subsection (F)(3)(c) was amended to clarify the penalties for amounts not reported during the election. Subsection (F)(3)(d) was added to clarify that the amounts in (a), (b), and (c) are subject to adjustment of A.R.S. § 16-959. Language was added to subsection (F)(4) to clarify that any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance or intends to comply with A.R.S. §§ 16-920 and -914.02 may seek an exemption from the reporting requirements of the Act. Subsection (F)(5) was amended by removing subsections (a) and (b) in regards to an organization's primary purpose and certification that the organization does not intend to accept donations or contributions for the purpose of influencing elections. Subsection (F)(6) was amended to clarify that organizations that do not receive an exemption from the Commission are required to file independent expenditure reports as specified in A.R.S. § 16-958. (20 A.A.R. 2804)

On August 20 and 21, 2015, the Commission approved rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the revised rule proposals which included the Secretary of State's petition for a rule change and Mr. Langhofer's rule amendment proposal. The Commission is currently seeking public comment on the following proposed rule amendments:

R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allow for direct fuel purchases by the candidate for the candidate's automobile only and require documentation such as a travel log to be kept regarding a candidate's direct fuel purchases.

R2-20-109 (F)(3) – adds language emphasizing an independent expenditure can be made on behalf of any candidate, a participating candidate or a nonparticipating candidate. Codify in rule statutory language stating an independent expenditure against a candidate is considered an independent expenditure on behalf of the opposing candidate(s). Add language that political committees receiving contributions or making expenditures for candidate elections are subject to the penalties of the Clean Elections Act. Also updates language to clarify the definition of "political committee" in response to HB 2649 redefining the term.

R2-20-109(F)(3) – removes entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

R2-20-109 (F)(6) – clarifies filing requirements to reflect statutory requirements.

R2-20-109 (F)(8) – clarifies Commission's auditing authority to eliminate potentially confusing language.

R2-20-109 (F)(12) – these provisions update the Commission's rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures. (21 A.A.R. 1977, 2043)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendments would be October 29, 2015.

R2-20-110 Campaign Accounts

2. Objective

Specify the method for maintaining campaign accounts.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to the rule by removing subsection (B) which permitted the Commission to consider a nonparticipating candidate's campaign finance activity in all accounts for the purposes of equalizing funds. (19 A.A.R. 1693)

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that a single campaign account is the same as a candidate campaign bank account. (21 A.A.R. 1629)

b. Action Proposed

None.

R2-20-111 Books and Records Requirements

2. Objective

Specify the manner for keeping records and giving the public access to campaign records.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that candidates should maintain records relating to the candidate's campaign bank account. (21 A.A.R. 1631)

b. Action Proposed

None.

R2-20-112 Political Party Exceptions

2. Objective

Provide guidance on the scope of the political party exceptions to the definitions of contributions and expenditures in A.R.S. § 16-901(5), (8).

R2-20-113. Calculation of Equalizing Funds (REPEALED)

2. Objective

Provide details for calculating equalizing funds in accordance with A.R.S. § 16-952.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission repealed the rule calculating equalizing funds for participating candidates. (19 A.A.R. 1694)

b. Action Proposed

None.

R2-20-113. Candidate Statement Pamphlet (NEW RULE)

2. Objective

Provide procedures for candidate eligibility and submission of statements for the Commission's primary and general election candidate statement pamphlets in accordance with A.R.S. § 16-956.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted a new rule to clarify which candidates are eligible to submit statements to the Commission's primary and general election candidate statement pamphlets. (21 A.A.R. 1633)

b. Action Proposed

None.

ARTICLE 2 – COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-201 Scope

2. Objective

Specify the scope of the rules.

R2-20-202 Initiation of Compliance Matters

2. Objective

Describe methods for initiating an enforcement matter.

R2-20-203 Complaints

2. Objective

Provide the process for filing a complaint.

R2-20-204 Initial Complaint Processing; Notification

2. Objective

Specify the procedures for processing complaints.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to subsections (A) and (B) of the rule to allow the Commission greater flexibility in the method in which respondents are provided with copies of complaints filed with the Commission. (21 A.A.R. 1634)

b. Action Proposed

None.

R2-20-205 Opportunity for No Action on Complaint-Generated Matters

2. Objective

Specify the method and time period allowed for an alleged violator to respond to a complaint.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to subsection (C) of the rule to require a respondent's response to be sworn to and signed in the presence of a notary public and notarized which aligns with the requirements of complaints filed with the Commission. (21 A.A.R. 1636)

b. Action Proposed

None.

R2-20-206 Administrative Counsel's Recommendation on Complaint-Generated Matters

2. Objective

Specify the Executive Director's and complainant's role prior to bringing a reason-to-believe violation to the Commission.

7. Written Criticism

Prior the May 22, 2014 Commission meeting, Robyn Prud'homme-Bauer from the League of Women Voters of Arizona provided a written comment supporting the rule amendments. Sam Wercinski from the Arizona Advocacy Network provided written public comment in opposition the proposed subsections (C) and (D) stating the proposals would create a separate process for initiating investigations for one group of candidates versus another and therefore creating unequal due process.

14. Course of Action

a. Action Taken

On May 22, 2014, the Commission adopted final amendments to subsection (B) clarifying that the Executive Director's recommendation is not an appealable agency action. The Commission also adopted subsections (C) and (D) to specify the procedures for initiating an inquiry regarding a nonparticipating candidate or a nonparticipating candidate's campaign committee and that the Commission's decision to authorize an inquiry is not an appealable agency action. (20 A.A.R. 1332)

On July 23, 2015, the Commission adopted final amendments to subsection (A) of the rule allow the Executive Director to close a complaint generated matter based on the respondent complying with the rule or statute on which the complaint is founded and notifying the Commission in such an instance. (21 A.A.R. 1638)

On August 20, 2015, the Commission approved a rule amendment proposal for publication with the Arizona Administrative Register in order to solicit public comment for a proposal that would require the Executive Director to first receive Commission approval to initiate an inquiry if a person making an independent expenditure in an election without a participating candidate faces penalties subject to A.R.S. § 16-942(B). (21 A.A.R. 1981)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendment would be October 29, 2015.

R2-20-207 Internally Generated Matters; Referrals

2. Objective

Provide the Executive Director with authority to generate an internal complaint.

R2-20-208 Complaint Processing; Notification

2. Objective

Provide the process for notifying the complainant and the respondent of a reason-to-believe determination.

7. Written Criticism

Prior to the August 20, 2015 Commission meeting, the Arizona Chamber of Commerce submitted a proposal to the Commission to amend the enforcement processing procedures when a complaint alleges an "Article 1" violation involving an independent expenditure.

14. Course of Action

a. Action Taken

On August 20, 2015, the Commission approved three rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the proposals. (21 A.A.R. 1772, 1822, 1983)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendments would be October 29, 2015.

R2-20-209 Investigation

2. Objective

Specify the methods used by the Commission to investigate following a reason-to-believe determination.

R2-20-210 Written Questions Under Order

2. Objective

Allow the Commission to issue an order requiring any person to submit sworn, written answers to written questions.

R2-20-211 Subpoenas and Subpoenas Duces Tecum; Depositions

2. Objective

Allow the Commission to authorize the Administrative Counsel or Assistant Attorney General to issue subpoenas for a deposition or issue a subpoena *duces tecum* during its investigation.

R2-20-213 Motions to Quash or Modify a Subpoena

2. Objective

Allow any person to whom a subpoena is directed to apply to the Commission to quash or modify the subpoena.

R2-20-214 The Probable Cause to Believe Recommendation: Briefing Procedures

2. Objective

Specify the procedure for the Commission's determination of probable cause to believe that a violation of the statute or rule has occurred or is about to occur.

R2-20-215 The Probable Cause to Believe Finding; Notification

2. Objective

Provide the process for notifying the respondent of a probable cause finding.

R2-20-216 Conciliation

2. Objective

Provide the process for settling matters informally.

R2-20-217 Enforcement Proceedings

2. Objective

Provide the process for assessing civil penalties.

R2-20-218 Reserved

R2-20-219 Reserved

R2-20-220 Ex Parte Communications

2. Objective

Prohibit ex parte communications with the Commission staff or Commissioner.

R2-20-221 Representation by Counsel; Notification

2. Objective

Specify the extent of a respondent's right to be represented.

R2-20-222 Civil Penalties

2. Objective

Designate potential civil penalties.

7. Written Criticism

Prior to the September 27, 2013 meeting, Sam Wercinski from the Arizona Advocacy Network provided written public comment stating that he currently penalty structure is unfair and lacks deterrent value. Mr. Wercinski proposed a percentage based penalty for deterring campaign finance violations.

14. Course of Action

a. Action Taken

On May 9, 2013, the Commission adopted final amendments to subsections (A) and (B) which increased the maximum civil penalties for participating legislative candidate from $500 to $1,000, participating statewide candidates from $2,500 to $5,000, and for a person other than a participating candidate from $500 to $1,000. (19 A.A.R. 1697)

On September 27, 2013, the Commission adopted final amendments to the rule which struck subsection (C) of the rule which limited penalties for violations of the Act. (19 A.A.R. 3524)

b. Action Proposed

None.

R2-20-223 Notice of Appealable Agency Action

2. Objective

Specify the Commission's notice requirement after making a probable cause finding.

14. Course of Action

a. Action Taken

On July 21, 2011, the Commission amended subsection (A) to include language specifying the statute or the rule "violated and the specific facts constituting the violation." (On October 27, 2015, this rule amendment was submitted to Arizona Administrative Register for publication.)

b. Action Proposed

None.

R2-20-224 Request for Administrative Hearing

2. Objective

Designate the timeline and process for a respondent to request a hearing.

R2-20-225 Informal Settlement Conference

2. Objective

Provide the process for a respondent to request an informal settlement conference.

R2-20-226 Administrative Hearing

2. Objective

Specify the timeline and process for conducting administrative hearings.

R2-20-227 Review of Administrative Decision by Commission

2. Objective

Specify the Commission's responsibilities when it receives notice of an administrative decision.

R2-20-228 Judicial Review

2. Objective

Provide the process for exhausting administrative remedies prior to seeking judicial review.

ARTICLE 3 - STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

R2-20-301 Purpose and Applicability

2. Objective

Indicate the purpose and scope of this article.

R2-20-302 Definitions

2. Objective

Define terms for this article.

R2-20-303 Notification to Commissioners and Employees

2. Objective

Specify material to be made available to each employee and Commissioner upon revision or entrance of new employment.

R2-20-304 Interpretation and Advisory Service

2. Objective

Specify the process for seeking advice on questions of conflict of interest.

R2-20-305 Reporting Suspected Violations

2. Objective

Provide the procedure for reporting suspected violations of conflict of interest requirements.

R2-20-306 Disciplinary and Other Remedial Action

2. Objective

Specify the disciplinary action for violating this Article.

R2-20-307 General Prohibited Conduct

2. Objective

Specify conduct that is prohibited for Commissioners or employees.

R2-20-308 Outside Employment or Activities

2. Objective

Specify the prohibited conduct related to employment and other activities for Commissioners or employees.

R2-20-309 Financial Interests

2. Objective

Specify financial conflicts of interest requirements.

R2-20-310 Political and Organizational Activity

2. Objective

Specify conflicts of interest related to express advocacy.

R2-20-311 Membership in Associations

2. Objective

Specify potential conflicts of interest related to membership in nongovernmental associations or organizations.

R2-20-312 Use of State Property

2. Objective

Specify limitations on using state property.

ARTICLE 4 – AUDITS

R2-20-401 Purpose and Scope

2. Objective

Provide the purpose and scope of the article.

13. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments removing nonparticipating candidates' campaign finances from the purpose and scope of the audits conducted by the Commission. (19 A.A.R. 1699)

b. Action Proposed

None.

R2-20-402. General

2. Objective

Establish the tools available to the Commission in conducting audits.

R2-20-402.01 Random Audits

2. Objective

Authorize Commission staff to conduct random audits.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to the rule removing nonparticipating candidates' campaign finances from the random audits conducted by the Commission. (19 A.A.R. 1700)

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that statewide and legislative candidates are selected for random audits rather than statewide offices and legislative districts, consistent with current practices. (21 A.A.R. 1640)

b. Action Proposed

None.

R2-20-403 Conduct of Fieldwork

2. Objective

Establish candidate responsibilities during an audit.

R2-20-404 Preliminary Audit Report

2. Objective

Provide the procedures for the first phase of the audit process.

R2-20-405 Final Audit Report

2. Objective

Provide the procedures for the final phase of the audit process.

R2-20-406 Release of Audit Report

2. Objective

Provide details on how an audit report is made available to the public.

ARTICLE 5 – RULEMAKING

R2-20-501 Purpose and Scope

2. Objective

Specify the purpose and scope of the Commission's rulemaking.

R2-20-502 Procedural Requirements

2. Objective

Provide the process for filing a written petition regarding the issuance, amendment or repeal of an administrative rule.

R2-20-503 Processing of Petitions

2. Objective

Provide the process for reviewing petitions related to issuing, amending, or repealing rules.

R2-20-504 Disposition of Petitions

2. Objective

Provide the process for disposition of petitions related to rulemaking.

R2-20-505 Commission Considerations

2. Objective

Specify a nonexclusive list of criteria the Commission may consider in disposing of a petition for rulemaking.

R2-20-506 Administrative Record

2. Objective

Designate which records compose the administrative record.

ARTICLE 6 – EX PARTE COMMUNICATIONS

R2-20-601 Purpose and Scope

2. Objective

Specify the purpose and scope of the article.

R2-20-602 Definitions

2. Objective

Define terms as used in the article.

R2-20-603 Audits, Investigations & Litigation

2. Objective

Prohibit ex parte communications with the Commission during audits, investigations or litigation.

R2-20-604 Sanctions

2. Objective

Specify the process for sanctioning those who violate this article.

ARTICLE 7 – AUDITS AND REPAYMENT

R2-20-701 Purpose and Scope

2. Objective

Specify the purpose and scope of the article.

R2-20-702 Use of Campaign Funds

2. Objective

Specify legal uses of campaign funds.

14. Course of Action

a. Action Taken

On February 17, 2011, the Commission adopted final amendments to the rule to clarify the limits on candidate expenditures for staff meals (R2-20-702(C)(2)), to clarify the personal use limitations listed are not inclusive (R2-20-702(C)(3)), and to prohibit campaign funds to be used to purchase extended warranties or other similar purchase options that extend beyond the campaign (R2-20-702(C)(3)(h)). Additionally, the amendments to the rule require "fixed assets purchased with campaign funds that can be used for non-campaign purposes with a value of $200 or more that were purchased with campaign funds shall be turned in to the Commission no later than 30 days after the primary election or the general election if the candidate was successful in the primary. A candidate may elect to reimburse the Commission for 50% of the original purchase price of the item instead of turning in the item" (R2-20-702(C)(6)). (17 A.A.R. 1267)

On October 6, 2011, the Commission adopted final amendments to the rule to clarify that candidates are prohibited from using Clean Elections funding for the cost of legal defense, any affirmative claim, or any litigation in court or before the Commission regarding a campaign (R2-20-702 (C)(1)). In addition, the Commission adopted final amendments to address disclosure of payments made by participating candidates to candidates or their family members or businesses (R2-20-702(C)(4)). (19 A.A.R. 1702)

On May 9, 2013, the Commission adopted final amendments to subsection (D) of the rule to decrease the amount of time a candidate has to return a fixed asset and increase the percentage of the cost of the item that the candidate must reimburse the Commission in the event the candidate wishes to retain the fixed asset. (19 A.A.R. 1702)

b. Action Proposed

None.

R2-20-702.01. Use of Assets

2. Objective

Provide a method for a candidate to use campaign materials from prior elections.

R2-20-703 Documentation for Direct Campaign Expenditures

2. Objective

Specify the process by which a participating candidate may ensure that campaign expenditures satisfy the direct campaign expenditure requirement.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that candidates must keep a list of fixed assets with a value of $200 or more. The amendment keeps rules regarding fixed assets consistent. (21 A.A.R. 1641)

b. Action Proposed

None.

R2-20-704 Repayment

2. Objective

Designate the process for repaying distributed funds to the Clean Elections fund and specify that the Commission may require such repayment.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule clarifying that repayment sources include the candidate's current election campaign account. (21 A.A.R. 1643)

b. Action Proposed

None.

R2-20-705 Additional Audits or Repayment Determination

2. Objective

Authorize additional audits or examinations of campaign activity when new facts are available.