

**R2-20-801. Definitions and Rules of Construction**

- A. The definitions in A.R.S. § 16-971 shall apply to these rules.
- B. For purposes A.R.S. § 16-971(2)(a)(vii), research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the other activities described in A.R.S. § 16-972(2)(a) shall not be considered campaign media spending unless these activities are specifically conducted in preparation for or in conjunction with those other activities.
- C. In response to a request pursuant to A.R.S. § 16-972(D), a person must inform that covered person in writing, of the identity of each other person that directly or indirectly contributed more than \$2,500 in original monies being transferred and the amount of each other person's original monies being transferred up to the amount of money being transferred to the requesting person.

**R2-20- 802. Time**

The following rules apply in computing any time period specified in these rules:

- A. The day of the event or act shall be excluded.
- B. If the deadline is five days or fewer, then Saturdays, Sundays, and legal holidays shall be excluded.
- C. If the last day of the period is a Saturday, Sunday, or legal holiday, the last day is excluded, and the period runs until the next day that is not a Saturday, Sunday, or legal holiday.
- D. The next day is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

### **R-20-803. Opt-out Notices**

- A.** Before a covered person may use or transfer a donor's monies for campaign media spending, the donor must be notified in writing that the monies may be so used. The covered person must give the donor an opportunity to opt out of having the donation used or transferred for campaign media spending.
- B.** The notice must:
1. Inform donors that their monies may be used for campaign media spending and that information about donors may have to be reported to the appropriate government authority in this state for disclosure to the public.
  2. Inform donors that they can opt out of having their monies used or transferred for campaign media spending by notifying the covered person in writing within twenty-one days after receiving the notice that the donor prefers to opt-out of having their monies used or transferred for campaign media spending and that a receipt confirming their choice shall be provided upon request.
  3. Opt-out information shall be provided in writing. If provided with other written information the opt-out information must be provided in a format at least the same size type as any other information provided in writing along with the notice. The information must be either the first sentence in a paragraph or itself constitute a paragraph. If the opt-out information is provided without additional writing it must be clearly readable. To be valid, the opt-out information must provide contact information to allow the recipient to contact the person who provided the opt-out information within 21 days. Upon request of the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming

the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice. Nothing in this rule precludes providing a donor a receipt without waiting for a request.

- C.** Any person responsible for providing the opt-out information must keep a record of when the information was provided and maintain all related records including the written notice for five years.
- D.** If a donor does not opt out after the initial notice period, a covered person may make subsequent written notices to a donor of their right to opt out and may set a time for response of no less than 1 day from the date the donor receives the notice. To be valid, the opt-out information must provide contact information to allow the recipient to contact the person who provided the opt-out information within the time identified in the subsequent request. Upon request by the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice.
- E.** A donor may request to opt out at any time after the initial notice period and the covered person must confirm the opt out to the donor in writing no later than 5 days after the request and subsequently that donor shall be treated as having opted out by the covered person. Upon request of the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice.

## **R2-20- 804. Request for Exemptions**

- A.** An original source who has reason to believe their identity will or could be subject to disclosure under Chapter 6.1 of Title 16 ay file a request for exemption pursuant to A.R.S. § 16-973(F) at any time. An original source who has not opted out of having their monies used for campaign media spending may file a request for an exemption with the Executive Director no later than 14 days after the notice to opt out is given. In the event an original source did not receive a notice to opt out, the person may file a request for exemption with the Executive Director no later than 21 days after discovering their monies may be or have been used for campaign media spending.
- B.** In the event the request provides documentation of a court order requiring confidentiality, the Executive Director shall confirm the validity of the court order in five days. If the order is confirmed, the Executive Director shall issue a letter to the requestor stating that their identity shall not be disclosed. In the event that the order is not confirmed, the Executive Director shall issue a letter to the requestor stating their identity may be disclosed.
- C.** In the event that the person making the request claims a statute provides for such confidentiality, the request shall include a citation to the statute and argument why the statute applies to require confidentiality. The Executive Director may make a recommendation to the Commission. The Executive Director shall place the item on an agenda no later than the next regular Commission meeting. The person and their counsel may appear. In order to protect the interests of the original source pending a determination, the Commission may vote to go into executive session to protect confidential information and if warranted for other reasons authorized by the Open

Meeting Law. For purposes of this rule, the person and their counsel shall be deemed individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities if the Commission votes to go into executive session pursuant to A.R.S. § 38-431.03(A)(2). No vote may be taken in the executive session. If the Commission decides that the statute applies by a roll call vote in public session in favor of the request, the Executive Director shall issue a letter to the requestor within 5 days stating that their identity shall not be disclosed. If the Commission does not vote that the state applies by roll call vote in favor of the request the Executive Director shall issue a letter to the requestor within 5 days stating that their identity may be disclosed.

- D.** In the event the person making the request claims that there is a reasonable probability that they or their family will experience threats of physical harm, the request shall provide such evidence. The request may also include argument in favor of the request. The Executive Director may make a recommendation to the Commission. The Executive Director shall place the item on an agenda no later than the next regular commission meeting. The person and their legal representative may appear. In order to protect the interests of the original source pending a determination, the Commission may vote to go into executive session to protect confidential information and if warranted for other reasons authorized by the Open Meeting Law. For purposes of this rule, the person and their counsel shall be deemed individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities if the Commission votes to go into executive session pursuant to A.R.S. § 38-431.03(A)(2). No vote may be taken in the executive session. If the Commission decides that the request

should be granted by a roll call in public session in favor of the request, the Executive Director shall issue a letter to the requestor within 5 days stating that their identity shall not be disclosed. If the Commission does not approve the request by a roll call vote the Executive Director shall issue a letter to the requestor within 5 days stating that their identity may be disclosed.

- E.** The agenda shall not identify the requestor.
- F.** No records related to a request shall be subject to a public records request or any other type of request. The records shall not be produced absent a court order compelling disclosure.
- G.** All records except the Executive Director's letter shall be destroyed ~~within~~ 30 days after ~~of~~ the determination, unless timely review of the Commission's action is sought. The Executive Director's letter shall not be made public except by a court order.

**R2-20-806. Ex Parte**

- A.** No individual shall communicate with any Commissioner ex parte as defined in subsections E and F of this rule. No Commissioner shall communicate with any individual ex parte as defined in subsections E and F of this rule.
- B.** In the event of a Complaint, no Commissioner shall communicate with the Executive Director or any other commission staff or attorney who represents the Executive Director regarding the Complaint except in commission proceedings where the Respondent or Respondent's Counsel is present.
- C.** The Executive Director may communicate with a Respondent, a Respondent's counsel, a

Complainant or Complainant's Counsel or any other person with information regarding a Complaint.

**D.** If a Respondent wishes to be represented by counsel with regard to any matter pending before the Commission, Respondent or Respondent's Counsel shall so advise the Commission by sending a writing to the Commission including the following:

1. The name, address, and telephone number of the counsel.
2. A statement authorizing such counsel to receive any and all notifications, service of process, and other communications from the Commission, its staff and attorneys on behalf of Respondent.

Upon receipt, the Commission shall have no contact with Respondent except through the designated counsel unless authorized Respondent.

**E.** Ex parte communication means any written or oral communication by any person outside the agency to any Commissioner or any member of a Commissioner's staff which imparts information or argument regarding prospective Commission action or potential action concerning:

1. Any proceeding involving a request for an exemption.
2. Any enforcement proceeding.
3. Any pending litigation matter, or
4. Any pending rulemaking, or
5. Any pending advisory opinion request.

**F.** Ex parte communications do not include the following communications:

1. Statements by any person publicly made in a public forum; or
2. Statements or inquiries by any person limited to the procedural status of an open

proceeding, rulemaking, advisory opinion request, or a litigation matter.

- G. In the event that a Commissioner receives an ex parte communication as defined in this rule, the Commissioner shall disclose receipt of such a communication in a public meeting of the Commission.

#### **R2-20-807. Recordkeeping**

- A. All records required to be retained by Chapter 6.1 of Title 16 shall be kept in such order that a reasonable person could confirm the accuracy of transactions, transfer records, reports, opt out notices, and other information by review of the documents and other information.
- B. Records may be kept in any media a person subject to Chapter 6.1 of Title 16 chooses, provided that the media is commonly available and not proprietary.
- C. Failure to maintain records in a reasonable manner may give rise to factual presumption against the person in an enforcement proceeding or other action under Chapter 6.1 of Title 16.

#### **R2-20- 808. Advisory Opinions**

- A. Requests for advisory opinions
  - 1. Any person may request in writing an advisory opinion concerning the Chapter 6.1, of Title 16 or any regulation prescribed by the Commission pursuant to that chapter. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.
  - 2. The written advisory opinion request shall set forth a specific transaction or



activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

3. Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.
4. The Executive Director shall review all requests for advisory opinions submitted. If the Executive Director determines that a request for an advisory opinion is incomplete or otherwise not qualified, they shall, within 10 days of receipt of such request, notify the requesting person and specify the deficiencies in the request.
5. Advisory opinion requests must be sent to the Clean Elections Commission by email or as directed by the Commission staff. Procedures for advisory opinion requests shall be available on the Commission website.

**B. Availability and Comments on Requests.**

1. Advisory opinion requests which qualify under this section shall be made public at the Commission promptly upon their receipt.
2. A copy of the original request and any supplements thereto, shall be available for public inspection and may be obtained via a written request to the Executive Director.
3. Any interested person may submit written comments concerning advisory opinion requests made public at the Commission.
4. The written comments shall be submitted within 10 days following the date the

request is made public at the Commission. Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted by the Executive Director without an extension request. Comments Advisory opinion requests must be sent to the Clean Elections Commission by email or as directed by the Commission staff.

**C. Issuance and Reliance on Advisory Opinions**

1. Within 60 calendar days after receiving a qualifying advisory opinion request, the Commission shall issue to the requesting person a written advisory opinion or shall issue a written response stating that the Commission was unable to approve an advisory opinion by the required affirmative vote of a majority of members present at a meeting of the Commission.
2. The 60 calendar day period is reduced to 20 calendar days for a qualified advisory opinion request provided the request:
  - a. Is submitted by a person within the 60 calendar days preceding the date of any election to which Chapter 6.1 of Title 16 applies;
  - b. Identifies the election by date and jurisdiction.
  - c. Presents a specific transaction or activity related to the election that may invoke the 20 day period if the connection is explained in the request.
3. An advisory opinion rendered by the Commission may be relied upon by any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the

transaction or activity with respect to which such advisory opinion is rendered.

4. Any person who relies upon an advisory opinion and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided Chapter 6.1 of Title 16.

**D.** A request for reconsideration may be made by:

1. The person who made the request within 15 days of the opinion's approval but no later than 5 days before the Commission's next regular meeting; or
2. Any person who states a good faith basis for vacating or reversing a prior opinion subject to other rules in this section.

**E.** Any request for reconsideration shall meet all of the requirements otherwise required of an initial request.