

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2010 JUL 29 PM 3:09

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: STATE ELECTION COMMISSION TITLE NUMBER: 146

CITE AUTHORITY: WV CODE 3-1A-5, 3-12-11 and 3-12-14

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: SERIES 5

TITLE OF RULE BEING PROPOSED: WEST VIRGINIA SUPREME COURT OF APPEALS PUBLIC  
CAMPAIGN FINANCING PILOT PROGRAM

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

## **SUMMARY OF RULE**

The proposed rule, Title 146 Series 5, is a required legislative rule necessitated by the passage of the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program passed by the WV Legislature during the 2010 regular session.

The rule defines and describes legal processes, requirements, forms, and procedures to administer this pilot program.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Election Commission

Address: 1900 Kanawha Blvd E  
Bldg 1 Room 157-K  
Charleston, WV 25305

Phone Number: (304)558-6000 Email: sec@wvscs.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Three million dollars (\$3M) will be transferred over a period of 3 years from the State Auditor Purchasing Card Administrative Fund to a special revenue account administered by the SEC. The amount could potentially be used in full, but any remaining funds at the expiration of the pilot program will be refunded to the State General Revenue account.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	FISCAL YEAR		
	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	111,200.00	85,000.00	85,000.00
Personal Services	28,000.00	53,000.00	53,000.00
Current Expenses			
Repairs & Alterations	80,000.00	30,000.00	30,000.00
Assets			
Other	3,200.00	2,000.00	2,000.00
<b>2. Estimated Total Revenues</b>			

West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

FY 2011 - Personal Services - \$3,000 for SEC per diem; \$25,000 for salary and benefits; Repairs and Alterations - \$80,000 for campaign finance administrative software; Other - \$2,000 for contractual services; \$1,200 for publications

FY 2012 and FY 2013 - Personal Services - \$3,000 for SEC per diem; \$50,000 for salary and benefits; Repairs and Alterations - \$30,000 for software maintenance; Other - \$2,000 for miscellaneous expenses

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

This Fiscal Note includes only administrative expenses incurred as an impact of both the law and the rule. Since it is virtually impossible to estimate the number of potential certified candidates for the 2012 election cycle, the amount dispersed to candidates for public campaign financing is not included in this Note.

Date: June 18, 2010

Signature of Agency Head or Authorized Representative



**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 7/29/2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) STATE ELECTION COMMISSION

LEGISLATIVE RULE TITLE: West Virginia Supreme Court of Appeals Public Campaign  
Financing Pilot Program

1. Authorizing statute(s) citation WV Code 3-1A-5, 3-12-11 and 3-12-12

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 18, 2010

b. What other notice, including advertising, did you give of the hearing?  
none

c. Date of Public Hearing(s) or Public Comment Period ended:  
July 15, 2010 and July 19, 2010

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached   X   No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2010

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- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Timothy G. Leach, Assistant Counsel, WV Secretary of State, 1900 Kanawha

Blvd.E., Suite 157-K, Charleston, WV 25305, 304-558-6000

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

Title 146  
Legislative Rule  
State Election Commission

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SERIES 5  
West Virginia Supreme Court of Appeals  
Public Campaign Financing Pilot Program

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**§146-5-1. General.**

1.1. Scope. – This rule controls the processes by which the State Election Commission administers the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program for the West Virginia Supreme Court election in 2012.

1.2. Authority. – W.Va. Code §§ 3-1A-5, 3-12-11, and 3-12-14.

1.3. Filing Date. –

1.4. Effective Date. –

**§146-5-2. Definitions.**

2.1. For purposes of this rule:

2.1.a. “Application for certification” is a form, ~~filed after the sufficient qualifying contributions have been raised, and required~~ prescribed by the State Election Commission to determine if the that a candidate is entitled must file to formally apply for to receive public campaign finance financing funds and request an eligibility determination from the Commission.

2.1.b. “Application for withdrawal from participation” is a form ~~required~~ prescribed by the State Election Commission to determine if that a candidate may withdraw as a participating seeking to withdraw as a certified candidate must file with the Commission. The Commission will determine if the candidate can withdraw from participation without penalty or repayment of funds received. Waiver of the penalty or repayment of funds is determined at the discretion of the Commission.

2.1.c. “Article 12” means the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, as codified in WV Code §3-12-1, *et. seq.*

2.1.d. “Certified candidate” means a candidate for the West Virginia Supreme Court of Appeals who has been determined by the State Election Commission to qualify for receipt of public campaign financing funds.

2.1.e. "Contested election" means either the primary or the general election in which more than two candidates of the same political party have filed for the primary nomination or more than two candidates of any party affiliation have been certified by the Secretary of State as eligible for the general election. Two candidates seeking the nomination of a major political party in the primary does not constitute a "contested election" even though another major political party also has a candidate or candidates seeking the nomination of their party. The general election is contested if there are more than two candidates, including any unaffiliated nominees and write-in candidates, ~~and~~ regardless of party affiliation.

2.1.f. "Declaration of intent" is a form prescribed by the State Election Commission which a candidate must file with the Secretary of State before accepting any qualifying contributions.

2.1.g. "Exploratory contributions" means a contribution of not more than \$1,000 made by an individual adult, including a participating candidate and members of his or her immediate family, during the exploratory period.

2.1.h. "Exploratory period" means the period during which a participating candidate may raise and spend exploratory contributions to examine his or her chances of election and to qualify for public campaign financing funds. The exploratory period begins January 1, 2011, and ends January 28, 2012.

2.1.i. "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

2.1.j. "Fund" means the Supreme Court of Appeals Public Campaign Financing Fund created by WV Code §3-12-5.

2.1.k. "General campaign period" means the period beginning the day after the primary election, May 9, 2012, and ending on the day of the general election, November 6, 2012.

2.1.l. "General election initial payment" means the amount of monies approved by the commission and paid from the Fund to ~~the~~ qualifying a certified candidate after certification of the primary election period results per W. Va. Code §3-12-11(b).

2.1.m. "Independent expenditures on behalf of" means any money spent advocating the election of a candidate or candidates. Expenditures advocating the defeat of a candidate or candidates are ~~treated as~~ considered expenditures on behalf of all other candidates in the general election, and all other candidates of the same party in the primary election, not so opposed.

2.1.n. "Non-participating candidate" means a candidate who is seeking election to the Supreme Court of Appeals, who is neither certified nor attempting to be certified to receive

public campaign financing from the Fund; and who has an opponent who is a participating or certified candidate.

2.1.o. "Participating candidate" means a candidate who is seeking election to the Supreme Court of Appeals and is attempting to be certified to receive public campaign financing from the Fund.

2.1.p. "Primary campaign period" means the period beginning on January 9, 2012 and ending on May 9, 2012.

2.1.q. "Primary election initial payment" means the amount of monies approved by the commission and paid from the Fund to the qualifying a certified candidate ~~when the candidate has qualified~~ per W.Va. Code §3-12-11(b)(a).

2.1.r. "Qualifying contribution" means a contribution, made by a West Virginia registered voter, of between \$1 and \$100, received during the qualifying period. The contribution may be in cash – if not more than \$50 (W.Va. Code §3-8-5d) - check or money order, electronic transmission, debit or credit card, made payable to the candidate or candidate's committee.

2.1.s. "Qualifying period" means the period during which participating candidates may raise and spend qualifying contributions. For candidates seeking nomination in the primary, the period is from September 1, 2011 until January 28, 2012. For candidates seeking to be placed on the general ballot by means other than through the primary, the period is from June 1, 2012 until October 1, 2012.

~~§§3-12-11~~ "Secretary" means the Secretary of State.

~~§§3-12-11~~ "State Election Commission" means the government body referenced in WV Code §3-1A-1 and may hereinafter be referred to as "SEC" or "commission".

~~§§3-12-11~~ "Supplemental payments" means the ~~payments approved~~ additional payments paid by the State Election Commission when the commission has determined expenditures or obligations by either a non-participating candidate and or persons making independent expenditures supporting an opponent of a participating candidate, or a combination of both, has expended or obligated exceed 120% of the initial funding available to a certified candidate for the primary or general elections as provided by W.Va. Code §§3-12-11(e-h).

### **§146-5-3. Exploratory Period; Contributions; Expenditures**

3.1. The exploratory period begins on the first day of January, 2011 and ends on January 28, 2012.

3.2. During the exploratory period a participating candidate or his or her committee may not accept, spend or obligate exploratory contributions exceeding \$20,000 in the aggregate. Amounts raised in excess of \$20,000 must be given to the Fund.

3.3. Upon filing a declaration of intent, any remaining unexpended or undedicated pre-candidacy contributions received prior to the exploratory period are treated as exploratory contributions.

3.4. Monies paid to the Fund, as required by any section of this rule, will not be refunded to the candidate should the candidate later fail to qualify for public financing.

**3.5. Contribution Limitations.**

3.5.a. No individual may contribute more than a total of ~~exploratory contribution may exceed~~ \$1,000.

3.5.b. Participating candidate may loan, contribute or obligate up to \$1,000 of his or her own money for exploratory purposes.

3.5.c. An exploratory contribution by one person may not be made in another person's name.

**3.6. Receipts.**

3.6.a. Each exploratory contribution must be accompanied by a written receipt. Receipt forms will be provided by the SEC.

3.6.b. For contributions of \$250 or more, the receipt must include:

3.6.b.1. The name of the participating candidate for whom the contribution is being made;

3.6.b.2. The contributor's name, residence and mailing address;

3.6.b.3. The contributor's business affiliation and occupation;

3.6.b.4. The amount of the contribution; and

3.6.b.5. A disclosure notifying the contributor any amount contributed counts against the \$1,000 limit on contributions to any candidate for a primary election.

3.6.c. For contributions of less than \$250, the receipt must include:

3.6.c.1. The name of the participating candidate for whom the contribution is being made;

3.6.c.2. The contributor's name;

3.6.c.3. The amount of the contribution;

3.6.c.4. A disclosure statement notifying the contributor any amount contributed counts against the \$1,000 limit on contributions to any candidate for a primary elections; and

3.6.d. Receipts for contributions of less than \$250 must also comport to the disclosure and reporting requirements of section five-a, article eight of this chapter.

3.6.e. Receipts, expenditures and obligations shall be reported to the Secretary of State at the beginning of each month.

3.6.e.1. Reports shall be made electronically.

3.6.e.2. A committee may apply to the commission for an exemption pursuant to subsection (c) of section five-b, article eight of this chapter.

3.7. Exploratory contributions in excess of \$20,000 in the aggregate must be sent on the first of each month to the commission for deposit in the Fund.

3.8. A participating candidate must comply with the restrictions on campaign contribution and expenditures in section 9 and the reporting requirements of section 11 of this series.

3.9. A candidate who decides not to run for office shall pay to the Fund all unspent or unobligated exploratory contributions.

3.10. A candidate who fails to qualify or decides to run for office as a non-participating candidate may use unspent or unobligated exploratory contributions in accordance with articles eight and twelve of this chapter.

#### **§146-5-4. Declaration of Intent to Participate.**

4.1. Before attempting to qualify to receive public campaign financing funds, a candidate must file with the Secretary a declaration of intent on a form provided by the SEC.

4.2. The time limit for filing the declaration is:

4.2.a. For persons seeking nomination by primary, no later than January 28, 2012;

4.2.b. For persons seeking nomination by certificate of nominations as provided in WV Code §3-5-23, no later than October 1, 2012.

4.3. The filing date of the declaration is the date of the postmark if mailed, and is the date delivered to the Secretary if hand-delivered or if delivered by facsimile or by electronic means.

4.4. The declaration shall contain a statement that the candidate is eligible to be ██████ on the ballot and, if elected, to hold the office sought.

4.5. The declaration shall contain a statement that the candidate has, and will continue to, comply with all requirements of ~~Article 12 twelve of chapter three of the West Virginia Code,~~ including contributions and expenditure restrictions.

4.6. A candidate may not ~~receive~~ accept qualifying contributions before filing the declaration of intent.

**§146-5-5. Qualifying Contributions, Requirements and Receipts.**

**5.1. Qualifying requirements.**

To be eligible for public campaign financing funds, a participating candidate or his or her candidate's committee must obtain contributions of at least \$1, but not more than \$100:

5.1.a. That are contributed by at least 500 West Virginia registered voters;

5.1.b. That total at least \$35,000;

5.1.c. That total no more than \$50,000; and

5.1.d. At least 10% of the total numbers of voters contributing must be registered to vote in each Congressional District.

5.1.d.1. Example: A candidate obtains 650 qualifying contributions. A minimum of 65 contributions must have been received from voters registered in Congressional District 1. A minimum of 65 contributions must have been received from voters registered in Congressional District 2. And, a minimum of 65 contributions must have been received from voters registered in Congressional District 3.

5.2. Contributions in excess of \$50,000 must be given to the Fund at the first of each month. Monies paid to the Fund, as required by any section of this rule, will not be refunded to the candidate should the candidate later fail to qualify for public financing.

5.3. Contributions made prior to the filing of the declaration of intent are not qualifying contributions and will be treated as exploratory contributions.

**5.4. Receipts.**

All contributions must be acknowledged by a receipt, on forms provided by the SEC, which includes each of the following:

5.4.a. The printed name of the candidate for whom the contribution is being made;

5.4.b. The signature of the person who collected the contribution;

5.4.c. The contributor's printed name, signature, street address and zip code;

5.4.d. The amount of the contribution;

5.4.e. The date of the contribution;

5.4.f. The congressional district in which the contributor is registered to vote;

5.4.g. Additionally, for contributions of \$25 or more, the contributor's phone number, occupation and name of employer; and,

5.4.h. A statement above the contributor's signature confirming the contributor understands the purpose of the contribution is to assist the participating candidate in obtaining public campaign financing funds, the contribution was made without coercion, and the contributor has not been reimbursed, received or promised anything of value for making the contributions.

5.5. A contribution is not a qualifying contribution unless one copy of the receipt has been provided to the contributor, one copy has been retained by the candidate and one copy has been received by the secretary. Receipts are filed at the ~~end~~ beginning of each month and a final report shall be filed at the end of the qualifying period. ~~Contributions without receipt are treated as exploratory contributions. Persons receiving contributions without receipt are liable to the Commission for the full amount plus any penalty assessed by the commission.~~

5.6. No more than one qualifying contributions, regardless of amount, may be accepted from a single individual.

5.7. Exploratory and qualifying contribution from the same individual may not exceed, in aggregate, \$1,000.

5.8. A participating candidate and members of his or her family, who are registered WV voters, are each eligible to make one qualifying contribution, however the participating candidate may not use any other personal funds to satisfy the qualifying contributions requirements.

5.9. A participating candidate must comply with the restrictions on campaign contributions and expenditures in section 9 and the reporting requirements of section nine 11 of this series.

5.10. A candidate who decides not to run for office shall pay to the Fund all unspent or unobligated qualifying contributions.

5.11. A candidate who fails to qualify or decides to run for office as a non-participating candidate may use unspent or unobligated qualifying contributions in accordance with articles eight and twelve of this chapter.

**§146-5-6. Certification of Candidates.**

6.1. After collecting sufficient numbers and amounts of qualifying contributions, and no later than January 31, 2012, - or October 1 for candidates seeking to be placed on the general election ballot by means other than a primary - a candidate who desires to apply for public financing funds files an Application For Certification with the Secretary.

6.2. The Application For Certification must contain a sworn statement by the candidate that he or she has complied with, and will continue to comply with, all provisions of Article 12 and that the candidate is eligible to hold the office of Justice of the West Virginia Supreme Court of Appeals.

6.3. The Secretary records the filing so that the filing is available to the general public.

6.4. By February 4, 2012 - or October 8 for candidates seeking to be placed on the general election ballot by means other than a primary - the Secretary will

6.4.a. Have confirmed the number and amounts of qualifying contributions;

6.4.b. Determined whether any challenges have been filed; and

6.4.c. Notified the SEC of the findings;

6.5. The SEC resolves any pending challenges to contributions according to the provisions of section seven of this rule.

6.6. The SEC reviews the Application For Certification and determines if:

6.6.a. The candidate has signed and filed Declaration of Intent Form required by WV Code §3-12-7;

6.6.b. The candidate has obtained the required number and amounts of qualifying contributions;

6.6.c. The candidate has complied with exploratory and qualifying contribution restrictions;

6.6.d. The contribution receipts contain all necessary information;

6.6.e. The candidate is eligible to appear on the primary or general election ballot;

6.6.f. The candidate has met all other requirements of this article, including, but not limited to, that all expenditures, obligations, contributions and receipts have been reported to the Secretary as required by sections 8, 9 and 13 of Article 12.

~~6.6.f.1. All expenditures, contributions and receipts have been reported to the Secretary as required by WV Code §§3-12-9(f) and (g);~~

~~6.6.f.2. \_\_\_\_\_~~

**6.7. SEC Determination of Candidate Eligibility.**

6.7.a. The SEC must process applications in the order they are received.

6.7.b. The SEC reviews the Application For Certification for all necessary information required by this section.

6.7.c. The SEC reviews the Candidate Certificate of Announcement (WV Code §3-5-7) for eligibility.

6.7.d. The SEC reviews any objections to a candidate's eligibility and evidence submitted by third persons.

6.7.d.1. Objections to the eligibility must be submitted on a form provided by the SEC within three business days of the filing of the Application For Certification.

6.7.d.2. Objections must state the basis for the claim of ineligibility.

6.7.d.3. Objections must have any evidence supporting the contention that candidate is not eligible to be on ballot attached at the time of submission.

6.7.d.4. The SEC will provide a copy of the objection form, and any evidence submitted, to the candidate. The candidate may respond in writing or at the meeting at which the matter is determined.

6.7.d.5. The candidate may attend, in person or by telephone, the SEC meeting at which all application issues are resolved.

6.8. The SEC uses verification and sampling techniques adopted by the SEC to test the qualifying contributions for validity.

6.9. The SEC must rule on Application For Certification within:

6.9.a. Three business days of candidate making final report of qualifying contributions per WV Code §3-12-9(f);

6.9.b. Six business days after candidate submits substitute qualifying contributions if necessitated by a successful challenge to a contribution.

6.10. The commission shall notify all candidates for Justice of the Supreme Court of Appeals of its determination within five business days.

6.10.a. If the SEC determines that the candidate has met all requirements for eligibility for the office and for the public campaign financing funds, the SEC will immediately proceed to the payments procedure of section eight of this rule.

6.10.b. If the SEC determines, for any reason, that the candidate fails to meet the requirements, a notice of denial, and the reasons for the denial, shall be provided immediately to the candidate.

#### 6.11. Revocation of Certification.

6.11.a. A candidate who violates any of the provisions of this article may have his or her certification and receipt of public campaign financing funds revoked by the SEC.

6.11.b. The SEC will schedule a meeting to review any report or suggestion of a violation which may be cause for revocation.

6.11.c. The candidate will be provided with a notice of the matter under review and the date and time of the meeting. A candidate may attend in person or by telephone.

6.11.d. A candidate whose certification has been revoked by the commission for violating any provision of this article must repay to the Fund all moneys received from the Fund.

6.11.d.1. The SEC shall give written notice to the candidate of the revocation and the amount that must be repaid.

6.11.d.2. The candidate must repay the funds received within seven two business days of receipt of the notice. In cases where the candidate cannot immediately repay the funds received, the commission may negotiate a repayment schedule.

#### §146-5-7. Challenges to the Validity of a Contribution

7.1. Any person may challenge the validity of any qualifying contribution.

7.2. A challenge is to be filed on form provided by the SEC providing:

7.2.a. Name, mailing address, phone number, and

7.2.b. signature of challenger;

7.2.c. ~~Identify~~ Identity of receipt challenged;

7.2.d. Reason for challenge;

7.3. The challenger should attach any relevant evidence, affidavits, or notarized statements to the form.

7.4. Challenge forms must be filed with, and received by, the Secretary within two business days after the close of the qualifying period or the filing of a candidate's Application For Certification, whichever is earlier.

7.5. In order to determine whether a challenge is significant as provided in section 7.8.b. below, the SEC will delay considering challenges until after the candidate has filed the Application For Certification.

7.6. The Secretary will provide a copy of the challenge form to the candidate within one business day of receipt.

7.7. The candidate may respond to the challenge, in writing, within two business days.

7.8. The SEC will resolve any challenges at the same meeting at which the candidate's application is determined as provided in section six.

7.8.a. Notice of the date, time and place of the meeting will be provided to the challenger and the candidate. Both may participate either in person or by conference call.

7.8.b. The SEC determines whether candidate has sufficient numbers and amounts of non-challenged contributions to meet requirements. If so, then challenge(s) is(are) dismissed.

7.8.c. The SEC may request the challenger or the candidate to submit additional information believed necessary to determine the validity of the contribution.

7.8.d. The SEC may utilize employees of the Secretary to assist with the gathering of information or evidence.

7.8.e. The SEC must determine by the end of next business day whether challenge is sustained and notifies the candidate and challenger.

7.8.f. If the challenge is sustained, the candidate has five business days to provide a replacement contribution.

7.8.g. Any replacement contribution receipt must be filed electronically with Secretary. Replacement contributions may be collected outside of the time period allowed for the collection of regular contributions.

7.8.h. A replacement contribution is subject to challenge within two business days of filing.

## **§146-5-8. Payment Procedures, Schedules and Amounts**

### **8.1. General.**

This section provides the procedures by which payment amounts are determined and payment delivery is made. The section applies to initial payments for primary and general elections and to the supplemental payments for both elections that are triggered by the expenditures of non-participating candidates, independent expenditures, or both, as provided in WV Code §§3-12-11(e)-(h).

### **8.2. Electronic transfer.**

A candidate who desires to receive payment from the Fund by electronic transfer must provide on the Application For Certification sufficient information and authorization for the State Treasurer to transfer payment to the candidate's campaign depository account.

### **8.3. Change of election status from uncontested to contested.**

When a candidate receives the uncontested election amount and, due to other candidates' later filing for the office, the election becomes contested, a payment to the candidate will be made in the amount equal to the difference between what was paid and what would have been paid had the election been contested at the time of initial payment. For purposes of this rule, the payment of the difference will be referred to an amended initial payment. The amended initial payment will be made within two business days of the SEC receiving information of the changed nature of the election.

### **8.4. Order of payment.**

When more than one candidate qualifies for payments on the same day, then payment will be made to all candidates on the same day.

### **8.5. Pro rata payments.**

If, at the time any payment is due, there is an insufficient balance to make full payment to all entitled candidates, the following procedure shall be followed:

8.5.a. The SEC will determine the amount of funds available;

8.5.b. The SEC will determine when the next deposit may be reasonably expected, and the amount of that deposit;

8.5.c. The SEC will determine the amount of administrative expenses due until the next deposit and will subtract the anticipated administrative expenses amount from the current Fund balance;

8.5.d. The SEC will then divide the difference equally among all entitled candidates and authorize payments in the pro rata amounts.

8.5.e. Candidates receiving reduced payments due to insufficient funds are permitted to solicit and receive campaign contributions, as permitted by Article Eight of Chapter Three, but total contributions may not exceed the difference between the amount paid and the amount that would have been due had full payment been possible. Excess contributions will be paid to the Fund.

**8.6. Initial payment amounts; primary and general elections.**

8.6.a. The initial primary payment amount for an uncontested election is \$50,000 less the amount of qualifying contributions raised by the candidate.

8.6.b. The initial primary payment amount for a contested election is \$200,000 less the amount of qualifying contributions raised by the candidate.

8.6.c. The initial general payment amount for an uncontested election is \$35,000 less the amount not spent or obligated at the conclusion of the primary campaign period.

8.6.d. The initial general payment amount for a contested election is \$350,000 less the amount not spent or obligated at the conclusion of the primary campaign period.

**8.7. Initial payment schedules; primary and general elections.**

8.7.a. The SEC will submit paperwork to the Auditor to ensure payment of the initial primary payment within two working days of certification of the candidate by the SEC.

8.7.b. The SEC will submit paperwork to the Auditor to ensure payment of the initial general payment within two working days of certification of the primary election results by the Secretary.

**8.8. Supplemental payments**

8.8.a. Payments are required when the SEC finds, from reports filed or from verifiable information obtained through an investigation:

8.8.a.1. That a non-participating candidate, or candidate's committee, has expended or obligated, in the aggregate, an amount exceeding by \$240,000 during the primary election campaign period, or exceeding \$420,000 during the general election campaign period;

8.8.a.2. That independent expenditures and obligations on behalf of a non-participating candidate, in combination with a non-participating candidate's, or candidate's committee's, expenditures and obligations, have exceeded, in the aggregate, \$240,000 during the primary election campaign period, or have exceeded \$420,000 during the general election campaign period; or

8.8.a.3. That independent expenditures and obligations on behalf of a participating certified candidate, either alone or in combination with the participating certified candidate's, or candidate's committee's, expenditures and obligations, have exceeded, in the aggregate, \$240,000 during the primary election campaign period, and have exceeded \$420,000 during the general election campaign period.

8.8.b. When one of the three findings of the preceding subsection has been determined by the SEC, the SEC will cause the Auditor to issue payment to all affected participating certified candidates.

8.8.c. Payments will be issued within two working days of the finding by the SEC.

8.8.d. Payments will be in the amount of the difference between \$200,000 for the primary campaign and \$350,000 for the general campaign and the amount expended as referenced in subsections 8.8.a.1 through 8.8.a.3, above.

8.8.d.1. Example: Participating Certified candidates A and B both raised \$35,000 in qualifying contributions and were each initially paid \$165,000 for a contested primary election. Non-participating candidate C reports expenditures of \$240,001. Candidates A and B will be paid \$40,001 each (20% of \$200,000 = \$40,000. \$200,000 + \$40,000 = \$240,000. \$240,001 exceeds \$240,000, which triggers supplemental payment. \$240,001 - \$200,000 initial amount available = \$40,001 payment).

8.8.d.2. Example: Participating Certified candidates A, B and C were each initially paid \$350,000 for a contested general election. Independent expenditures on behalf of candidate C were reported in the amount of \$400,000. Candidate C has reported expenditures of Public Financing Funds of \$250,000 (for a total of \$650,000). Candidates A and B will be paid ~~\$230,000~~ \$300,000 each (20% of \$350,000 = \$70,000. \$350,000 + \$70,000 = \$420,000. \$650,000 - \$420,000 = \$230,000 \$350,000 = \$230,000 \$300,000).

8.8.d.3. Example: Participating Certified candidates A and B both raised \$35,000 in qualifying contributions and were each initially paid ~~receive~~ \$165,000 for initial primary and candidates C and D are non-participating. Independent expenditures advocating the defeat of candidate A are reported in the amount of \$250,000. Expenditure against A is treated as "on behalf of" B, C, and D, who are opponents of A, thereby triggering a supplemental payment. Candidate A receives supplemental payment of \$50,000 (20% of \$200,000 = \$40,000. \$200,000 + \$40,000 = \$240,000. \$250,000 exceeds \$240,000, which triggers supplemental payment. \$250,000 - \$200,000 initial amount available = \$50,000 payment). B, "on behalf of" whom the expenditure was made, receives no supplement.

8.8.e. When additional excess expenditures are made by non-participating candidates or entities making independent expenditures, separately or in combination, after the first supplemental payment ~~has been made~~, additional payments in amounts to match the additional expenditures are made to all affected certified candidates.

8.8.e.1. Example: After candidates A and B (in the first example in subsection ~~1-5-8.8.d.1~~) received payments of \$40,001, expenditures by non-participating candidate, or independent expenditures in his or her behalf, of an additional \$25,000 (~~making for~~ a total of \$265,001) are reported. Candidate A and B each receive an additional supplemental payment of \$25,000.

8.8.f. Total supplemental payments to any candidate are limited to:

8.8.f.1. \$400,000 for the primary election;

8.8.f.2. ~~\$750,000~~ for the general election; or

8.8.f.3. As provided in section 8.5 above.

**8.9. Payment issuance procedure.**

8.9.a. On the same business day as the SEC determines that any candidate is entitled to any payment provided by Article 12, the SEC shall complete the paperwork required by the Auditor to initiate the Auditor's expedited payment process.

8.9.b. On the same business day the SEC shall deliver the paperwork to the Auditor electronically or by hand-delivery.

8.9.c. Immediately upon receipt of the paperwork from the SEC, the Auditor, in cooperation with the Treasurer, shall issue a check, or an electronic deposit if elected by the candidate.

8.9.d. All procedural steps shall be completed by the responsible agencies and persons in such manner so as to ensure payment to the candidate no later than two working days from the determination of the SEC.

**§146-5-9. Restrictions on Campaign Contributions and Expenditures.**

9.1. During the qualifying period a participating candidate may spend or obligate only that amount which he or she has collected in exploratory and qualifying contributions.

9.2. At the end of the qualifying period, a certified candidate may spend or obligate any unspent exploratory or qualifying contributions and the moneys he or she receives from the Fund.

9.3. A participating or certified candidate may expend exploratory and qualifying contributions and money from the Fund only for lawful election expenses as provided in section nine, article eight of chapter three of the West Virginia Code.

9.4. Moneys distributed from the Fund may be expended only during the primary and general election campaign periods for which the funds were dispersed.

9.5. Money from the Fund may not be used:

9.5.a. In violation of law;

9.5.b. To repay any personal, family or business loans, expenditures or debts; or

9.5.c. To help any other candidate.

9.6. A certified candidate must return to the Fund any unspent and unobligated exploratory contributions, qualifying contributions or moneys received from the Fund within forty-eight hours after he or she ceases to be certified or loses the primary election or otherwise ceases to be a candidate.

9.7. A certified candidate who remains certified through the general campaign period shall pay to the Fund, within five business days after the general election, any unspent or unobligated public campaign financing funds.

9.8. A candidate who decides not to run for office shall pay to the Fund all unspent or unobligated exploratory and qualifying contributions.

9.9. A candidate who decides to run for office as a non-participating candidate may use unspent or unobligated exploratory and qualifying contributions in accordance with articles eight and twelve of this chapter.

9.10. A candidate may not mingle public campaign financing funds in the same bank account with his or her personal funds.

#### **§146-5-10. Withdrawal from Participation.**

10.1. A candidate who wants to withdraw from being a certified candidate and become a nonparticipating candidate may at any time file an Application for Withdrawal from Participation, on a form provided by the SEC, with the commission.

10.2. No certified candidate may withdraw until he or she has repaid all moneys received from the Fund unless the commission has waived the repayment requirement due to exceptional circumstances.

10.3. If a candidate seeks to avoid repayment of all monies received, the candidate shall explain on the Application For Withdrawal From Participation the circumstances which justify a waiver of the repayment requirement.

10.4. Upon receiving an application for withdrawal the commission shall meet and make a determination within three business days.

10.5. The commission shall consider applications for withdrawal on a case-by-case basis to determine the sufficiency of the reason for withdrawal.

10.6. The commission may assess a penalty not to exceed \$10,000 against any candidate who withdraws without approval from the commission.

**§146-5-11. Reporting Requirements for Participating and Certified Candidates.**

11.1. Participating candidates must comply with the provisions of this section in addition to any reporting requirements of Article 8 of Chapter 3 of the West Virginia Code.

11.2. A certified candidate or his or her financial agent shall file periodic financial statements in accordance with WV Code §3-8-5 on forms approved by the Secretary.

**11.3. Monthly reports.**

During the exploratory and qualifying periods, a participating candidate or his or her financial agent must submit, on the first of each month, a report of all exploratory and qualifying contributions along with their receipts and an accounting of all expenditures and obligations received during the immediately preceding month.

11.3.a. The reports shall be on forms or in a format prescribed by the Secretary.

11.3.b. The reports shall be filed electronically unless a hardship exemption has been granted pursuant to subsection (c), section five-b, article eight, chapter three of the West Virginia Code.

**11.4. Final report of exploratory and qualifying contributions.**

By January 31, 2012 – or October 1 for candidates seeking to be placed on the general election ballot by means other than a primary - a participating candidate must report to the Secretary on appropriate forms a summary of:

11.4.a. All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions.

11.4.b. All qualifying contributions received and funds expended or obligated during the qualifying period together with copies of any receipts not previously submitted for qualifying contributions.

**§146-5-12. Reporting Requirements for Non-Participating Candidates.**

In addition to all reporting requirements in Article 8, of Chapter 3, of the West Virginia Code, a non-participating candidate or his or her financial agent shall report to the Secretary on approved forms an itemized summary of his or her campaign contributions and obligations in accordance with the following guidelines:

**12.1. Primary campaign.**

12.1.a. No later than March 9, 2012, report to the Secretary a listing of expenditures and obligations incurred prior to March 1 if those expenditures and obligations, in the aggregate, exceed \$200,000.

12.1.b. No later than April 7, 2012, report to the Secretary a listing of expenditures and obligations incurred since reporting the financial statement required by WV Code §3-8-5(b)(1) [pre-primary report], if those expenditures and obligations, in the aggregate, exceed \$200,000.

12.1.c. Thereafter, report to the Secretary within forty-eight hours any additional expenditures or obligations incurred prior to April 23, 2012, if those expenditures and obligations, in the aggregate, exceed \$200,000.

12.1.d. During the last fifteen days before the primary election, report to the Secretary within twenty-four hours every additional expenditure or obligation incurred if those expenditures and obligations, in the aggregate, exceed \$200,000.

**12.2. General campaign.**

12.2.a. No later than July 7, 2012, report to the Secretary a listing of expenditures and obligations incurred since May 9, 2012 through July 1, 2012, if those expenditures and obligations, in the aggregate, exceed \$350,000.

12.2.b. No later than October 6, 2012, report to the Secretary a listing of expenditures and obligations incurred since reporting the financial statement required pursuant to WV Code §3-8-5(b)(4) [first general report], if those expenditures and obligations, in the aggregate, exceed \$350,000.

12.2.c. Thereafter, report to the Secretary within forty-eight hours any additional expenditures or obligations incurred prior to October 22, 2012, if those expenditures and obligations, in the aggregate, exceed \$350,000.

12.2.d. During the last fifteen days before the general election, report to the Secretary within twenty-four hours every additional expenditure or obligation incurred if those expenditures and obligations, in the aggregate, exceed \$350,000.

**§146-5-13. Reporting Requirements for Persons Making Independent Expenditures.**

13.1. Any person, organization or entity making independent expenditures in excess of \$1,000, in the aggregate, advocating the election or defeat of a certified candidate or the nomination or election of any candidate who is opposed by a certified candidate must report those expenditures to the Secretary on approved forms within forty-eight hours of the expenditure.

13.2. During the last fifteen days before the primary or general election, any person, organization or entity making independent expenditures advocating the election or defeat of any candidate must continue to file reports as required by WV Code §3-8-2(b).

**§146-5-14. Criminal Penalties.**

14.1. A participating or certified candidate is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50 nor more than \$500, or confined in jail for up to thirty days or both for knowingly doing any of the following:

14.1.a. Personally or through his or her candidate's committee, accepting contributions or benefits in excess of what Article 12 allows.

14.1.b. Spending or obligating funds in excess of the public campaign funding he or she is entitled to.

14.1.c. Using benefits or funds for a purpose other than those permitted under Article 12.

14.2. A participating or certified candidate is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$1,000 nor more than \$10,000, or confined to jail for up to one year or both for the following violations:

14.2.a. Personally or through his or her candidate's committee or financial agent, providing false information to the Secretary or the SEC;

14.2.b. Concealing or withholding information from Secretary or SEC.

14.3. The SEC, upon receipt of information that suggests a violation may have occurred, shall cause the allegations or suggestions to be investigated by appropriate employees of the Secretary.

14.3.a. The participating candidate will be given notice of the issues, allegations, and facts being investigated and will be permitted an opportunity to respond.

14.3.b. At the conclusion of the investigation, a confidential report will be submitted to the SEC.

14.3.c. The SEC will review the report in executive session and will determine, by majority vote, whether to recommend prosecution.

14.4. If a determination is made to recommend prosecution, a report will be prepared and presented to the prosecutor with appropriate jurisdiction.

14.5. All investigations and reports, and individuals involved, are subject to the non-disclosure provisions of WV Code §3-8-8(i).

#### **§146-5-15. Civil Penalties.**

15.1. A participating or certified candidate is subject to civil penalties if the candidate, or the candidate's committee or financial agent,

15.1.a. Accepts contributions from a private source in violation of the provisions of Article 12, or

15.1.b. Spends or obligates to spend more than the amount of public financing money he or she is eligible to receive from the Fund.

15.2. In addition to any other penalties imposed by law, the SEC may impose a penalty of \$100 per day for a violation of any reporting requirement. The penalty shall be doubled if the amount not reported for a specific election exceeds:

15.2.a. \$20,000 for the primary election; or

15.2.b. \$35,000 for the general election.

15.3. The SEC may consider invoking civil penalties based upon information

15.3.a. Obtained from reports required by West Virginia code and this rule;

15.3.b. Submitted by candidates or other individuals.

15.4. The SEC, upon receipt of information or a report suggesting a violation identified in sections 15.1 and 15.2 above, will schedule a meeting to determine what penalty, if any, will be assessed.

15.4.a. Notice of the meeting and the matters under review will be provided to the potentially violating candidate.

15.4.b. The candidate may appear at the meeting in person or by telephone.

15.5. The SEC will review the evidence and any reports provided by the Secretary and determine whether to assess a penalty based upon the following criteria:

15.5.a. If the violation was unintentional, the SEC may order the candidate to pay the commission an amount equal to the amount of the contribution, expenditure or obligation.

15.5.b. If the violation was intentional, the SEC shall order the candidate to pay the commission an amount equal to ten times the amount of the contribution, expenditure or obligation.

15.6. The SEC will present to the candidate a written notice of any civil fine assessment.

15.7. If the candidate fails to fully pay any civil penalty within seven days of receipt of the written notice, the SEC may order the candidate to pay an amount equal to three times the amount that should have been paid.

15.8. A candidate and the candidate's campaign account are jointly and severally liable for the payment of any penalty imposed pursuant to this section.

15.9. Any penalties collected by the SEC shall be deposited into the Fund.

**§146-5-16. Determinations by SEC; Notice of Meetings; Appeal Process.**

16.1. Meetings required by Article 12 to be conducted by the commission are not subject to the public notice and open meeting requirements of Chapter 6, Article 9A of the Code.

16.1.a. Meetings of the commission for business relating to matters other than Article 12 must comply with the requirements of Chapter 6, Article 9A of the Code

16.1.b. Before conducting any meeting that may result in an adverse impact upon any participating or certified candidate, the commission will give notice to the potentially affected persons. The notice does not have to comply with the requirements of Chapter 6, Article 9A of the Code.

16.2. The SEC shall provide public notice of any determination it makes which impacts a candidate's eligibility to receive funds pursuant to the provisions of Article 12.

16.3. The determination of any issue before the commission is the final administrative determination.

16.4. Any person adversely affected by a determination of the commission under the provisions of Article 12 may appeal that determination to the circuit court of Kanawha County.

**§146-5-17. Expiration of Rule.**

17.1. The provisions of Article 12 shall expire on July, 1, 2013. Any money remaining in the Fund on July 1, 2013 shall be transferred to the General Revenue Fund.

STATE ELECTION COMMISSION PUBLIC HEARING  
WEST VIRGINIA SUPREME COURT OF APPEALS  
PUBLIC CAMPAIGN FINANCING PILOT PROGRAM  
TITLE 146 SERIES 5 WEST VIRGINIA CODE OF STATE RULES,

**COPY**

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July 15, 2010

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I N D E X

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1 rule, especially considering it's a very complex piece of  
2 legislation. And just generally we support the proposed  
3 rule; however we do have some technical changes and  
4 clarifications we would like to suggest, and we just plan on  
5 submitting those in writing rather than getting into those in  
6 detail this evening. So thank you very much.

7 MR. RUPP: Okay. Thank you. And you're  
8 going to submit those in writing to the Commission?

9 MS. ARCHER: Yes. I'm not prepared to do it  
10 today, but I will have them ready in time, by the deadline on  
11 Monday.

12 MR. RUPP: Right, because then we're  
13 meeting the following week. Okay. Now we can hear from  
14 Carol Warren, West Virginia Citizens for Clean Elections.

15 MS. WARREN: My name is Carol Warren, and  
16 I'm the coordinator for West Virginia Citizens for Clean  
17 Elections, which is a group of about twenty-five  
18 organizations that are all state-wide organizations: Council  
19 of Churches, AFL-CIO, NASW, West Virginia Environmental  
20 Council, just kind of a wide variety of groups who support  
21 public financing in West Virginia.

22 And basically to ditto what Julie said, we are  
23 really thrilled about this pilot project. We think that it  
24 will really restore confidence in our judiciary and the way

1                   MR. RUPP:            So you'll be submitting a  
2 separate --  
3                   MS. WARREN:           No.  
4                   MR. RUPP:            You're going to do it together?  
5                   MS. ARCHER:           On behalf of the coalition.  
6                   MR. RUPP:            And the interest in just some  
7 technical language?  
8                   MR. COLLIAS:          So you're going to have one  
9 comment submitted or are you each going to submit something?  
10                  MR. RUPP:            No, they're going to do a  
11 common one.  
12                  MS. WARREN:          No, it's from the coalition,  
13 and CAG is a member of the coalition. It will just be one  
14 set of comments.  
15                  MR. RUPP:            Good. So do we have here  
16 anyone else?  
17    (No response.)  
18                  MR. COLLIAS:          It's 6:09. Should we wait a  
19 few more minutes? Make sure no one else is out there.  
20                  MR. RUPP:            I think we'll wait. We'll  
21 need to make sure that they can -- yes, given what's  
22 happening upstairs.  
23                  MR. LEACH:            Do we understand about  
24 recessing till Monday?

1 either. The staff can --

2 MR. LEACH: And all members of the SEC will  
3 receive a transcript of anything that takes place at that  
4 time.

5 (WHEREUPON, a brief recess  
6 was taken.)

7 MR. RUPP: I need to declare a recess of  
8 this Special State Election Commission Public Hearing and we  
9 will reconvene on Monday at 6:00 PM.

10 MS. KINDER: Monday the 19th of July.

11  
12 (WHEREUPON, the hearing was  
13 adjourned at 6:20 PM.)  
14

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July 19, 2010

State Election Commission  
1900 Kanawha Blvd. East  
Building 1, Suite 157-K  
Charleston, WV 25305

**Re: Comments on Rule CSR §146-5 Rule for WV Supreme Court of Appeals  
Public Campaign Financing Pilot Project**

Dear Commission Members:

We appreciate the opportunity to comment on the rule for the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Project. We are extremely pleased that the Legislature passed HB 4130 and we appreciate the support of the Governor Manchin and Secretary Tennant for this legislation aimed at ensuring fairness in our Supreme Court elections. We believe the establishment of this pilot project will go a long way toward helping West Virginia restore public confidence in the impartiality and integrity of our judicial system.

We commend the Commission and the election staff of the Secretary of State's office on the work that has gone into developing this rule, especially considering the complexities of the legislation that established the pilot project. Generally, we support the rule proposed by the Commission, however we have several technical changes and clarifications we would like to suggest. Below are our comments on specific sections of the rule.

### **Section 2 - Definitions**

We suggest a revised definition for "Application for certification" as follows:

2.1.a. "Application for certification" is a form prescribed by the State Election Commission that a candidate must file with the Secretary of State to formally apply for public campaign financing funds and request an eligibility determination from the Commission.

We suggest a revised definition for "Application for withdrawal from participation" as follows:

2.1.b. "Application for withdrawal from participation" is a form prescribed by the State Election Commission that a candidate seeking to withdraw as a certified candidate must file with the Commission. The form will be used to determine if the candidate can without penalty or repayment of funds received.

Whether or not this suggested language is adopted, we believe the definition should be revised to clarify that the "application for withdrawal from participation" is to be completed/submitted by certified candidates seeking to withdrawal and that withdrawal "without penalty or repayment of funds received" is not automatic.

We suggest the removing confusing language from the definition of "Contested election" as follows:

2.1.e. "Contested election" means either the primary or the general election in which more than two candidates have filed or been certified for the nomination ~~or have been certified for the general election~~. Two candidates seeking the nomination of a major political party in the primary does not constitute a "contested election," ~~even though another major political party also has candidates seeking the nomination of their party~~. The general election is contested if there are more than two candidates, including any write-in candidates, ~~and regardless of party affiliation~~.

Furthermore, although we understand this definition is being used because there will be two open seats for the Supreme Court of Appeals in 2012, we feel it might be helpful to provide more of an explanation within the definition.

We suggest the definition of "General election initial payment" be clarified as follows:

2.1.1. "General election initial payment" means the amount of monies approved by the Commission and paid from the Fund to ~~the qualifying a certified~~ candidate after certification approval of the primary election ~~period results~~ per W.Va. Code §3-12-11(b).

We recognize that there is some overlap in the use of the terms "qualifying" and "certified" candidates. However, we believe that in most instances the language of the rule applies to candidates who have been duly certified. We also feel it is important to provide this clarification because both Article 12 and the rule distinguish between "participating" and "certified" candidates."

We suggest the definition of "Independent expenditures on behalf of" be clarified as follows:

2.1.k. "Independent expenditures on behalf of" means any money spent advocating the election of a candidate or candidates. Expenditures advocating the defeat of a candidate or candidates are ~~treated as considered~~ expenditures on behalf of all other candidates for the same office not so opposed.

We suggest the definition of "Primary election initial payment" be clarified and corrected as follows:

2.1.q. "Primary election initial payment" means the amount of monies approved by the commission and paid from the Fund to ~~the qualifying a certified~~ candidate ~~when the candidate has qualified~~ per W.Va. Code §3-12-11(b)(a).

We suggest the definition of "Supplemental payments" be clarified as follows:

2.1.t. "Supplemental payments" means the ~~payments of additional funds paid to a certified candidate approved by the State Election Commission~~ when the Commission has determined expenditures or obligations by either a non-participating candidate ~~and or~~ persons making independent expenditures, or a combination of both, ~~has expended or obligated exceed~~ 120% of the initial funding available to a certified candidate for the primary or general elections as provided by W.Va. Code §3-12-11(e-h).

Finally, we suggest that definitions of "Qualifying contribution" and "Qualifying period" be included in Section 2.

### **Section 3 – Exploratory Period; Contributions; Expenditures**

Although the provision of the code that allows contributions received during any precandidacy period to be considered exploratory contributions appears in the Declaration of Intent section of Article 12, a candidate can collect exploratory contributions prior to filing the Declaration. W. Va. Code §3-12-7 states "Contributions made prior to filing the declaration of intent are not **qualifying contributions.**" In addition, we believe this section should clarify that that any precandidacy funds in excess of \$20,000 should be remitted to the fund. Therefore, we suggest subsection 3.3 be revised as follows:

3.3. ~~Upon filing a declaration of intent, a~~Any remaining unexpended or undedicated precandidacy contributions received prior to the exploratory period are treated as exploratory contributions. Contributions in excess of the \$20,000 limit on exploratory contributions that were not previously expended or obligated must be given to the Fund.

We also suggest that the Commission add a new subsection(s), clarifying that if a candidate fails to qualify and/or decides to run as a nonparticipating candidate, they may keep any unspent or unobligated exploratory contributions and that these contributions shall be spent in accordance with Articles 8 and 12, Chapter 3 of the West Virginia Code and Section 9 of this rule/series. Section 3 also should clarify that if a candidate decides not to run for office or ceases to be a candidate they must give any unspent or unobligated exploratory contributions to the Fund.

We think it is good that subsection 3.4 clarifies that monies paid to the Fund will not be refunded.

Our other suggestions for Section 3 relate to the Receipts for Exploratory Contributions. Specifically, we suggest subsection 3.6.b.5 be clarified as follows:

3.6.b.5. A disclosure notifying the contributor that any amount contributed counts against the 1,000 limit on contributions to any candidate for a primary election, including qualifying contributions to participating candidates.

We think it is good that subsection 3.7 clarifies when excess exploratory contributions should be sent to the Fund. We suggest the Commission also add a subsection, (similar to 5.5 of this series) which indicates when receipts for exploratory contributions are to be submitted to the Secretary of State.

Finally, we suggest subsection 3.8 be revised as follows:

3.8. A participating candidate must comply with the restrictions on campaign contributions and expenditures in section 9 of this series and the reporting requirements of section 11 of this series.

### **Section 4 – Declaration of Intent to Participate**

Since Section 2 includes a definition of "Article 12," subsection 4.5 could be shortened as follows:

4.5. The declaration shall contain a statement that the candidate has, and will continue to comply with all requirements of ~~a~~Article 12 ~~twelve of chapter three of the West Virginia code,~~ including contribution and expenditure restrictions.

We suggest subsection 4.6 be clarified as follows:

4.6. A candidate may not ~~receive~~ accept qualifying contributions before filing the declaration of intent. Any contributions received prior to filing the declaration shall be considered exploratory contributions.

### **Section 5 – Qualifying Contributions**

Generally, we suggest that this section be renamed Qualifying Period, Contributions, Expenditures and restructured in a way similar to Section 3.

More specifically, we suggest combining subsections 5.1.b and c as follows:

5.1.b. That total at least \$35,000, but

~~5.1.c. That total~~ no more than \$50,000 in the aggregate; and

Subsection 5.5 mistakenly indicates that receipts are filed at the end of the month rather than the beginning. Also, since receipts are required for exploratory contributions the last sentence of this subsection should be deleted. We suggest correcting and clarifying subsection 5.5 as follows:

5.5. A contribution is not a qualifying contribution unless one copy of the receipt has been provided to the contributor, one copy has been retained by the candidate and one copy has been received by the Secretary. Receipts are filed with the Secretary ~~at the end~~ on the first of each month and a final report shall be filed at the end of the qualifying period. ~~Contributions without receipt are treated as exploratory contributions.~~

We feel subsections (similar to those in Section 3) which clarify when excess contributions should be submitted to the fund and that those monies will not be refunded should be added to Section 5. We also suggest that the Commission add a new subsection(s), clarifying that if a candidate fails to qualify and/or decides to run as a nonparticipating candidate, they may keep any unspent or unobligated qualifying contributions and that these contributions shall be spent in accordance with Articles 8 and 12, Chapter 3 of the West Virginia Code and Section 9 of this rule/series. Section 5 also should clarify that if a candidate decides not to run for office or ceases to be a candidate they must give any unspent or unobligated qualifying contributions to the Fund.

Finally, we suggest subsection 5.9 be clarified and revised as follows:

5.9. A participating candidate must comply with the restrictions on campaign contributions and expenditures in section 9 of this series and the reporting requirements of section 911 of this series.

### **Section 6 – Certification of Candidates**

By indicating a specific deadline of January 1, 2012 for collecting qualifying contributions and filing the Application for Certification with the Secretary, subsection 6.1 overlooks the fact that the qualifying period for minor party and independent candidates ends on October 1, 2012. Similarly, the February 4, 2012 deadline for the Secretary to confirm the number and amounts of qualifying contributions, etc (subsection 6.4) also ignores this fact.

In addition, subsection 6.4 appears to conflict with both the §3-12-10(d) of W.Va. Code and subsection 6.9.a of this series. In other words, the rule appears to add additional days for the Secretary to confirm the number and amounts of qualifying contributions, etc. before notifying the Commission. While we

support the spirit of the rule and feel it is important for the Secretary of State's office to have adequate time to conduct its work and help the Commission fulfill its assigned duties, we believe that the rule as written is inconsistent with the provision of the code that requires the SEC to make its eligibility determination within three business days of a candidate making their final report of qualifying contributions.

We suggest that if the Secretary and the Commission feel more time is needed to process candidates' applications for public financing and make a final determination that you ask the Legislature to make any necessary changes to the pilot project legislation during the 2011 regular session. We would support such a change provided candidates would still receive their payments in a timely manner.

Some recommended changes to specific subsections in Section 6 include:

Subsection 6.6.c should include both exploratory and qualifying contribution restrictions.

Subsection 6.6.f should be clarified and broadened as follows:

6.6.f. The candidate has met all other requirements of this article, including:

6.6.f.1. All expenditures and obligations, contributions and receipts have been reported to the Secretary as required by ~~WV Code §3-12-9 (f) and (g)~~ sections 8, 9 and 13 of Article 12.

The heading for subsection 6.7 could be deleted and incorporated into the main section heading/title.

The provision indicating that "the SEC must process applications in the order they are received" (subsection 6.7.b) should appear earlier in Section 6. We suggest making it subsection 6.5 and renumbering the subsequent subsections. (Subsection 6.7.b appears to be redundant and could be deleted, and 6.7.c and d could become 6.8 and 6.9, etc.)

Similarly, we believe the current subsection 6.5 related to the resolution of challenges to contributions could appear later Section 6 (perhaps as subsection 6.7) and should appear either before or after current subsection 6.8 regarding verification and sampling techniques. However, if W.Va. Code gives the Commission the authority to delegate the responsibility of verification to the Secretary, then perhaps the language in subsection 6.8 should be incorporated instead into subsection 6.4.

Our final comments on Section 6 relate to the repayment of funds by candidates who have had their certification revoked. First, the seven day time frame for repayment appears to be inconsistent with W.Va. Code §3-12-12 (d) and subsection 9.6 of this series which require that anyone who ceases to be a candidate return monies received from the fund within 48 hours. We recognize that neither W.Va. Code §3-12-10(h) or (j) specify a time frame for repayment of funds, and we do not think that seven days is unreasonable. Rather, we believe this raises an important question about what happens if a candidate cannot repay the funds received within the specified time frame. We feel this necessitates giving the Commission the authority to negotiate repayment plans/schedules with candidates and their committees on a case-by-case basis. If the Commission does not feel the current statute gives the SEC this authority, then we encourage the Commission to seek the necessary changes during the 2011 legislative session. This should apply to candidates whose certification is revoked, as well as those who withdraw.

### Section 7 – Challenges to the Validity of a Contribution

Generally, we find that Section 7 provides much needed clarity to the rather vague section of Article 12 dealing with challenges to the validity of qualifying contributions. In particular, no time frame for filing

a challenge is specified in W.Va. Code §3-12-10(g), even though the SEC is charged with resolving challenges within one business day. We applaud and support the Commission's effort to provide more structure and clarity to this process, however, as with Section 6, we are concerned that the rule as written may be adding additional days to the certification process that are not authorized in legislation establishing the pilot project. Again, we would support any changes need to ensure that the Secretary and the Commission have adequate time to fulfill there duties and would encourage seeking those changes during the 2011 legislative session if necessary.

Our only other suggestion for Section 7 would be to rewrite subsection 7.2.c as follows:

**7.2.c. ~~Identify~~ Identity of receipt contributor whose qualifying contribution is being challenged;**

### **Section 8 – Payment Procedures, Schedules and Amounts**

In subsection 8.5 related to Pro rata payments, it should be clear that the ability to raise private contributions due to insufficient funds extends to supplemental payments. Therefore, we suggest 8.5.e be amended as follows:

8.5.e. Candidates receiving reduced payments due to insufficient funds are permitted to solicit and receive campaign contributions, as permitted by Article 8 of Chapter 3, but total contributions may not exceed the difference between the amount paid and the amount, including supplemental payments, that would have been due had full payment been possible. Excess contributions will be paid to the fund.

The references to "participating candidate(s)" in subsection 8.8 should be changed to "certified candidate(s)."

In addition, we believe the examples provided in this subsection, and the example in 8.8.d.2 in particular, are confusing. We also believe the amount of the supplemental payment in example 8.8.d.2 may be calculated incorrectly (see below). Although contributions that exceed the initial funding available to a certified candidate by 20% is the threshold that triggers additional payments, the intent (as shown in the other examples) is to cover the entire amount of the excess expenditure.

(Candidates A, B and C each received \$350,000 in public financing. Independent expenditures on behalf of Candidate C are reported in the amount of \$400,000. Candidate C has reported expenditures of \$250,000.  $\$250,000 + \$400,000 = \$650,000$ . This exceeds the \$420,000 threshold for releasing additional funds. Therefore Candidate A and B should receive an additional \$300,000 each.  $\$650,000 - \$350,000 = \$300,000$ .)

In all the examples additional formulas should be shown to explain how the amount of the supplemental payments is calculated.

Subsection 8.8.e should be clarified and corrected as follows:

8.8.e. When additional excess expenditures are made by non-participating candidates or entities making independent expenditures after the first supplemental payment ~~has been made~~, additional supplemental payments in amounts to match the additional expenditures are made to all affected certified candidates.

8.8.e.1. Example: After candidates A and B (in the first example in ~~4-5-8.8.d.1~~) received payments of \$40,001, expenditures by non-participating candidate C or independent expenditures on his

or her behalf of an additional \$25,000 (~~making for~~ a total of \$265,000) are reported. Candidate A and B each receive an additional supplemental payment of \$25,000.

Subsection 8.8.f.2 should be corrected as follows:

8.8.f.2. ~~\$750,000~~ \$700,000 for the general election; or

### **Section 9 – Restrictions on Campaign Contributions and Expenditures**

Section 9 should reiterate that if a participating candidate fails to qualify and/or decides to run as a nonparticipating candidate, they may keep any unspent or unobligated exploratory and qualifying contributions and that these contributions shall be spent in accordance with Articles 8 and 12, Chapter 3 of the West Virginia Code. Likewise, Section 9 should clarify that if a participating candidate decides not to run for office they must give any unspent or unobligated exploratory and qualifying contributions to the Fund.

Also subsection 9.6 should be clarified and amended as follows:

9.6. A certified candidate must return to the Fund any unspent and unobligated exploratory contributions, qualifying contributions or moneys received from the Fund within forty-eight hours after he or she ceases to be certified, ~~or~~ loses the primary election, or otherwise ceases to be a candidate. However a certified candidate who remains a certified candidate throughout the general campaign period, shall have five business days after the general to return any unspent or unobligated public campaign financing funds as provided in W.Va. Code §3-12-12(f).

### **Section 10 – Withdrawal from Participation**

Generally, we find that Section 10 provides some needed clarity to the section of Article 12 dealing with withdrawals by certified candidates. We applaud and support the Commission's effort to provide more structure and clarity to this process. We do have concerns, as noted in our comments on Section 6, about the repayment of funds by candidates that withdraw or have their certification revoked.

### **Section 11 – Reporting Requirements for Participating Candidates**

We suggest amending the section heading/title as follows:

§146-5-11. Reporting Requirements for Participating and Certified Candidates

We suggest clarifying the heading for subsection 11.4 as follows:

11.4. Final report of exploratory and qualifying contributions.

Also setting a deadline specific deadline of January 31, 2012 for candidates to submit their final report of exploratory and qualifying contributions overlooks the fact that the qualifying period for candidates other than those nominated during the primary election ends on October 1, 2012. W.Va. Code §3-12-13(c) states that the final or summary report of exploratory and qualifying contributions will be submitted "no later than two business days after the close of the qualifying period."

We recognize that this is problematic since Article 12 also clearly states that the exploratory period "ends on the last Saturday in January of the election year" or January 28, 2012. Other public campaign financing proposals considered by the legislature specified that the exploratory or seed money period

ended on the "last day of the qualifying period," allowing minor party and independent candidates to continue to raise and spend exploratory contributions through October 1. This would be fairer to those candidates and we would support seeking this change to the statute during the 2011 legislative session.

In addition, we wanted to mention that there are inconsistencies between the times specified for certified candidates must return unspent or unobligated money received from the Fund, and the filing of their post election campaign finance reports. However, this cannot be remedied without seeking statutory changes to Article 12.

Finally, we suggest that Section 11 clarify when excess exploratory and qualifying contributions should be sent to the Fund. No time frame is specified in Article 12, although Section 3 of this series says they "must be sent on the first of each month."

### Section 16 – Determinations by SEC; Appeal Process

We suggest that the section heading/title and subsection 16.1 be amended to clarify that only certain meetings, in particular those held pursuant to Article 12 for the purpose of making eligibility determinations and authorizing supplemental payments, are exempt from the Open Governmental Proceedings Act. While we recognize that the time constraints placed on the Secretary and the Commission by Article 12 make strict compliance with the provisions of the Act very difficult, whenever possible, we would encourage the Commission to post notice of these meetings on the Secretary of State's website. Finally, we feel it is important and appreciate that affected candidates will be provided with notice, as indicated in previous sections of the rule and we suggest that be reiterated in Section 16.

Again, thank you for the opportunity to comment. Should you have any questions regarding our recommendations, please contact us.

Sincerely,

*Carol E. Warren*

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STATE OF WEST VIRGINIA  
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## **Natalie E. Tennant**

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State of West Virginia

July 29, 2010

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Re: Your Comments on Proposed Rule 146 CSR 5

Dear Ms. Warren and Ms. Archer:

Thank you for your detailed comments to the State Election Commission's proposed rule. The Commission has adopted almost all of your suggestions, with three or four exceptions. Your input has been very valuable and helpful. Please refer to the attached response notes for point-by-point responses.

Your suggestions to clarify the definitions, and to add two additional definitions, were adopted with the exception of a disagreement about striking language from the "contested elections" definition. It may be a matter of semantics, but we believe the emphasis was required and retained that language.

Your suggestions that we add subsections in two or three places clarifying what happens to contributions and funds when there has been a change of status of the participating or certified candidate was meritorious and adopted. Also adopted was the references to compliance with section nine of the article, which had inadvertently been omitted.

The noting that we had failed to address the 'alternative' qualifying period was appreciated and corrected. Also appreciated were the two or three 'typos' including a misstated section reference and a misstated cap amount. We also corrected some errors in the examples and added, at your suggestions, more 'formula' explaining how the numbers were reached.

The areas of disagreement were, in general, concerns that the Commission had overreached authority and contradicted the Code or created procedures not contemplated by the Code. A couple of suggestions that you made contemplated the Commission creating remedies that do not exist. While recognizing the concerns raised and the suggestions made, on the whole the Commission determined that procedural 'tweaking' was required by the confusions in the Code but that the creating of new substantive (rather than procedural) remedies was not a valid response. This is surely an area that will be revisited by the Rule-Making Committee.

In summary, your detailed comments reflected a lot of knowledge and a lot of thought. The Commission was very impressed and very appreciative of your hard work.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy G. Leach". The signature is fluid and cursive, with the first name being the most prominent.

Timothy G. Leach  
Assistant General Counsel

attachment

cc: (by email and mail)  
Carol Warren  
Julie Archer

## **(STAFF) RESPONSE TO PUBLIC COMMENTS**

### **Citizens for Clean Elections:**

1. Revise definition of "application for certification" (language suggestion made)
  - a. Recommended response – revise to accommodate the concern. [§2.1.a.]
  
2. Revise definition of "application for withdrawal from participation" (language suggestion made, but, if not accepted, requests clarification to make it clear that withdrawal without penalty or repayment is not automatic).
  - a. Recommended response – suggested language was missing some necessary words, but agree to clarify waiver of repayment requirement is not automatic. [§2.1.b.]
  
3. Revise definition of "contested election" (language suggestion made)
  - a. Comment suggests confusion may exist between "certified" as used in W.Va. Code, Chapter 3, to define the winner of an election and "certified" as used to describe a candidate approved to receive public financing funds.
  - b. We disagree with the suggestion to strike the language beginning with "event though another major political party..." because it is necessary to explain that a primary for two seats is not "contested" if there are (for example) two Democrats, two Republicans, and two Mountain Party candidates for nominations.
  - c. We do agree to strike the "and" between "write-in candidates" and "regardless of party".
  - d. Revised language to address the concerns. [§2.1.e.]
  
4. Revise definition of "general election initial payment" (suggestions made)
  - a. Recommended response – agree to clarify that payment is not made at end of primary election period (which ends with the date of the primary) but after the results are certified by the Secretary of State. [§2.1.f.]
  
5. Some overlap in the Rule in the use of the terms "certified candidate" and "participating candidate". Rule and Code make distinctions.
  - a. Recommended response – agreed and corrected.
  
6. Revise definition of "independent expenditures on behalf of" (suggestions made)
  - a. Recommended response – accept with some slight modification. [§2.1.m.]

7. **Revise definition of "primary election initial payment" (same suggestions as #4) and correct erroneous code citation.**
  - a. **Recommended response – agree; we mistakenly cited wrong paragraph of code subsection. [§2.1.q.]**
8. **Revise definition of "supplemental payments" (suggestions made)**
  - a. **Recommended response – accept [§2.1.v.]**
9. **Suggest adding definitions for "qualifying contribution" and "qualifying period".**
  - a. **Recommended response – agreed. [§2.1.r. and 2.1.s.]**
10. **Revise §3.3 to retroactively put in place the \$20,000 exploratory contribution limit to those monies raised before the exploratory period and before candidate files declaration of intent.**
  - a. **Recommended response – reject. Code says "Any contributions received by a candidate during any precandidacy period which preceded the exploratory period which remain unexpended at the time of the declaration of intent shall be considered exploratory funds and subject to the limits and provisions of section eight of his article."**
11. **Add section to clarify that candidates who choose not to participate or who fail to qualify must comply with regular campaign election laws.**
  - a. **Recommended response – accept. Provided in code. [§3.10]**
12. **Suggest adding clarification that, if candidate decides not to run or ceases to be a candidate, unspent exploratory contributions must be returned to Fund –**
  - a. **Recommended response – accept. [§3.9.]**
13. **Suggest amending notice on receipt to clarify that qualifying contributions count toward the \$1,000 per person contribution limit of regular campaign financing laws.**
  - a. **Recommended response – reject. Requested language is already provided on qualifying receipts (§5.7).**
14. **Suggests adding section describing when exploratory receipts must be reported to Secretary of State.**
  - a. **Recommended response – accept; the requirement is in code so will add to Rule. [§§3.6.e., 3.6.e.1. and 3.6.e.2.]**
15. **Suggests adding language to compliance requirements of §3.8 to include compliance with §9 of rule.**
  - a. **Recommended response – accept. [§3.8.]**

16. Suggest shortening full code reference in §4.5 to merely "Article 12".
  - a. Recommended response – accept.
17. Suggests replacing "receive" with "accept" and adding provision that any qualifying contributions accepted before filing declaration of intent be considered to be exploratory contributions.
  - a. Recommended response – accept (no pun intended) the word change
  - b. Reject the additional language as unnecessary; it's already in §5.3.
18. Rename the title of §5 and restructure similar to §3
  - a. Recommended response – revised the heading.
19. Combine sections 5.1.b. and 5.1.c. and add "in the aggregate".
  - a. Recommended response – reject, unnecessary.
20. Change §5.5 to "beginning of the month"
  - a. Recommended response – agreed to change to "beginning of the month" because we misquoted the code.
21. Suggests deleting last sentence of §5.5 about how to treat qualifying contributions without receipt.
  - a. Recommended response - Agree that proposed rule is incorrect.
  - b. However, Code 3-9-12(h) provides that person receiving exploratory or qualifying contributions without name listed on receipt is liable to Commission for amount of contribution plus penalty.
  - c. We think the proposed rule should reference this code provision and have revised accordingly. [§5.5]
22. Suggests adding sub-sections setting a date by which excess qualifying contributions will be paid to Fund and alerting candidates that money will not be refunded as was done in section 3.
  - a. Recommended response – accept. [§5.2]
23. Suggests adding sub-sections clarifying that, if candidate decides not to participate or fails to qualify, contributions become regular campaign contributions subject to regular campaign finance and reporting laws.
  - a. Recommended response – accept; it's in the code [§3-12-9(f)]. [§5.11.]
24. Suggests that if candidate decides not to run, contributions must be paid to Fund.
  - a. Recommended response – Accept. See response to comment #12 and #47. [§5.10.]

25. Suggests adding language to compliance requirements of §5.9 to include compliance with §9 of rule (same as suggestion for §3.8 above)
- a. Recommended response – accept. [§5.9]
26. Suggests that deadline of January 1 (sic), 2012 for filing application for certification ignores special qualifying period set by code for persons not affiliated with a major party.
- a. Recommended response – accept, corrected. [§6.1]
27. Same argument for February 4, 2012 deadline for Secretary to confirm numbers of qualifying contributions.
- a. Recommended response – accept. [§6.4]
28. Suggests that §6.4 conflicts with code and allows Secretary additional time to confirm numbers and amounts.
- a. Recommended response – reject. SEC has two different action deadlines: within three business days of final report; or within six business days of resolution of challenge to any contribution. Cannot go with earlier date because challenge may be received after final report has been submitted. Therefore, we allowed six business days for Secretary to determine whether late challenge was filed.
29. Suggests amending 6.6.c. by adding "exploratory and" before "qualifying".
- a. Recommended response – accept.
30. Suggests adding references to "obligations" and sections 8, 9 & 12 of Article 12.
- a. Recommended response – accept. [§6.6.f.]
  - b. Also, we merged §6.6.f.1. with §6.6.f. because we never received a suggestion for the missing §6.6.f.2.
31. Suggests deleting the sub-section heading and incorporating in section heading.
- a. Recommended response – reject. Sub-headings may not conform strictly to rule-making format and, if not allowed, will be corrected by Rule Making Review Committee counsel. However, no comments about other sub-section heading in rule and we believe the organization to be helpful to the clarity of the rule.
32. Suggests sub-section (§6.7) should appear as part of section 6. Also, 6.7.b. appears redundant.
- a. Recommended response – reject. There is nothing in current Code or SEC procedures for how to determine whether a candidate is eligible to hold the office sought. This is an entirely new process and we thought deserved separate subsection status.

33. Suggests that sub-section §6.5 should be moved to before or after §6.8.
- a. Recommended response – reject. We believe that the order of the process requires determination of challenges before proceeding to next qualification step review.
34. Suggests seven day repayment time for candidates who had their certification revoked is contrary to code and too long.
- a. Recommended response – accept. We created the seven days without true code basis. Code analysis of comment is more rational than our proposed rule language.
  - b. We also like the proposal that the SEC could negotiate repayment plans or settlements for when the candidate is unable to repay. We will add a new subsection. [§6.11.d.2.]
35. Suggests that challenge resolution section (§7) may allow SEC additional time contrary to code. Suggests revisiting legislation in 2011.
- a. Recommended response – reject. The code is inconsistent and does not appear to allow any type of due process and response necessary for all administrative procedures. (For example: code says SEC must rule within one day of receipt of challenge but first determine whether challenge is moot by number of other contributions received. The SEC cannot know if a contribution challenge is moot if it were the first receipt received. Only after all receipts have been received can that process be determined. Therefore, it became necessary to delay all challenges until the final numbers became known.)
  - b. We were compelled to try to implement the code in a legal way. The Legislature can address this by Rule Making Review or in session.
36. Suggests correction of typographical errors in 7.2.c.
- a. Recommended response – accept.
37. Suggests the ability of participating candidates to receive private contributions when the Fund is unable to pay should "includ[e] supplemental funds".
- a. Recommended response – reject. We agree that supplemental funds are included by that is already covered by sub-section 8.5 which says "at the time of any payment" (emphasis added). The suggested language may imply that the potential future supplemental fund private match can be raised now instead of when the supplemental payment is triggered.
38. Suggests reference to "participating candidate" should be "certified candidate".

- a. Recommended response – accept. [§8.8 in several places]
39. Suggests that examples are confusing.
- a. Recommended response – accept. Got formula wrong in one example and corrected. Added formula to all three as suggested by #42. [§8.8.d.2.]
40. Suggests that example 8.8.d.2. has been calculated incorrectly.
- a. Recommended response – accept. See response to comment #40.
41. Suggests that formula should be given in all three examples to explain how payments are calculated.
- a. Recommended response – accept. See response to #40. [§§8.8.d.1. and 8.8.d.3.]
42. Suggests additions to 8.8.e. (suggestions made).
- a. Recommended response – accept.
43. Suggests clarifying language to example 8.8.e.1. and corrects an erroneous rule sub-section cross-reference.
- a. Recommended response – accept.
44. Corrects erroneous amount of total supplemental payments cap.
- a. Recommended response – accept. [§8.8.f.2.]
45. Repeats comments made earlier (#11 and #23) that language should be included to emphasize that candidate who fails to qualify or chooses to run as a non-participating candidate may keep exploratory and qualifying monies but is restricted by provisions of Chapter 3.
- a. Recommended response – accept. [§9.8]
46. Repeats comment made earlier (#12 and #24) that participating candidate who withdraws from race must pay to the Fund any unspent or unobligated exploratory and qualifying contributions.
- a. Recommended response – accept. [§9.9]
47. Suggests amending sub-section 9.6 to include reference to different repayment deadline for unspent general funds.
- a. Recommended response – accept, but create a new sub-section to be more clear that there are two different deadlines: one for primary, withdrawal, or decertification (48 hours); and one for post-general (five days) [§9.7].
48. Suggests amending the section heading to add "and Certified" before "Candidates".
- a. Recommended response – agreed. [§146-5-11]

49. Suggests adding to sub-section title "of exploratory and qualifying contributions".  
a. Recommended response – agreed.
50. Repeats suggestion (#27) that 11.4 deadline of January 31, 2012 overlooks the separate deadline for persons unaffiliated with major parties.  
a. Recommended response – agreed.
51. Requests that section 3 requirement that excess exploratory and qualifying contributions be paid to the Fund on the first of each month be also included in section 11.  
a. Recommended response – reject. Not germane to the section purpose.
52. Suggests section 16 heading and 16.1 be amended to clarify that only meetings of SEC relating to Article 12 matters are exempt from Public Meeting law.  
a. Recommended response – agreed.
53. Suggest that "whenever possible" SEC post notice of meetings on Secretary of State's website.  
a. Recommended response – agreed, but does not require SEC rule change.
54. Suggests that section 16 include recognition that affected candidates will be provided with notice [of possible SEC actions].  
a. Recommended response – agreed. [§16.1, 16.1.a., and 16.1.b.]

**WV Supreme Court:**

55. Suggests that Rule should require Public Funds and candidate's personal funds must be maintained in separate bank accounts.  
a. Recommended response – agreed. [§9.10]

**From:** Sevy, Tina [mailto:Tina.Sevy@courtswv.gov]  
**Sent:** Monday, July 19, 2010 12:05 PM  
**To:** David Nichols  
**Subject:** RE: Public Finance Rules

Dave:

I have reviewed the proposed rules for the Supreme Court Public Campaign Financing Pilot Program. I just have one comment. Current law does not require candidates to separate campaign funds and personal funds into different bank accounts.

My question – since these candidates will be receiving public monies, shouldn't we require that these public funds be placed in a separate account, thereby prohibiting the candidates from depositing taxpayer money into personal bank accounts?

Thank you for your time and attention to this matter.

Tina A. Sevy  
Director of Legislative Analysis  
WV Supreme Court of Appeals  
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**Natalie E. Tennant**

Secretary of State  
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July 29, 2010

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Tina A. Sevy  
Director of Legislative Analysis  
WV Supreme Court of Appeals  
Charleston, WV

(by email)

Re: Your Comments on Proposed Rule 146 CSR 5

Dear Ms. Sevy:

Thank you for your comments to the State Election Commission's proposed rule. The Commission has adopted your suggestion and is appreciative of your review of the rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy G. Leach".

Timothy G. Leach  
Assistant General Counsel