

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

Form #3

Do Not Mark In This Box

FILED

2013 JUL 11 PM 3:26

SECRETARIAL DIVISION
OFFICE OF THE SECRETARY OF STATE

**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: W.Va. 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: 5

TITLE OF RULE BEING AMENDED: West Virginia Supreme Court of Appeals Public Campaign Financing Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

FILED

2013 JUL 11 PM 3:26

CLERK OF COURTS
WEST VIRGINIA
SOUTH BRANCH OF STATE

Title 146
Legislative Rule
State Election Commission

SERIES 5

West Virginia Supreme Court of Appeals
Public Campaign Financing Pilot Program

§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 prescribed by the State Election Commission that a candidate must file to formally apply for public campaign financing funds and request an eligibility determination from the Commission.

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 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 W.Va. 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 than Justices to be elected have filed for the primary or more ~~than two~~ candidates of any party affiliation than Justices to be elected 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~~ The fact that any other ~~another major~~ political party also has a candidate or candidates seeking the nomination of their party does not constitute a "contested primary" election for a political party with no more candidates filed than Justices to be elected. The general election is contested if there are more ~~than two~~ candidates, including any unaffiliated nominees and write-in candidates, regardless of party affiliation, than Justices to be elected.

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. "Election year" means the calendar year beginning January 1 during which a Justice, or more than one Justice, is to be elected to the West Virginia Supreme Court of Appeals.

2.1.gh. "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 but prior to the filing of a declaration of intent.

2.1.hi. "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 of the calendar year preceding the election year, and ends on the last Saturday in January 28, 2012 of the election year.

2.1.ij "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.jk. "Fund" means the Supreme Court of Appeals Public Campaign Financing Fund created by W.Va. Code §3-12-5.

2.1.kl. "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.lm. "General election ~~initial~~ payment" means the amount of monies approved by the Commission and paid from the Fund to a certified candidate after certification of the primary election 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 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 the first day of the primary election candidate filing period January 9, 2012 and ending on May 9, 2012 the day of the primary election.

2.1.q. "Primary election initial payment" means the amount of monies approved by the Commission and paid from the Fund to a certified candidate per W.Va. Code §3-12-11(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~~ begins September 1, ~~2011~~ preceding the election year ~~until~~ and ends the last Saturday in January 28, 2012 of the election year. For candidates seeking to be placed on the general ballot by means other than through the primary, the period ~~is from~~ begins June 1, ~~2012~~ of the election year ~~until~~ and ends October 1, ~~2012~~ of the election year.

2.1.~~ts~~. "Secretary" means the Secretary of State.

2.1.~~ut~~. "State Election Commission" means the government body referenced in W.Va. Code §3-1A-1 and may hereinafter be referred to as "SEC" or "Commission".

~~2.1.v. "Supplemental payments" means the additional payments paid when the Commission has determined expenditures or obligations by either a non-participating candidate or persons making independent expenditures supporting an opponent of a participating candidate, or a combination of both, 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~~ preceding the election year and ends on the last Saturday in January 28, 2012 of the election year.

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. A candidate may not accept additional exploratory contributions after filing a declaration of intent.

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 \$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 W.Va. Code §3-8-5a.

3.6.e. Receipts, expenditures and obligations shall be reported to the Secretary 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 W.Va. Code §3-8-5b(c).

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 8 and 12, chapter 3, of the West Virginia Code.

§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~~ the close of the candidate filing period of the election year;

4.2.b. For persons seeking nomination by certificate of nomination as provided in W.Va. Code §3-5-23, no later than ~~October 1, 2012~~ of the election year.

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 placed 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, chapter 3, of the West Virginia Code, including contributions and expenditure restrictions.

4.6. A candidate may not 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 number 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 contribution.

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 beginning of each month and a final report shall be filed at the end of the qualifying period. Candidates must review the receipts for completeness and accuracy before filing with the Secretary. 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 contribution, regardless of amount, may be accepted from a single individual.

5.7. Exploratory and qualifying contributions 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 West Virginia voters, are each eligible to make one qualifying contribution, however the participating candidate may not use any other personal funds to satisfy the qualifying contribution 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 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 8 and 12, chapter 3, of the West Virginia Code.

§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~~ two business days after the close of the qualifying period, a candidate who desires to apply for public financing funds shall 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 shall 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 The Secretary will have:

6.4.a. ~~Confirmed~~ Confirm the number and amounts of qualifying contributions;

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

6.4.c. ~~Notified~~ Notify the SEC of the findings.

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

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

6.6.a. The candidate has signed and filed Declaration of Intent Form required by W.Va. 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, as provided by W.Va. Code §3-5-9, 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.

6.7. 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 (W.Va. Code §3-5-7) for eligibility.

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 an Application For Certification within:

6.9.a. Three business days of candidate making final report of qualifying contributions per W.Va. 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 West Virginia 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 8 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 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 a form provided by the SEC providing:

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

7.2.b. Signature of challenger;

7.2.c. Identity of receipt challenged; and

7.2.d. Reason for challenge;

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

7.4. If the SEC determines the candidate has sufficient numbers and amounts of non-challenged contributions to meet requirements, then challenge(s) is(are) dismissed.

7.5. The SEC must determine by the end of next business day whether the challenge is sustained and notify the candidate and challenger.

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

7.7. Any replacement contribution receipt must be filed electronically with the Secretary. Replacement contributions may be collected outside the time period allowed for the collection of regular contributions, but must be collected within five business days following the filing of a challenge.

7.8. 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 W.Va. 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 as 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 such 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 8, chapter 3, of the West Virginia Code, 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 election 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 election payment amount for a contested election is ~~\$200,000~~ \$300,000 less the amount of qualifying contributions raised by the candidate.

8.6.c. The ~~initial~~ general election 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 election payment amount for a contested election is ~~\$350,000~~ \$525,000 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 State Auditor to ensure payment of the ~~initial~~ primary election 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 election payment within two working days of certification of the primary election results by the Secretary.

~~8.8. Supplemental payments~~

~~8.8.a. Supplemental 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 \$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 certified candidate, either alone or in combination with the certified 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.~~

~~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 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: 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: 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 \$300,000 each (20% of \$350,000 = \$70,000. $\$350,000 + \$70,000 = \$420,000$. $\$650,000 - \$350,000 = \$300,000$).~~

~~8.8.d.3.— Example: Certified candidates A and B both raised \$35,000 in qualifying contributions and were each initially paid \$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, 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 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 (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. \$700,000 for the general election; or~~

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

8.87. Payment issuance procedure.

8.87.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.

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

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

8.87.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 W.Va. Code §3-8-9.

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 8 and 12, Chapter 3, of the West Virginia Code.

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, 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 W.Va. 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 W.Va. Code §3-8-5b(c).

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~~ two business days after the close of the qualifying period, 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; and

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 W.Va. 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 W.Va. 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 W.Va. Code §3-8-2(b).~~

§146-5-1412. Criminal Penalties.

1412.1. 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:

1412.1.a. Personally or through his or her candidate's committee, accepting contributions or benefits in excess of what article 12 allows;

1412.1.b. Spending or obligating funds in excess of the public campaign funding to which he or she is entitled; or

1412.1.c. Using benefits or funds for a purpose other than those permitted under article 12.

1412.2. 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:

1412.2.a. Personally or through his or her candidate's committee or financial agent, providing false information to the Secretary or the SEC;

1412.2.b. Concealing or withholding information from Secretary or SEC.

1412.3. 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.

~~1412.3.a.~~ The participating candidate will be given notice of the issues, allegations, and facts being investigated and will be permitted an opportunity to respond.

~~1412.3.b.~~ At the conclusion of the investigation, a confidential report will be submitted to the SEC.

~~1412.3.c.~~ The SEC will review the report in executive session and will determine, by majority vote, whether to recommend prosecution.

~~1412.4.~~ If a determination is made to recommend prosecution, a report will be prepared and presented to the prosecutor with appropriate jurisdiction.

~~1412.5.~~ All investigations and reports, and individuals involved, are subject to the non-disclosure provisions of W.Va. Code §3-8-8(i).

§146-5-~~1513~~. Civil Penalties.

~~1513.1~~ A participating or certified candidate is subject to civil penalties if the candidate, or the candidate's committee or financial agent:

~~1513.1.a.~~ Accepts contributions from a private source in violation of the provisions of article 12; or

~~1513.1.b.~~ Spends or obligates to spend more than the amount of public financing money he or she is eligible to receive from the Fund.

~~1513.2.~~ 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:~~

~~1513.2.a.~~ \$20,000 for the primary election; or

~~1513.2.b.~~ \$35,000 for the general election.

~~15~~13.3. The SEC may consider invoking civil penalties based upon information:

~~15~~13.3.a. Obtained from reports required by the West Virginia Code and this rule;

~~15~~13.3.b. Submitted by candidates or other individuals.

~~15~~13.4. 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~~13.4.a. Notice of the meeting and the matters under review will be provided to the potentially violating candidate.

~~15~~13.4.b. The candidate may appear at the meeting in person or by telephone.

~~15~~13.5. 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~~13.5.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~~13.5.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~~13.6. The SEC will present to the candidate a written notice of any civil fine assessment.

~~15~~13.7. 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~~13.8. 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~~13.9. Any penalties collected by the SEC shall be deposited into the Fund.

§146-5-1614. Determinations by SEC; Notice of Meetings; Appeal Process.

~~1614.1.~~ 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 West Virginia Code.

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 candidates. The notice does not have to comply with the requirements of Chapter 6, article 9A of the West Virginia Code.

~~1614.2.~~ 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.

~~1614.3.~~ The determination of any issue before the Commission is the final administrative determination.

~~1614.4.~~ 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.

**SUMMARY OF RULE
WEST VIRGINIA SUPREME COURT OF APPEALS
PUBLIC CAMPAIGN FINANCING PILOT PROGRAM**

This amendment to the current rule is required by changes to underlying code made during the 2012 regular session. Code language relating to triggering and paying "matching funds" was eliminated by the legislature. The "pilot" status was changed to permanent law. The amendments reflect code changes and eliminate references to specific events and dates applicable only to the "pilot" program period.

**RESPONSE TO PUBLIC COMMENTS
WEST VIRGINIA SUPREME COURT OF APPEALS
PUBLIC CAMPAIGN FINANCING PROGRAM**

No comments suggesting amendment to the proposed rule were received.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Supreme Court of Appeals Public Campaign Financing Program

Type of Rule: Legislative Interpretive Procedural

Agency: State Election Commission

Address: Building 1, Suite 157-K
Kanawha Blvd. E.
Charleston, WV 25305

Phone Number: 304-558-6000 Email: tleach@wvsos.com

Fiscal Note Summary

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

Rule has no impact on costs or revenues of state.

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.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

West Virginia Supreme Court of Appeals Public Campaign Financing 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.

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.

No areas of vagueness.

Date: 7/11/13

Signature of Agency Head or Authorized Representative

Matalis Elmer

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: 7/11/13

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 Program

1. Authorizing statute(s) citation W.Va. Code §§ 3-1A-5, 3-12-11 and 3-12-14

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
5/30/2013

b. What other notice, including advertising, did you give of the hearing?
Webcast of SEC meeting.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
7/1/2013

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

Attached _____ No comments received X

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

7/11/2013

- 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

Building 1, Suite 157-K

1900 Kanawha Blvd. E.

Charleston, WV 25305

304-558-6000 tleach@wvsos.com

- 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)

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

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