

OFFICE OF THE SECRETARY OF STATE, ELECTIONS DIVISION
STATE OF COLORADO

IN THE MATTER OF KELLNER FOR COLORADO/JOHN KELLNER
2022-24

NOTICE OF INITIAL REVIEW AND OPPORTUNITY TO CURE

Ethan Black (“Complainant”) filed Complaint 2022-24 on May 20, 2022, against “Kellner for Colorado/John Kellner” (“Respondent”); John Kellner is a candidate for Attorney General in the November 2022 election.¹ Complainant alleges that Respondent accepted a prohibited contribution from a registered professional lobbyist while the General Assembly was in regular session.

The Division notified Respondent of the Complaint on May 20, 2022.

The Division has completed its initial review according to section 1-45-111.7(3), C.R.S. For the reasons stated below, the Division initially determines that Complainant identified potential violations of Colorado campaign finance laws. The Division also initially determines that one or more of the alleged violations may be curable.

Respondent will have ten business days from the date of this notice to submit a Notice of Intent to Cure form to the Division and to cure any deficiencies specified in this notice or provide other relevant information on how Respondent has cured the alleged violations and substantially complied with the law.

Analysis

Any person who believes that a violation of Colorado campaign finance law has occurred may file a complaint with the Colorado Secretary of State.² Upon receipt, the Division must initially review a complaint to determine: (1) whether the complaint was timely filed; (2) whether the complaint specifically identified one or more violations of Colorado campaign finance law; and (3) whether the complaint alleged sufficient facts to support a factual and legal basis for the complaint.³

¹ Complaint 2022-24; the Division notes that Complainant names both the candidate and candidate committee as Respondent on the complaint form, so the Division will assess the allegations as against both the candidate and the committee.

² Section 1-45-111.7(2)(a), C.R.S.

³ Section 1-45-111.7(3)(a), C.R.S.

1. The Complaint was timely filed.

The Division initially determines that the complaint was timely filed. A complaint must be filed no later than 180 days after the date on which the complainant knew or should have known, by the exercise of reasonable diligence, of the alleged violation.⁴

Complainant alleges that they were first made aware of the potential violations for the Complaint on May 2, 2022, which is the date on which Respondent's relevant campaign finance report was filed. The Complaint involves a contribution made to Respondent on January 27, 2022, and reported on Respondent's May 2, 2022, report. Complainant filed their Complaint on May 20, 2022.

Based on the information provided by Complainant, the Division determines that the Complaint was timely filed per section 1-45-111.7(2)(b), C.R.S., as the Complaint was filed within 180 days of when Complainant knew or should have known of the alleged violations.

2. Complainant identifies one or more potential violations of Colorado campaign finance law.

The Division makes the initial determination that Complainant identifies one or more potential violations of Colorado campaign finance law.

Under Colorado law, professional lobbyists are prohibited from making contributions to a candidate for attorney general when the General Assembly is in regular session.⁵

A contribution is:

- (I) The payment, loan, pledge, gift, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party;
- (II) Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party;
- (III) The fair market value of any gift or loan of property made to any candidate committee, issue committee, political committee, small donor committee or political party;
- (IV) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's nomination, retention, recall, or election.⁶

⁴ Section 1-45-111.7(2)(b), C.R.S.

⁵ Section 1-45-105.5, C.R.S.; 8 CCR 1505-6, Rule 14.2.

⁶ COLO. CONST. art. XXVIII, § 2(5)(a).

Here, Complainant alleges that, per Respondent's May 2, 2022, campaign finance report, Respondent accepted a \$500.00 contribution on January 27, 2022, from a registered professional lobbyist, Michael Fields, while the General Assembly was in regular session. Complainant also asserts that Michael Fields violated Rule 7.1 of the Secretary of State's Rules Concerning Lobbyist Regulation.⁷

The Division finds that Complainant's allegations indicate one or more potential violations of Colorado campaign finance law.

3. Complainant alleges sufficient facts to support a factual and legal basis for the violation of law alleged in the Complaint.

The Division initially determines that Complainant alleges sufficient facts to support a factual and legal basis for the violation of law alleged in the Complaint.

Complainant alleges that Respondent accepted a prohibited contribution from a professional registered lobbyist while the General Assembly was in regular session.

In support of their allegation, Complainant attached numerous documents to the Complaint, including a detailed explanation of the allegation, Michael Fields' lobbyist registration, and a TRACER screenshot showing the contribution at issue.

Based on the information Complainant provided, the Division determines that Complainant alleges facts that, if proven, could establish that Respondent violated Colorado campaign finance laws.

4. Respondent has the opportunity to cure the alleged violation.

The Division makes the initial determination that one or more of the alleged violations may be curable. Under section 1-45-111.7(4), C.R.S., a respondent may cure alleged campaign finance violations under certain circumstances. If Respondent intends to cure, Respondent has ten business days from the date of this notice to do so. Respondent must file with the Division a Notice of Intent to Cure form with reports, amendments, or other relevant information on how the deficiencies or violations have been cured and demonstrate how Respondent has substantially complied with the law.

When determining whether Respondent has substantially complied with the law, the Division must consider:

- (1) The extent of the respondent's noncompliance;

⁷ Complaints alleging violations of the Secretary of State's Rules Concerning Lobbyist Regulation are outside the framework of the campaign and political finance complaint process. Complaints regarding violations of the Rules Concerning Lobbyist Regulation may be filed using the Lobbyist Complaint Form, linked [here](#).

- (2) The purpose of the provision violated and whether the purpose was substantially achieved despite the noncompliance; and
- (3) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.

However, if Respondent disputes the allegations, they may also provide the Division with such information for further review under section 1-45-111.7(5)(a), C.R.S. The Division may ask Respondent for additional information, including the production of documents or other tangible items during the cure or investigation.

Conclusion

For the reasons stated above, the Division makes the initial determination that potential violations of Colorado campaign finance laws exist, but that one or more of the alleged violations may be curable.

If Respondent disputes the allegations and does not establish cure and substantial compliance under section 1-45-111.7(4), C.R.S., the Division will conduct an additional review under section 1-45-111.7(5), C.R.S. to determine whether to file a motion to dismiss the Complaint with the Deputy Secretary of State or file a complaint with a hearing officer.

Please note that all documents and records related to the alleged violation in Complaint, including email communications, financial records, and other relevant documentation, must be maintained until the final agency decision has been reached or appeals have been exhausted.

Dated this 6th day of June 2022.

/s/ Emily Curosh
Emily Curosh
Campaign and Political Finance Enforcement
Elections Division
Colorado Secretary of State

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice of Initial Review and Opportunity to Cure was served by electronic transmission to:

Respondent – Kellner for Colorado/John Kellner

Registered Agent – Marge Klein
mklein@swspolifi.com

Complainant – Ethan Black
ethan@progressnowcolorado.org

On this 6th day of June 2022.

/s/Emily Curosh
Elections Division