

STATE OF COLORADO

SECRETARY OF STATE
1700 BROADWAY #550
DENVER, COLORADO 80290

BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE,
ADMINISTRATIVE HEARING OFFICER

AHO Case No. 2025 AHO 35 CPF

ED Case Nos. 2025-88, 2025-89, 2025-90, 2025-91

In the Matter of

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

CLARK CALLAHAN FOR DCSD, KYRZIAPARKER4DCSD, TONYRYAN4DCSD, and,
KELLY DENZLER FOR DCSD

Respondents.

OPPOSITION TO MOTION TO DISMISS

As the Hearing Officer has already concluded under nearly identical circumstances, the time limit for setting a hearing found in Section 1-45-111.7(6)(a), C.R.S. is directory not mandatory. *See Elections Division v. Larson et al.*, No. 2023 AHO 0003, Order ¶ 11 (Dec. 27, 2023) (attached as Exhibit A). Because the directive is not mandatory, that the hearing was not set within 30 days does not deprive the Hearing Officer of jurisdiction. The Motion should be denied.

BACKGROUND

This case arises from a series of campaign finance complaints filed with the Elections Division last year. 1st Am. Compl. ¶ 12 (Dec. 12, 2025). The complaints alleged that the

Respondent Committees had failed to include compliant disclaimers on campaign communications. *Id.*

After reviewing and investigating the complaints, the Elections Division timely filed an Administrative Complaint with the Hearing Officer on December 10, 2025. Compl. (Dec. 10, 2025). After an Order from the Hearing Officer, the Division filed a First Amended Complaint on December 12, 2025.

On January 27, 2026, more than 30 days after both the original and First Amended Complaints were filed, the Hearing Officer issued an initial scheduling order setting a date for the hearing, which it later amended after a motion from the Division. Respondents now move to dismiss the First Amended Complaint for lack of jurisdiction on the grounds that the Hearing was not scheduled within 30 days of the filing of the administrative complaint. Mot. to Dismiss at 2 (Jan. 30, 2026).

ARGUMENT

Respondents argue that the Complaint against them should be dismissed because the hearing was not set within thirty days of the Complaint being filed. But the time limitations in section 1-45-111.7 are directory, not mandatory. The Motion should be denied.

I. The time limitations in § 1-45-111.7 are directory, not mandatory.

Respondents argue that the Complaint should be dismissed because a hearing on the Complaint was not set within 30 days. Mot. to Dismiss ¶¶ 8-9 (citing § 1-45-111.7(6)(a)). The Respondents then suggest that the Hearing Officer's failure to abide by that time limitation deprives the Hearing Officer of jurisdiction over this matter.

Statutory "provisions that prescribe the time within which an agency must act are presumed to be directory unless the statute suggests a contrary intent." *In re Protest of McKenna*, 2015 CO 23, ¶ 20; *see also DiMarco v. Dept. of Rev., Motor Vehicle Div.*, 857 P.2d 1349, 1352 (Colo. 1993) ("[O]ur appellate courts have generally construed time

limitations imposed on public bodies as being directory rather than mandatory, unless the General Assembly has clearly evidenced a contrary intent.”).

Although the word “shall” often “has a mandatory connotation,” *In re McKenna*, 2015 CO ¶ 19, that alone is insufficient evidence to hold that a statutory timeline is mandatory, rather than directory, *DiMarco*, 857 P.2d at 1352. And where a statute uses “affirmative language” such as “shall . . . within,” instead of “negative language” like “or not at all,” courts are more likely to hold that the time limitations were directory, not mandatory. *Id.* (collecting cases where courts held that requirements to act “within” a set period of time are directory, not mandatory).

Here, the deadline for setting a hearing in Section 111.7(6)(a), is directory, not mandatory. First, the statute is subject to the presumption that its provisions prescribing “the time within which an agency must act” are directory. *McKenna*, 2015 CO ¶ 20.

Second, the statute uses affirmative language, specifically the word “within,” as to the deadline for scheduling a hearing, further establishing its directory nature. *See* § 1-45-111.7(6)(a) (“[A] hearing officer shall schedule a hearing within thirty days of the filing of the complaint . . .”).

Finally, Colorado voters have reiterated in both statute and the constitution “that the interests of the public are best served by . . . strong enforcement of campaign finance laws.” § 1-45-102; *see also* Colo. Const. art. XXVIII, § 1 (“[T]he interests of the public are best served by . . . strong enforcement of campaign finance requirements.”). Against this backdrop, it would be unjust to penalize the enforcement body—here, the Elections Division—for an action or inaction that is not attributable to that body. Section 111.7(6)(a) directs the *hearing officer*, to take action. Yet the Respondents seek to penalize the *Elections Division* with dismissal of their Complaint.

DiMarco is instructive. There, the court considered a time period relating to when a driver's license could be revoked or suspended. 857 P.2d 1350. The relevant statute stated that, if the licensee requests a hearing prior to revocation or suspension, "such hearing *shall* be held within sixty days after application is made." *Id.* at 1351. It was undisputed that such a hearing was not held within 60 days, but the court declined to hold that the failure to adhere to this provision divested the agency of jurisdiction. *Id.* at 1353. "Absent explicit language revealing such, [the court] decline[d] to assume that the General Assembly intended that an agency's procedural mistake should defeat the prime objective of the statute." *Id.* at 1352.

This case is on all-fours with *DiMarco*. And the Hearing Officer has recognized as much in similar circumstances. In *Larson*, the Hearing Officer held that the deadline for setting a hearing in Section 111.7(6)(a) is directory, not mandatory, and that failure to abide by the deadline does not strip the court of jurisdiction. Exhibit A ¶¶ 10-11 ("[A]ny argument that delay should prompt a dismissal of a well pleaded administrative complaint must fall, given the importance that both the electors in Colorado and the General Assembly have attached to compliance with campaign finance . . . regulations and their stated intention that there be strong enforcement of the campaign laws.")

It is undisputed that the hearing in this matter was not scheduled within 30 days of when the complaint was filed. But "absent explicit language revealing such," the Hearing Officer should not presume that the General Assembly intended for that fact, alone, to deprive it of jurisdiction over these proceedings.

CONCLUSION

The Motion should be denied.

Respectfully submitted this 13th day of February, 2026

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CERTIFICATE OF SERVICE

This is to certify that I will cause the foregoing to be served this 13th day of January, 2026, by email and/or U.S. mail, addressed as follows:

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