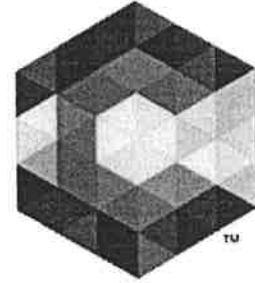


# COUNTY SUPPORT MEMO



**SUBJECT: Ballot Access for County Candidates**

**DATE: December 13, 2021**

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## 1) Introduction

“Ballot access” is a term of art in election administration circles, and generally refers to the procedures and requirements that prospective candidates must follow in order to have their names placed on the ballot for an upcoming primary or general election.

In Colorado, the ballot access paths and requirements vary based on the party affiliation of the candidate. Generally, candidates affiliated with a major political party must obtain the designation of their party, either through the county assembly process (“designation by assembly”) or by circulating and obtaining a sufficient number of valid signatures on nomination petitions (“designation by petition”). Minor political parties typically do not conduct party assemblies or participate in partisan primary elections. Therefore, most minor party candidates usually, and all unaffiliated candidates must, access the county’s general election ballot through the petition process.

Before reviewing the specific ballot access paths and requirements for candidates for county office, this memo first outlines the eligibility requirements for any person to hold an elective office at the county level.

## 2) County elective offices

The elected offices of county governments are<sup>1</sup>:

- County Commissioner
- Clerk and Recorder
- Sheriff
- Coroner
- Treasurer
- Assessor
- Surveyor

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<sup>1</sup> Colo. Const. art. XIV, §§ Sections 6, 8; sections 1-4-205, 1-4-206, C.R.S.

**3) Regular ballot cycle; terms of office**

All county offices other than county commissioner cycle onto the ballot in gubernatorial election years.<sup>2</sup> A majority of county commissioner seats cycle onto the ballot in presidential election years, and a minority cycle onto the ballot in gubernatorial election years.<sup>3</sup> All elected officers serve four-year terms that begin on the second Tuesday in January following the general election in which they were elected.<sup>4</sup>

**4) Eligibility requirements for county offices**

The requirements discussed here apply to candidates for county office in statutory counties. Since Colo. Const. art. XIV, § 16 authorizes home rule counties to establish the organization and structure their county governments by charter or ordinance, Colorado's two home rule counties (Pitkin and Weld) should confirm the eligibility requirements for county elective offices with their county attorneys.

**a) Eligibility requirements applicable to all county offices**

Article XIV, section 10 of the Colorado constitution states: "No person shall be eligible to any county office unless he shall be a qualified elector, nor unless he shall have resided in the county one year preceding his election." This means that any candidate for any county office must be:<sup>5</sup>

- i) A citizen of the United States;
- ii) A registered elector;
- iii) At least 18 years of age;
- iv) A resident of the county for at least one year before his or her election.

Candidates' voter registration records are *prima facie* evidence that they satisfy all or some of these requirements,<sup>6</sup> which means the county clerk may accept information contained in a candidate's voter registration record as correct, but the candidate and others may provide other evidence to show a prospective candidate satisfies or fails to satisfy a particular requirement.

**b) Additional eligibility requirements for county commissioners**

In addition to the general eligibility requirements applicable to all county offices, candidates for county commissioner also must be residents of the commissioner district for at least one year preceding the general election at which they are elected.<sup>7</sup>

**c) Additional eligibility requirements for county sheriff**

In addition to the general eligibility requirements applicable to all county offices, section 30-10-

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<sup>2</sup> Colo. Const. art. XIV, §8.

<sup>3</sup> Colo. Const. art. XIV, §6.

<sup>4</sup> Colo. Const. art. XIV, §§6, 8.

<sup>5</sup> Section 1-4-501(1), C.R.S.

<sup>6</sup> Section 1-4-501(1), C.R.S.

<sup>7</sup> Section 1-4-205(1)(b), C.R.S.

501.5, C.R.S., requires a candidate for county sheriff to:

- i) Be a “citizen” of Colorado (by which the statute probably means “resident”);
- ii) Possess a high school diploma or its equivalent, or a college degree;
- iii) Have a complete set of fingerprints taken by a qualified law enforcement agency and submits a receipt evidencing the fingerprinting at the time of filing his or her candidate acceptance or affidavit of intent.

The law enforcement agency that takes the fingerprints must forward the fingerprints to the CBI, which must utilize them for the purpose of determining whether the prospective candidate has ever been convicted of, or pleaded guilty or entered a plea of *nolo contendere* to, any felony charge under federal or state laws. If the CBI investigation discloses such a conviction or plea, the person is unqualified for office unless pardoned. The CBI must notify the county clerk and recorder of the results of the fingerprint analysis. The results of the fingerprint analysis are confidential, except the county clerk and recorder may divulge whether the prospective candidate is qualified or unqualified for office.

d) Additional eligibility requirements for county coroner

In addition to the general eligibility requirements applicable to all county offices, section 30-10-601.5, C.R.S., also requires candidates for county coroner to:

- i) Be a resident of Colorado;
- ii) Possess a high school diploma or its equivalent, or a college degree;
- iii) Have a complete set of fingerprints taken by a qualified law enforcement agency and submit a receipt evidencing the fingerprinting at the time of filing his or her candidate acceptance or affidavit of intent.

The law enforcement agency that takes the fingerprints must forward the fingerprints to the CBI, which must utilize them for the purpose of determining whether the prospective candidate has ever been convicted of, or pleaded guilty or entered a plea of *nolo contendere* to, any felony charge under federal or state laws. If the CBI investigation discloses such a conviction or plea, the person is unqualified for office unless pardoned. The CBI must notify the county clerk and recorder of the results of the fingerprint analysis. The results of the fingerprint analysis are confidential, except the county clerk and recorder may divulge whether the prospective candidate is qualified or unqualified for office.

e) Additional eligibility requirements for county surveyor

In addition to the general eligibility requirements for all county offices, section 30-10-901(1), C.R.S., requires a county surveyor to be “a professional land surveyor as provided in part 3 of article 120 of title 12...” Section 12-120-302, C.R.S., defines “professional land surveyor” as “an individual who practices professional land surveying and who is currently licensed” by the

Division of Professions and Occupations of the Department of Regulatory Agencies.<sup>8</sup>

5) **Ballot access for candidates affiliated with political parties**

Candidates affiliated with a political party must obtain the designation of their party to appear on the primary election ballot.<sup>9</sup> The candidate who wins the primary election becomes the party's nominee for purposes of the next general election.<sup>10</sup> The winner of the general election is elected to the office in question and begins their term of office in the following January.

County candidates may obtain the designation of their party and access the primary election ballot in one of two ways. They may participate in their party's county assembly process and obtain ***party designation by assembly***, or they may forego the assembly process and obtain ***party designation by petition***.

Although the two ballot access paths are technically available to candidates affiliated with both major and minor political parties,<sup>11</sup> there are significant practical differences between major and minor party operations that impact ballot access opportunities for their respective candidates. Major political parties must convene precinct caucuses<sup>12</sup> and county assemblies<sup>13</sup> and, with one exception,<sup>14</sup> must also participate in the ensuing primary election.<sup>15</sup> Every county elective office must appear on a major party's primary election ballot according to the office's regular ballot cycle, whether or not the party designates any candidate for any county office.<sup>16</sup> Minor political parties may but are not required to hold county assemblies,<sup>17</sup> and they participate in primary elections only if two or more candidates for an office obtain that party's designation.<sup>18</sup> Uncontested offices do not appear on minor party primary election ballots at all.<sup>19</sup>

As a practical matter at the county level, candidates affiliated with major political parties access the primary election ballot by obtaining party designation by assembly or by petition. Candidates affiliated with minor parties, and unaffiliated candidates, ordinarily access the general election ballot by petition. This memo examines each method of ballot access next.

a) **Party designation by assembly**

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<sup>8</sup> Sections 12-20-102(2), 1-20-103, C.R.S.

<sup>9</sup> Section 1-4-101(3), C.R.S.

<sup>10</sup> Section 1-4-104, C.R.S.

<sup>11</sup> Sections 1-4-101(1), 1-4-1304(1), 1-4-502, C.R.S.

<sup>12</sup> Section 1-3-102((1)(a)(I), C.R.S.

<sup>13</sup> Section 1-4-602(1)(a)(I), C.R.S.

<sup>14</sup> Section 1-4-702(1), C.R.S., permits political parties to nominate candidates by assembly or convention rather than by primary election if "at least three-fourths of the total membership of the state central committee votes to use the assembly or convention nomination process" no later than October 1 of the year preceding the year in which the assembly or convention nominating process is used.

<sup>15</sup> Section 1-4-101(3), C.R.S.

<sup>16</sup> Sections 1-4-104.5(2), 1-5-407(4.5), C.R.S.

<sup>17</sup> Sections 1-4-101(1), 1-4-1304(1), 1-4-502, C.R.S.

<sup>18</sup> Section 1-4-1304(1.5)(c), C.R.S.

<sup>19</sup> Section 1-4-1304(1.5)(d), C.R.S.

This section reviews the requirements for county candidates to access the primary election ballot by obtaining the designation of their political party by assembly.<sup>20</sup>

i) Eligibility requirements for designation by assembly

To obtain a major party's designation by assembly, prospective candidates must be registered electors, reside in the county (and if applicable, the commissioner district) for at least one year prior to their election,<sup>21</sup> and be affiliated with the party conducting the assembly not later than the first business day of January immediately preceding the primary election, except to the extent provided otherwise by the bylaws or rules of the party in question.<sup>22</sup> In addition, SB21-250 added new section 1-4-601(1.5), which requires county candidates seeking party designation by assembly to provide notice to the county party chair no less than 30 days before the assembly, unless otherwise provided by party rules.<sup>23</sup>

Since county assemblies are essentially internal affairs of the political parties that conduct them, section 1-4-604(1)(a), C.R.S., explicitly authorizes political parties to alter the first-business-day-in-January affiliation deadline by party rule or bylaw. Colorado's major political parties diverge in their approach to the affiliation deadline. The Colorado Republican Party's bylaws require prospective assembly designees to be affiliated with the party for at least 30 days prior to the assembly,<sup>24</sup> while the Colorado Democratic Party appears to follow state law.<sup>25</sup>

ii) Assembly votes required

To obtain designation by assembly, eligible candidates must receive at least thirty percent of the votes of all duly accredited assembly delegates who are present and voting on that office.<sup>26</sup> Therefore, a county assembly may confer party designation by assembly on a maximum of three candidates for each county office. A person who receives less than 10% of assembly votes may not access the primary election ballot or the general election ballot at all.<sup>27</sup>

iii) Filing certificates of designation

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<sup>20</sup> Section 1-4-601(1), C.R.S.

<sup>21</sup> Colo. Const. art XIV, § 10; section 1-4-205(1)(b), C.R.S. Note that, for purposes of the one-year residency requirement, candidates who win the primary election become the nominees of their political party but are not "elected" unless and until they win the general election.

<sup>22</sup> Section 1-4-601(4)(a), C.R.S.

<sup>23</sup> Section 1-4-601(1.5), C.R.S.

<sup>24</sup> Bylaws of the Colorado Republican State Central Committee, Article XIII, Section I (as amended 9/18/2021) (available at <https://www.cologop.org/wp-content/uploads/2021/11/CRC-Bylaws-and-Appendices-with-standing-rules-as-amended-9-18-2021.pdf>)

<sup>25</sup> Colorado Democratic Party Plan of Organization and Rules, Section 4.8(a) (as amended 11/13/2021) (available at <https://coloradodems.org/wp-content/uploads/2021/11/CDP-Rules-Nov-2021-approved-1.pdf>)

<sup>26</sup> Section 1-4-601(2), C.R.S.

<sup>27</sup> Section 1-4-801(4), C.R.S.

The assembly's presiding officer or secretary is supposed to file certificates of designation by assembly with the Clerk and Recorder no later than 4 days after assembly adjourns.<sup>28</sup> Certificates of designation may be transmitted by facsimile transmission; however, the original certificate must also be filed and postmarked no later than ten days after the adjournment of the assembly.<sup>29</sup> However, section 1-4-604(5), C.R.S., states that the "[l]ate filing of a certificate of designation shall not deprive candidates of their candidacy."

iv) Filing candidate acceptances

Candidates who obtain party designation by assembly must file with the county clerk a written acceptance no later than four days after the county assembly adjourns. If the candidate acceptance is filed by facsimile transmission, the original acceptance must also be filed and postmarked no later than 10 days after the assembly adjourns. The acceptance must state the candidate's name in the form in which it is to appear on the ballot. The name may include one nickname if the candidate regularly uses the nickname and the nickname does not include any part of a political party name. If an acceptance is not timely filed, the candidate shall be deemed to have declined the designation, unless the late filing of an acceptance is caused by the failure to timely file a certificate of designation or the failure to file an acceptance with the certification of designation.<sup>30</sup>

b) Party designation by petition

Eligible individuals may also obtain major party designation by petition.<sup>31</sup> They must satisfy the same eligibility requirements as candidates who obtain designation by assembly, except candidates seeking designation by petition must be affiliated with the political party by the statutory deadline (the first business day of January immediately preceding the primary election), even if the political party provides a different affiliation deadline in its bylaws for candidates seeking party designation by assembly.<sup>32</sup> In other words, political parties may establish their own affiliation deadlines when conferring party designation by assembly, but they must follow the statutory deadline for candidates seeking political party designation by petition. Finally, a person who attempted to obtain party designation by assembly and failed to receive at least 10% of the assembly delegates' votes **cannot** obtain designation by petition.<sup>33</sup>

i) Form of petition

The petition for a candidate may consist of one or more sheets, to be fastened together in the form of one petition section. Each sheet must contain the same heading, and each petition section must contain one sworn affidavit for the petition circulator to sign. No

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<sup>28</sup> Section 1-4-604(2), C.R.S.

<sup>29</sup> Section 1-4-604(3), C.R.S.

<sup>30</sup> Sections 1-4-501(1), 1-4-601(3)(a), C.R.S.

<sup>31</sup> Section 1-4-603, C.R.S.

<sup>32</sup> Section 1-4-801(3), C.R.S.

<sup>33</sup> Section 1-4-801(4), C.R.S.

petition may contain the name of more than one person for the same office.<sup>34</sup> The top of each page of a candidate petition must contain in bold-faced type a statutory warning and a sentence identifying the petition by candidate name and the office sought.<sup>35</sup>

ii) Approval of petition format

No petition may be circulated unless it has been approved as to form by the officer with whom the completed petition will be filed. For county candidate petitions, the clerk and recorder must approve or disapprove a petition as to form by the close of the second business day following submission of the proposed petition. The clerk and recorder must mail or email written notice of the action taken to the person who submitted the petition on the day that the petition format is approved or disapproved.<sup>36</sup>

iii) First day to circulate major party petition

Candidates seeking major party designation by petition may not begin circulating or obtaining signatures on their candidate petitions before the third Tuesday in January.<sup>37</sup> In 2022, the earliest date to start circulating candidate petitions is January 18<sup>th</sup>.

iv) Filing deadline for signed petition sections

Candidates seeking major party designation by petition must file their signed petitions with the clerk and recorder no later than the close of business on the third Tuesday in March.<sup>38</sup> In 2022, the petition filing deadline for major party candidates is March 15<sup>th</sup>.

v) Petition circulators

Petition circulators must be United States citizens and at least 18 years old. The circulator must personally appear before a notary public, and complete and sign the detailed circulator's affidavit required by statute,<sup>39</sup> which must include:

- The circulator's printed name
- The circulator's residence address, including the street name and number, the city or town, and the county
- The date on which the circulator signed the affidavit
- A statement that the circulator was a United States citizen and at least 18 years of age at the time the circulator circulated the petition
- A statement that the circulator circulated the petition section

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<sup>34</sup> Section 1-4-901(1), C.R.S.

<sup>35</sup> Section 1-4-902(2), (3), C.R.S.

<sup>36</sup> Sections 1-4-903, 1-4-907, C.R.S.

<sup>37</sup> Section 1-4-801(5), C.R.S.

<sup>38</sup> Section 1-4-801(5), C.R.S.

<sup>39</sup> Section 1-4-905(1), C.R.S.

- A statement that each signature on the petition was affixed in the circulator's presence and is the signature of the person whose name it purports to be
- A statement that to the best of the circulator's knowledge and belief each of the persons signing the petition section was, at the time of signing, an eligible elector
- A statement that the circulator has not paid or will not in the future pay, and that the circulator believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing the signer to sign the petition
- A statement that the circulator understands that the circulator can be prosecuted for violating the law governing the circulation of petitions, and
- A statement that the circulator understands that failing to make themselves available to be deposed and to provide testimony in the event of a protest shall invalidate the petition section if it is challenged on the grounds of circulator fraud.

Notaries public must not notarize a circulator's affidavit unless the circulator is in their physical presence and has dated and fully and accurately completed all of the required personal information.<sup>40</sup> Any circulator's affidavit notarized in violation of those requirements is invalid.<sup>41</sup> A circulator's affidavit is also invalid if the date of the circulator's signature is different from the date of notarization, and the notarization of the affidavit does not cure a circulator's failure to date the affidavit.<sup>42</sup> Any signature added to a petition after its execution is also invalid.<sup>43</sup>

Candidates and candidate committees must maintain a list of the names and addresses of all circulators who circulated petition sections on behalf of the candidate, the notaries public who notarized the petition sections, and the petition section numbers that each circulator circulated and each notary public notarized. A copy of the list must be filed with the county clerk and recorder when the signed petitions are filed. If a copy of the list is not filed, the clerk and recorder must prepare the list from the information contained on the completed petitions and charge the candidate a fee to cover the actual cost of preparing the list. Once filed or prepared, the list is a public record for purposes of the Colorado Open Records Act.<sup>44</sup>

A circulator who is not paid for circulating a petition must display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type that is clear legible. Circulators who are paid to circulate petitions must display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type that is clearly legible, and the

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<sup>40</sup> Section 1-4-905(2)(b)(I)(A-B), C.R.S.

<sup>41</sup> Section 1-4-905(2)(b)(II), C.R.S.

<sup>42</sup> Section 1-4-905(2)(b)(III), C.R.S.

<sup>43</sup> Section 1-4-905(3), C.R.S.

<sup>44</sup> Section 1-4-905(5), C.R.S.



name and telephone number of the individual employing the circulator.

The Secretary of State provides trainings for volunteer and paid circulators. Candidates and committees must inform their petition circulators of the availability of the trainings as one manner of complying with the requirement in the circulator's affidavit that the circulator read and understand the laws pertaining to petition circulation.<sup>45</sup>

vi) Petition signers

Candidate petitions may be signed by electors eligible to vote for the office designated in the petition.<sup>46</sup> For major party candidate petitions, petition signers must be affiliated with the major party named in the petition for at least 22 days as shown in the statewide voter registration system, and may not sign any other petition for another candidate for the same office.<sup>47</sup> Petitions for minor party and unaffiliated candidates may be signed by any eligible elector who has not signed any other petition for another candidate for the same office.<sup>48</sup>

Counties with populations less than 70,000 must have three-member boards of county commissioners. Although candidates for each commissioner district office must reside in their districts for one year before their election, all county commissioners are elected by voters of the county on an at-large basis.<sup>49</sup> Therefore, a county elector who satisfies the other petition signer requirements may sign the petition of one candidate for each commissioner district office, whether or not the signer resides in the commissioner district designated in the petition.<sup>50</sup> Since all other county elected officials represent the entire county rather than a district within the county, eligible electors of the county may also sign one candidate petition for each of the other county offices.

Counties with populations of 70,000 or more may have five-member boards of county commissioners.<sup>51</sup> In these counties, three of the five commissioner offices may be elected at-large or by district, while the other two members must be elected at-large.<sup>52</sup> In counties that require three of the five county commissioners to be elected by district, only voters who reside in the district may sign one petition for one county commissioner candidate seeking that office.

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<sup>45</sup> Section 1-4-905(5), C.R.S.

<sup>46</sup> Section 1-4-801(2)(a), C.R.S.

<sup>47</sup> Section 1-4-904(2)(a), C.R.S.

<sup>48</sup> Section 1-4-904(2)(b), C.R.S.

<sup>49</sup> Section 30-10-306(1), C.R.S., states that one "county commissioner must be elected from each of the [three] districts by the voters of the whole county."

<sup>50</sup> Section 1-4-801(1)(a), C.R.S., states in part: "Every petition in the case of a candidate for any county office must be signed by electors eligible to vote within the commissioner district or political subdivision for which the officer is to be elected."

<sup>51</sup> See sections 30-10-306(2), 30-10-306.5, 30-10-306.7, C.R.S.

<sup>52</sup> Sections 30-10-306.5(5)(a), (6)(a); 30-10-306.7(2)(a)(I-II), C.R.S.

vii) Number of petition signatures required

For major party candidates, the candidate petition must be signed *by the lesser of* 1,000 eligible and properly affiliated voters, or by signers equal in number to 10% of the votes cast at the contested or uncontested primary election for the political party's candidate for the for which the petition is being circulated or, if there was no primary election, at the last preceding general election for which there was a candidate for the office in question. Notwithstanding any other provision of law, an unaffiliated elector is not eligible to sign a petition for a candidate of a major political party.<sup>53</sup>

A different number of petition signatures is required for county commissioner candidates in counties that increased the boards of county commissioners from three to five members during the last two primary election cycles.<sup>54</sup>

viii) Candidate acceptances

Candidates seeking party designation by petition must file a candidate acceptance at the time the signed petition sections are filed. Each candidate acceptance must contain the full name of the candidate as the name will appear on the ballot and the candidate's full address<sup>55</sup>

ix) Verifying candidate petitions

Once the candidate petition is filed, the county clerk and recorder must "review all petition information and verify the information against the registration records..."<sup>56</sup> Unlike candidate petitions filed with the Secretary of State, title 1 does not authorize or require county clerks to verify the signatures of petition signers.<sup>57</sup> Rather, county clerks verify all of the petition entries by confirming the signer is registered in the county, affiliated with the political party at least 22 days before signing the petition, and the signer has not signed other candidate petitions for the same office.

If the county clerk discovers a petition signer provided their mailing address rather than a residence address, the clerk may accept the signature line as valid if the county clerk can locate the signer's registration record in the statewide voter registration database and determine the signer is eligible to sign the petition.

After reviewing the petition entries, the county clerk must notify the candidate of the number of valid signatures and whether the petition appears to be sufficient or insufficient. The clerk must certify the candidate for the ballot if the petition is determined to be sufficient and after the protest period has passed.

6) Protests

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<sup>53</sup> Section 1-4-801(2)(a), C.R.S.

<sup>54</sup> Section 1-4-801(2)(e), C.R.S.

<sup>55</sup> Section 1-4-906, C.R.S.

<sup>56</sup> Section 1-4-908(1), C.R.S.

<sup>57</sup> Section 1-4-908(1.5), C.R.S., requires the Secretary of State to verify petition signatures by comparing each petition signature on the petition with the signature of the eligible elector stored in the statewide voter

A person who desires to protest the process by which party designation is conferred must file a petition with the district court under section 1-1-113, C.R.S., within five days after the certificate of designation or candidate petition is filed with the Clerk and Recorder.<sup>58</sup> An eligible elector may challenge a candidate's qualification to hold office by filing a verified petition in district court within five days after the DEO issues a statement certifying the candidate for the ballot.<sup>59</sup>

#### **7) Filing candidate affidavits with Secretary of State**

A provision of the Fair Campaign Practices Act requires individuals to file an affidavit with the appropriate officer, affirming that he or she is familiar with the provisions of the FCPA, within 10 days of becoming a "candidate," as that term is defined by Colo. Const. art. XVIII, §2(2).<sup>60</sup>

Although this clearly is a requirement of Colorado's campaign finance regulation regime, it also affects candidate eligibility, because section 1-45-110(3), C.R.S., states:

Failure of any person to file the affidavit . . . shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the designated election official certifying the ballot pursuant to section 1-5-203 (3)(a) has sent a notice to the person by certified mail, return receipt requested, addressed to the person's mailing address. The notice shall state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five business days of receipt of the notice.

This provision often serves as a trap for the unwary county candidate. Counties should include compliance with this requirement in their candidate packets.

#### **8) Resources**

Certifications of designation by assembly, candidate acceptances, and a county candidate petition template, are available in the Approved Forms page of Clerks Corner.

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registration database. The Uniform Election Code does not extend the signature verification requirement to candidate petitions filed with county clerks and recorders.

<sup>58</sup> Section 1-4-909(1), C.R.S.

<sup>59</sup> Section 1-4-501(3), C.R.S.

<sup>60</sup> 1-45-110(1), C.R.S.