WISCONSIN ETHICS COMMISSION
Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes an order to repeal WIS. ADMIN. CODE ETH 1.855 (3), and to amend WIS. ADMIN. CODE ETH 1.20 (3), 1.20 (4), 1.25, 1.39 (1) (b), 1.56 (2), 1.60 (1) (a), 1.60 (1) (c), 1.60 (2), 1.70 (2), 1.70 (3), and 1.85 (3); related to campaign finance.

RULE SUMMARY

A. **Statutes interpreted**: Chapter 11, Stats.

B. **Statutory authority**: The Wisconsin Ethics Commission is specifically directed to promulgate rules to administer Chapter 11 pursuant to s. 11.1304 (17), Stats.

> **11.1304   Duties of the ethics commission.** The commission shall:
> **(17)** Promulgate rules to administer this chapter.

The Commission also has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 19.48(1), Stats.:

> **19.48   Duties of the ethics commission.** The commission shall:
> **(1)** Promulgate rules necessary to carry out ch. 11, subch. III of ch. 13, and this subchapter.

s. 227.11(2)(a), Stats.:

> **227.11   Extent to which chapter confers rule-making authority.**
> **(2)** Rule-making authority is expressly conferred on an agency as follows:
> **(a)** Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

Explanation of agency authority: The Ethics Commission is required to promulgate rules to administer Chapter 11, Stats.

The Government Accountability Board previously reviewed the provisions of Wis. Admin. Code ETH 1 as required by 2015 Wisconsin Act 117. In that review, the Board noted several provisions that were inconsistent with the new law, but it did not address other statutory and administrative references within ETH 1 that needed to be updated to harmonize the language

with the newly created Chapter 11 or current administrative procedures before it was dissolved. This proposed rule would update provisions that currently contain references to the prior version of Chapter 11. The Ethics Commission previously sought to modify other inconsistent provisions in CR 19-035, which is currently pending review in the Legislature.

In review of Clearinghouse Rule 19-035, the Legislative Council Rules Clearinghouse report recommended the Ethics Commission should review the entire chapter to ensure consistency between the rule and Chapter 11 as re-created by 2015 Wisconsin Act 117. As such a review would require a broader statement of scope than initially proposed, rather than amending the scope of CR 19-035, the Ethics Commission proposes a new rule to amend those provisions of Wis. Admin. Code ETH 1 that contain outdated language (e.g., "personal campaign committee" instead of "candidate committee") or are otherwise not consistent with Chapter 11 as re-created by 2015 Wisconsin Act 117 (e.g., removing references to collecting the place of employment of a contributor) that were not previously identified as needing further revision. The Wisconsin Ethics Commission has tentatively identified the following provisions to be re-examined: Wis. Admin. Code ETH 1.20 (3), 1.20 (4), 1.25, 1.39 (1) (b), 1.56 (2), 1.60 (1) (a), 1.60 (1) (c), 1.60 (2), 1.70 (2), 1.70 (3), 1.85 (3), and 1.855 (3).

C. **Related statute(s) or rule(s)**: CR 19-035.

D. **Plain language analysis**: The rule repeals or amends several provisions of ETH 1 to eliminate or modify references to statutory provisions or terms that were repealed or replaced under the new campaign finance law created by 2015 Act 117. The rule will also extend ETH 1.60 and 1.70 to additional committee types.

E. **Summary of, and comparison with, existing or proposed federal regulations**: N/A.

F. **Comparison with similar rules in adjacent states**: N/A.

G. **Summary of factual data and analytical methodologies**: Commission staff reviewed and compared the current text of the rule with the new statutory framework established by 2015 Wisconsin Act 117.

H. **Analysis and supporting documentation used to determine effect on small businesses**: N/A

I. **Effect on small business**: N/A

J. **Agency contact person**:

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K. **Place where comments are to be submitted and deadline for submission**:

Written comments on the proposed rule will be accepted and receive consideration if they are received by June 15, 2020. Written comments should be addressed by mail to: David Buerger, P.O. Box 7125, Madison, WI 53707-7125; or by email to: eth.rulecomments@wi.gov.

Fiscal Estimate: The creation of this rule does not affect business.

Initial Regulatory Flexibility Analysis: The creation of this rule has no fiscal effect.

TEXT OF RULE

See attached.

TEXT OF RULE

SECTION 1. ETH 1.20 (3) is amended to read:

ETH 1.20 (3) When an individual other than a registrant receives authorization to make an in-kind contribution, the authorized person shall obtain from the contributor, in writing: the contributor's name and address and, where applicable, the contributor's occupation ~~and the name and address of his or her principal place of employment;~~, the nature of the contribution, its actual value, and the date of the contribution.

SECTION 2. ETH 1.20 (4) is amended to read:

ETH 1.20 (4) When a registrant receives authorization to make an in-kind contribution, the registrant shall provide to the authorized person, in writing, before the closing date of the next campaign finance report in which the contribution is required to be listed: the registrant's name and address~~;~~, the nature of the contribution and its actual value~~;~~, and the date of the contribution.

SECTION 3. ETH 1.25 is amended to read:

ETH 1.25 A loan when made by any person~~,~~ or committee ~~or group (~~, except a loan of money by a commercial lending institution made by the institution in accordance with applicable banking laws and regulations in the ordinary course of business~~)~~, shall be reported as a contribution or disbursement, and also as an incurred obligation by the debtor. When such a loan is received by a registrant, it is counted within the contribution limitation of the creditor while outstanding, but is not counted within the limitation after repayment. The amount or value of any such outstanding loans and any other contributions or disbursements shall at no time exceed any limitation specified in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats.

SECTION 4. ETH 1.39 (1) (b) is amended to read:

ETH 1.39 (1) (b) "State campaign committee" means the ~~personal campaign~~ candidate committee of a candidate for state or local office.

SECTION 5. ETH 1.56 (2) is amended to read:

ETH 1.56 (2) When a registrant sells an item which it has purchased for resale to raise funds ~~for political purposes~~, the entire amount of the proceeds of the sale shall be reported in the registrant's campaign finance report as a contribution from the purchaser.

SECTION 6. ETH 1.60 (1) (a) is amended to read:

ETH 1.60 (1) (a) Expenditures for consulting services made by a ~~candidate's~~ candidate committee, political action committee, legislative campaign committee, or political party ~~committee~~ on behalf of more than one candidate shall be attributable to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably derived, except as provided

in par. (c). This rule shall not apply to independent expenditures made under ss. 11.0505, 11.0605, and 11.1001, Stats.

SECTION 7. ETH 1.60 (1) (c) is amended to read:

ETH 1.60 (1) (c) Exceptions to pars. (a) and (b). Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other costs of political ~~party~~ parties or legislative campaign committees, which costs are incurred in the ordinary course of its day-to-day operations, need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

SECTION 8. ETH 1.60 (2) is amended to read:

ETH 1.60 (2) If a candidate, ~~candidate's~~ candidate committee, political action committee, ~~or~~ political party, or legislative campaign committee, for itself or another, hires a consultant to work during a campaign period as that term is defined in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats., the amount paid or incurred shall be presumed to be an expenditure on behalf of a candidate or candidates who receive assistance from the consultant. This presumption may be rebutted.

SECTION 9. ETH 1.70 (2) is amended to read:

ETH 1.70 (2) If the candidate or elected official is reimbursed by another individual, ~~personal campaign~~ candidate committee, political action committee, political party, or legislative campaign committee for travel, the reimbursement is a reportable contribution to the candidate.

SECTION 10. ETH 1.70 (3) is amended to read:

ETH 1.70 (3) If the candidate or elected official is an officer or employee of a political party or legislative campaign committee who travels on committee business, the reimbursement is not a reportable contribution to the candidate or elected official, but is a reportable disbursement of the political party or legislative campaign committee.

SECTION 11. ETH 1.85 is amended to read:

ETH 1.85 Conduit registration and reporting requirements. A conduit shall send to each candidate or committee at the time funds are transferred a letter identifying itself as a conduit, the name and address of the transferee, and listing the name and address of each contributor, ~~and~~ the date and amount of each contribution, and the occupation, if any, of each contributor whose cumulative contributions to the transferee for the calendar year are in excess of $200.

SECTION 12. ETH 1.855 (3) is repealed.

SECTION 13. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.