

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Ethics Commission

101 E. Wilson Street, St. Croix Room
Madison, Wisconsin

Public Attendance and Appearances by Teleconference Only: (608) 316-9000, 47466827#

To make a Personal Appearance, email ethics@wisconsin.gov by 5:00 p.m. on 10/12

Tuesday, October 13, 2020, 9:00 a.m.

Open Session Agenda

- A. Call to Order
- B. Report of Appropriate Meeting Notice – Administrator
- C. Approval of Minutes of Prior Meetings
 - 1. Open Session Minutes for Meeting on August 18, 2020 Page 3
 - 2. Open Session Minutes for Meeting on September 3, 2020 Page 9
 - 3. Open Session Minutes for Meeting on September 10, 2020 Page 11
 - 4. Open Session Minutes for Meeting on September 15, 2020 Page 13
- D. Personal Appearances via Teleconference
- E. Administrative Rules Update Page 15
- F. Guidance Document Policy Page 17
- G. Late Payment of Lobbying Fees Staff Procedure Update Page 23
- H. FY21 Lapse Plan Verbal Update
- I. Staff Report Page 25
- J. Consideration of Future Agenda Items
- K. Closed Session
 - 1. Requests for Advice
 - 2. Complaints and Investigations
 - 3. Personnel Matters
- L. Adjourn

Future Ethics Commission Meetings Scheduled:

- Tuesday, December 8, 2020 at 9:00 AM
- Tuesday, February 23, 2021 at 9:00 AM
- Tuesday, May 11, 2021 at 9:00 AM
- Tuesday, July 27, 2021 at 9:00 AM
- Tuesday, October 12, 2021 at 9:00 AM
- Tuesday, December 14, 2021 at 9:00 AM

The Ethics Commission will convene in open session but may move to closed session under WIS. STAT. § 19.85(1)(c), (g), (h), or WIS. STAT. § 19.851. This notice is to inform the public that the Commission intends to convene in open session, but may move to closed session. The Commission plans to return to open session following that closed session, as outlined in the above agenda. WIS. STAT. § 19.85(2).

WIS. STAT. §§ 19.50 & 19.55(3) No employee of the Commission may disclose information related to an investigation or prosecution under ch. 11, subchapter III of ch. 13, or ch. 19.

WIS. STAT. § 19.85(1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

- (c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
- (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- (h) Consideration of requests for confidential written advice from the elections commission under s. 5.05 (6a) or the ethics commission under s. 19.46 (2), or from any county or municipal ethics board under s. 19.59 (5).

WIS. STAT. § 19.851(2) The commission shall hold each meeting of the commission for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the commission in closed session under this section.



Wisconsin Ethics Commission

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Wisconsin Ethics Commission

Teleconference and at
101 E. Wilson Street
Wisconsin Room
Madison, Wisconsin
August 18, 2020
9:00 a.m.

Open Session Minutes

Present: David Halbrooks, Pat Strachota (via phone), Paul Connell, Mac Davis, Scot Ross, and Timothy Van Akkeren

Staff Present: Daniel Carlton, David Buerger, Colette Greve, Adam Harvell, Julie Nischik, and Caroline Russell

A. Call to Order

Commission Chair David Halbrooks called the meeting to order at 9:07 a.m.

B. Report of Appropriate Meeting Notice – Administrator

Commission Administrator Daniel Carlton notified the Commission appropriate meeting notice had been provided to the public and news media.

C. Approval of Minutes of Prior Meetings

1. Open Session Minutes for Meeting on June 16, 2020

MOTION: To approve the minutes. Moved by Commissioner Van Akkeren, seconded by Commissioner Connell. Motion carried unanimously.

D. Personal Appearances

Two people were present to address agenda items in open session. Mike Wittenwyler, representing the Association of Wisconsin Lobbyists, was present for agenda items E1 and I. George Klaetsch, representing the Association of Wisconsin Lobbyists, was present for agenda item I.

E. Requests for Advice to be Issued by the Commission

1. 2020 RA 10 General Public Exception and Permissible Use of Attendance Criteria

Administrator Daniel Carlton presented the memo on page 9 of the meeting materials.

Mike Wittenwyler provided comment on the agenda item, seeking guidance from the Commission on hosting events and conforming to the advice provided by the Commission.

The Commission, staff, and Mr. Wittenwyler discussed possible criteria for hosting events in the future, and past practices of the organizations for hosting events that were attended by legislators.

MOTION: The Commission directed the administrator to seek legislation to clarify the issue of give versus furnish, and to work with Mr. Wittenwyler to get factual representations for the Commission to consider if they fit within the general public exception. Moved by Commissioner Van Akkeren, seconded by Commissioner Connell. Motion carried unanimously.

2. 2020 ETH 05 Village Contracting with Company Employing Department Head's Spouse

Ethics Specialist Colette Greve presented the opinion on page 29 of the meeting materials.

MOTION: To approve the draft opinion as presented. Moved by Commissioner Van Akkeren, seconded by Commissioner Davis. Motion carried unanimously.

F. Lobbying Website Demonstration

Ethics Specialist Caroline Russell provided a demonstration of the new lobbying website. The Commission took no action.

G. SEI Candidates Module Demonstration

Ethics Specialist Adam Harvell provided a demonstration of the SEI website candidates module. The Commission took no action.

H. Adoption of Guidance Documents – SEI Manuals

Staff Counsel David Buerger presented the memo on page 41 of the meeting materials.

MOTION: To adopt the manual for agency users. Moved by Commissioner Van Akkeren, seconded by Commissioner Ross. Motion carried unanimously.

MOTION: To adopt the manual for state public officials and candidates. Moved by Commissioner Connell, seconded by Commissioner Van Akkeren. Motion carried unanimously.

The Commission and staff discussed the process of reviewing guidance documents and citations in the future, in light of the recent Supreme Court decision. The Commissioners requested staff bring suggestions for a policy on adopting guidance documents and manuals, including the use of citations, for the Commission to consider at the October meeting.

I. Administrative Rules Update and Hearing

Staff Counsel David Buerger presented the memo on page 63 of the meeting materials.

Commission Chair David Halbrooks opened the public hearing for ETH 21. No comments were provided by the public in person or via phone.

MOTION: To close the public hearing. Moved by Commissioner Connell, seconded by Commissioner Davis. Motion carried unanimously.

MOTION: For ETH 21 – Practice and Procedure, the Commission approved the statement of scope and directed staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse. Moved by Commissioner Connell, seconded by Commissioner Van Akkeren. Motion carried unanimously.

Staff Counsel David Buerger discussed the Legislative Council’s report, written comments provided regarding ETH 26, and how staff had addressed the Legislative Council’s report in the revised rule.

Commission Chair David Halbrooks opened the public hearing for ETH 26. Two members of the public were present to provide comment: Mike Wittenwyler and George Klaetsch.

Mr. Wittenwyler suggested changing the references to legislative session to reporting period in Section 18 of the revised rule.

Mr. Klaetsch requested clarification of the term “due date” in Sections 9 and 19 of the revised rule, as that date is dependent on completing the registration steps and may cause confusion as it is currently written. Mr. Klaetsch suggests the Commission provide a warning to the lobbyist or principal that the required fees have not been paid and that the Commission count days from that communication instead.

MOTION: To close the public hearing. Moved by Commissioner Van Akkeren, seconded by Commissioner Connell. Motion carried unanimously.

The Commission and staff discussed the comments provided, as well as defining calendar days. The Commission directed staff to define business days similar to the example of ATCP 93.050 but to also include a cross-reference to WIS. STAT. § 995.20.

MOTION: For ETH 26 – Settlement Offer Schedule, the Commission directed staff to proceed with drafting the rule as directed in today’s meeting and submit to the Governor’s office. Moved by Commissioner Van Akkeren, seconded by Commissioner Ross. Motion carried unanimously.

J. Attorney General Opinion Request

Staff Counsel David Buerger presented the memo on page 85 of the meeting materials.

MOTION: The Commission directed staff to proceed with requesting the Attorney General opinion, as well as the proposed legislation. Moved by Commissioner Connell, seconded by Commissioner Van Akkeren. Motion carried unanimously.

K. FY21 Lapse Plan

Office Manager Julie Nischik presented the memo on page 91 of the meeting materials.

The Commission directed staff to invite a representative from the State Budget Office to attend the October meeting to discuss the plan with the Commission.

L. Biennial Budget Draft 2021-23

Office Manager Julie Nischik presented the memo on page 95 of the meeting materials.

The Commission set a teleconference meeting to review the final draft of the budget for September 10, at 10:00 am.

M. Reissuance of Lobbyist License During Same Legislative Session

Administrator Daniel Carlton presented the memo on page 103 of the meeting materials.

MOTION: To allow lobbyists and principals to surrender their license and allow them to reapply and pay the fees for a license within the same legislative session. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

N. Legislative Recommendations for 2021 – 2022 Legislative Session

Administrator Daniel Carlton presented the memo on page 111 of the meeting materials.

MOTION: To reapprove the previously approved package for the legislative session and directed staff to segregate certain recommendations that may assist in the passage of the legislation. Moved by Commissioner Strachota, seconded by Commissioner Ross. Motion carried unanimously.

Regarding item 2 of the memo, the Commission directed staff to narrow the scope of the proposal for their consideration at the December meeting.



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Wisconsin Ethics Commission

Teleconference Meeting
Wisconsin Room
Madison, Wisconsin
September 3, 2020
8:30 a.m.

Open Session Minutes

Present: David Halbrooks, Pat Strachota, Paul Connell, Mac Davis, Scot Ross,
and Timothy Van Akkeren

Staff Present: Daniel A. Carlton, Jr., Administrator

A. Call to Order

Commission Chair David Halbrooks called the meeting to order at 8:36 a.m.

B. Report of Appropriate Meeting Notice – Administrator

Commission Administrator Daniel Carlton notified the Commission appropriate meeting notice had been provided to the public and news media. Administrator Carlton also advised the Commission that members of the public were provided information about how to participate in the teleconference. No members of the public called into the meeting.

C. Closed Session

MOTION: To go into closed session for the purpose of discussing personnel matters. Moved by Commissioner Van Akkeren, seconded by Commissioner Connell. Motion carried unanimously.

1. Personnel Matters

D. Adjourn

MOTION: To adjourn. Moved by Commissioner Connell, seconded by Commissioner Halbrooks. Motion carried unanimously.

Meeting adjourned at 9:47 a.m.

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Wisconsin Ethics Commission meeting minutes for September 3, 2020, prepared by:

Daniel A. Carlton, Jr., Administrator

October 13, 2020

September 3, 2020 Wisconsin Ethics Commission meeting minutes certified by:

Pat Strachota, Vice Chair

October 13, 2020



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Wisconsin Ethics Commission

Teleconference Meeting
Thursday, September 10, 2020
10:00 a.m.

Open Session Minutes

Present: David Halbrooks, Paul Connell, Mac Davis, Scot Ross,
Timothy Van Akkeren

Staff Present: Daniel Carlton, David Buerger, Julie Nischik

A. Call to Order

Commission Chairperson David Halbrooks called the meeting to order at 10:12 a.m.

B. Report of Appropriate Meeting Notice – Administrator

Commission Administrator Daniel Carlton notified the Commission that appropriate meeting notice had been provided to the public and news media.

C. Review Biennial Budget Request 2021 – 23

Office Management Specialist Julie Nischik presented the draft budget request beginning on page 2 of the meeting materials.

Discussion of Decision Item 4000.

Chairperson Halbrooks passes the gavel to Commissioner Ross.

MOTION: To amend the previous motion of the Commission at its prior meeting to create a deputy administrator position and seek to fund the deputy administrator position via an increase of \$54 in the fees for principal registration and lobbyist authorization with the Commission to inform lobbyists and principals that the Commission will not collect any the 2021-2022 session fees until those increased fee amounts go into effect. Moved by Commissioner Halbrooks, seconded by Commissioner Davis. Roll call voted requested.

Connell – Aye

Wisconsin Ethics Commissioners

Paul Connell | Mac Davis | David R. Halbrooks | Scot Ross | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

Davis – Aye
Halbrooks – Aye
Ross – Aye
Van Akkeren – Aye

Motion passes 5-0.

Commissioner Ross passes the gavel back to Chairperson Halbrooks.

MOTION: Approve the draft budget request as amended. Moved by Commissioner Van Akkeren, seconded by Commissioner Ross. Motion carried unanimously.

D. Adjourn

MOTION: To adjourn. Moved by Commissioner Connell, seconded by Commissioner Van Akkeren. Motion carried unanimously.

Meeting adjourned at 11:17 a.m.

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September 10, 2020 Wisconsin Ethics Commission meeting minutes prepared by:

David Buerger, Staff Counsel

October 13, 2020

September 10, 2020 Wisconsin Ethics Commission meeting minutes certified by:

Pat Strachota, Vice Chair

October 13, 2020



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Wisconsin Ethics Commission

Teleconference Meeting
Tuesday, September 15, 2020
8:30 a.m.

Open Session Minutes

Present: David Halbrooks, Mac Davis, Scot Ross, Timothy Van Akkeren,
Pat Strachota

Absent: Paul Connell

Staff Present: Daniel Carlton, David Buerger, Julie Nischik

A. Call to Order

Commission Chair David Halbrooks called the meeting to order at 8:33 a.m.

B. Report of Appropriate Meeting Notice – Administrator

Commission Administrator Daniel Carlton informed the Commission that appropriate meeting notice had been provided to the public and news media.

C. Consideration of Biennial Budget Request 2021 – 23

Discussion of proceedings at the September 10, 2020 meeting regarding the creation and funding of a new position. Commission has been informed of the alternative of a surcharge in 2021-2022 rather than delaying the collection of fees for that session.

Chairperson Halbrooks passed the gavel to Commissioner Strachota.

MOTION: To amend the motion from the Commission meeting of September 10, 2020, to return to collecting lobbying fees as normal for the 2021-2022 legislative session, and to add to the Commission's budget request two items: (1) a surcharge of \$55 to all principal registrations and lobbyist authorizations for the 2021-2022 legislative session, and (2) a permanent increase of \$55 in the principal registration and lobbyist authorization fees

Wisconsin Ethics Commissioners

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Administrator

Daniel A. Carlton, Jr.

beginning with the 2023-2024 legislative session. Moved by Commissioner Halbrooks, seconded by Commissioner Davis.

Motion passes 4-1. Commissioner Strachota votes no.

Commissioner Strachota returned the gavel to Commissioner Halbrooks.

D. Adjourn

MOTION: To adjourn. Moved by Commissioner Van Akkeren, seconded by Commissioner Ross. Motion carried unanimously.

Meeting adjourned at 8:48 a.m.

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September 15, 2020 Wisconsin Ethics Commission meeting minutes prepared by:

David Buerger, Staff Counsel

October 13, 2020

September 15, 2020 Wisconsin Ethics Commission meeting minutes certified by:

Pat Strachota, Vice Chair

October 13, 2020



Wisconsin Ethics Commission

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DATE: For the Commission Meeting on October 13, 2020
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: Administrative Rules Update

FOR COMMISSION ACTION

This memo is for information only and no action is required at this time.

I. Chapter ETH 1 – Comprehensive Review of ETH 1 for Consistency with Statute

This 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 for consistency. At the Commission’s meeting on June 16, 2020, it conducted a hearing on this rule and approved the final draft rule for submission to the Governor’s Office for final approval. Commission staff submitted the final draft rule to the Governor’s Office on June 17, 2020. The Governor approved the final draft rule on September 21, 2020. The next step will be submission of the rule to the Legislature. As the Legislature has held its final general-business floor period of the session, once submitted, the rule will be considered received as of the first day of the next regular session of the Legislature. See [WIS. STAT. § 227.19\(2\)](#).

II. Chapter ETH 21 – Practice and Procedure

This rule will codify the Commission’s procedures for requests for advice and complaints. The Commission held a preliminary public hearing on the scope statement for this proposed rule on August 18, 2020, but no members of the public appeared to comment on the scope statement at that meeting, and no public comments were received. The Commission then formally approved the scope statement and directed staff to begin drafting the proposed rule and associated documents for submission to the Legislative Council Rules Clearinghouse. Commission staff are currently drafting the proposed rule.

III. Chapter ETH 26 – Settlement Offer Schedule

This rule would create settlement schedules in the following two additional categories: (1) unauthorized lobbying, and (2) late payment of lobbying fees. The amendments

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Administrator

Daniel A. Carlton, Jr.

proposed by the rule would clarify the word “days” in prior settlement schedules throughout the rule as either calendar days or business days. Staff submitted the draft rule and associated documents to the Legislative Council Rules Clearinghouse on June 17, 2020. The Legislative Council Rules Clearinghouse provided its report on July 13, 2020. The report suggested three changes to the rule. The Commission considered the suggested changes at its meeting on August 18, 2020. The Commission also conducted a public hearing on the rule at that meeting. Commission staff made two of the changes proposed by the Legislative Council’s report in the version of the rule considered at that meeting, and solicited the Commission’s direction on the third proposed change: a definition of “business day” to include in the rule. The Commission approved of these changes and directed staff to define business days similar to the example of ATCP 93.050, but to also include a cross-reference to WIS. STAT. § 995.20.

At the public hearing, two members of the public appeared to provide comment on the draft rule: Attorney Wittenwyler and Mr. Klaetsch. Attorney Wittenwyler suggested changing the references to “legislative session” in Section 18 of the revised rule to “reporting period.” Mr. Klaetsch requested clarification of the term “due date” in Sections 9 and 19 of the revised rule, as that date is dependent on completing the registration steps and may cause confusion. Mr. Klaetsch suggested the Commission provide a warning to the lobbyist or principal that the required fees have not been paid and that the Commission count days from that communication instead. The Commission agreed with these suggestions and Commission staff incorporated them into the final draft rule.

Commission staff submitted the final draft rule to the Governor’s Office for final approval on August 26, 2020. The Governor approved the final draft rule on September 21, 2020. The next step will be submission of the rule to the Legislature. As the Legislature has held its final general-business floor period of the session, once submitted, the rule will be considered received as of the first day of the next regular session of the Legislature. *See* [WIS. STAT. § 227.19\(2\)](#).



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DATE: For the Commission Meeting on October 13, 2020
TO: Members, Wisconsin Ethics Commission
FROM: Daniel A. Carlton, Jr., Administrator
SUBJECT: Guidance Document Policy

FOR COMMISSION ACTION

For this agenda item, the Commission can:

1. Adopt the proposed policy herein as presented;
2. Adopt an amended version of the policy contained herein consistent with today's discussion; or
3. Decline to adopt a policy.

Background

At the Commission meeting on August 18, 2020, the Commission approved two manuals prepared by Commission staff in accordance with 2017 Act 369. At that meeting, Commission staff advised that the Wisconsin Supreme Court had struck down the controlling provisions of Act 369 and asked the Commission how it wished to proceed in the future. The Commission directed staff to bring suggestions for a policy on adopting guidance documents for the Commission to consider at its October meeting.

Discussion

2017 Act 369 ("The Act") broadly defined "guidance document" to include any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin that either explains the agency's implementation of a statute or rule enforced or administered by the agency, or provides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency.

The Act established several requirements for promulgation of "guidance documents." Pertinent to this discussion are that an agency was required to:

- Post a proposed guidance document for public comment for a minimum of 21 days prior to adoption;
- Post each guidance document on its internet site and permit continued public comment on the document; and

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Administrator

Daniel A. Carlton, Jr.

- Provide legal citations to the provisions of Wisconsin statute or administrative code that supported any statement or interpretation of law contained in the publication.

With those former requirements in mind, this memo will discuss considerations and present a proposed policy. The Commission is free to modify the proposed policy as it sees fit or not adopt any policy.

1. What documents should be covered by a policy the Commission may adopt?

One of the issues that confused agencies was identifying what documents were “guidance documents.” The definition was broad enough that it appeared that the term included a number of agency publications such as web pages, training presentations, or even emails. In adopting this policy, the Commission should be more specific about which documents are covered by the policy.

In the context of the Commission, our most used documents are in the following categories: meeting memoranda, informal and formal opinions, manuals, PowerPoint presentations, and emails sent to those outside of the Commission. By their very nature, meeting memoranda and opinions require statutory citation. Meeting memoranda and opinions do not lend themselves to public comment. In the context of meeting memoranda, their purpose is for staff to inform and aid the Commission in its consideration of matters. Additionally, for the open session portion of meetings, meeting memoranda are posted on the Commission’s website. Since the Commission includes a personal appearances agenda item for its regular meetings, a person having a comment on any subject can appear and discuss their thoughts on an agenda item (and also on anything else they wish to raise). Further, the subject of many of the memoranda and opinions are frequently confidential. The Commission’s formal opinions are made public by posting them on the Commission’s website. Concerning those opinions, requestors can ask for the Commission to consider whether it applies to their circumstances or reconsider the issue addressed at any time. Additionally, the Commission can review and revise an opinion *sua sponte*. For these reasons, staff believes that the policy should not cover meeting memoranda and opinions.

Concerning PowerPoint presentations, the Commission’s staff uses these for training sessions. Inherently, those presentations contain appropriate statutory and rule citations. Several presentations are already posted on the Commission’s website. Over the past couple of years, staff has done at least ten trainings per year. These trainings need to be modified to address things that are most appropriate for a given audience. Trainings often are scheduled on an ad hoc basis and may not allow sufficient time for staff to follow a notice and comment period to modify or create trainings before a presentation. Also, as PowerPoints are designed to just contain a high-level statement, the public may not be able to review and provide meaningful feedback on a presentation until after they have attended the presentation. Of course, staff is always considering what the attendees found valuable and whether to adjust the presentation based on that feedback.

In the context of external emails, the Commission should not include them in this policy. Under the former law, employees of other agencies wondered whether the law applied to emails

because the definition of guidance document included “communications.” Staff never understood the intent of the law to capture emails because it would be unworkable for employees to have to post an email they were going to send for public comment. Additionally, there are frequently confidentiality concerns. Also, to the extent that a policy could address the Commission’s website, the pages already contain appropriate statutory citations. The public is free to comment on the website and suggest revisions at any time. Staff can consider this and make updates as necessary and appropriate. So, the policy would work best if it were not applicable to emails and the website.

Concerning manuals, these documents are created to help users navigate our program areas. They contain information such as how to report required information in our reporting systems. Inherently, they cite to legal requirements. However, their purpose is not to discuss the requirement. Rather, the focus is just on how to use the systems. Over the past couple of years, staff has revised and created manuals and had the Commission adopt them. The versions that were approved contained statutory citations where appropriate. In the context of the manuals that we produce to explain how to use CFIS, the SEI website, and the lobbying website, the readers are more focused on how to use the system. These manuals should be excluded from the policy. If the Commission creates other types of manuals, they could be subject to the new policy. No such manual is currently planned.

Finally, the Commission has guidelines. These documents are clearly intended to advise the public about how the Commission is going to interpret and apply the law. The Commission’s policy should require appropriate citation to applicable statutes, rules, court cases, and advisory opinions. They are posted on the Commission’s website. The public is free to comment on adopted guidelines at any time. New guidelines or revisions to old ones are presented to the Commission for adoption. As they are general statements of the Commission’s interpretation and application of the law, and the audience is the general public, they should be covered by a policy if the Commission adopts one.

2. Should the Commission continue pre-adoption publication of documents covered by the policy?

Commission staff believe public comment from the regulated community is a vital part of producing clear and effective guidance. As such, the Commission is likely to want to solicit public comments from the regulated community on certain documents prior to bringing that document to the Commission for consideration. Feedback from the community would be incorporated as a part of the materials. The former law required a period of at least 21 days unless the Governor allowed a shorter period. Commission staff post all public materials on the agenda for a meeting on the Commission’s website. Generally, this is accomplished 10 days before a meeting. The Commission could determine that this posting is sufficient to provide notice and receive feedback. However, tying the notice to posting materials on the website would necessitate a supplemental material packet or verbal presentation. The Commission may want to consider requiring the document to be adopted to be posted for a period of time before meeting materials are finalized so that public comment could be incorporated in the meeting materials. However, in determining the length of that period, the

Commission should remember that material will have to be finalized and posted for 3 weeks or more. This could delay Commission's ability to adopt a document at its next meeting.

3. Should the Commission continue its practice of posting certain documents on its website and allowing continuing comment on the document?

For the reasons stated in #2 above, the Commission should continue to post on its website adopted documents to which the policy would apply. The public is currently able to comment on those documents and should be able to do so going forward. There is no reason why this cannot continue. Staff will advise the Commission if comment is received that indicates that there is a need for reconsideration or revision.

4. Should the Commission continue to require legal citations in documents covered by this policy?

Commission staff also believe that legal citation within a document can be useful to identify the legal authority for guidance and provide context for how the Commission interprets the laws it administers. However, a document is likely most effective when it is written in plain language and does not require consulting the underlying laws. As such, the Commission may want to direct its staff to draft any document covered by this policy in plain language and provide footnotes to relevant Wisconsin statutes, administrative rules, case law, or opinions as appropriate for the intended audience. As these documents will be approved by the Commission prior to posting, staff will exercise its judgment in determining whether a citation is required. If there is a doubt about whether citation is necessary, it will be included. At adoption, the Commission can easily recommend including citations if the Commission determines additional citations are necessary.

Proposed Policy

This policy applies only to Commission guidelines. Guidelines must be written in plain language with appropriate citations included via footnote. Guidelines must be published for public comment no later than two weeks before all other meeting materials are publicly available. The Commission Administrator can request a shorter public comment period if there is good cause for the shorter period. The request must be approved by the Chair and Vice Chair. Comments received will be provided to the Commission. The comment period will apply to any new guideline or any existing guideline that staff believes needs revision.

Adopted guidelines will be posted and remain on the Commission's website. The public is free to comment on these documents at any time after adoption. In response to public comment, staff can correct typographical errors and other technical errors. Any comment that, if addressed, would change the substance of a guideline must be presented to the Commission for consideration. Upon receipt of the comment, staff will prepare a meeting memo addressing the comment for consideration at the next Commission meeting. If the staff believes that a guideline will be revised by the Commission based on the comment, staff will prepare a proposed revised version. The proposed revised guideline will be posted for additional public comment no later than two weeks prior to the publication of other materials for the next

meeting unless a shorter time is approved by the Chair and Vice Chair. If staff does not anticipate the Commission will revise the guideline, no revision will be prepared. The comment will be added to the agenda for the next meeting for Commission consideration and direction.



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DATE: For the Commission Meeting on October 13, 2020
TO: Members, Wisconsin Ethics Commission
FROM: Caroline M. Russell, Ethics Specialist
SUBJECT: Late Payment of Lobbying Fees Staff Procedure Update

FOR COMMISSION ACTION

For the late payment of lobbying fee staff procedure, the Commission may:

1. Allow staff to begin the new process of sending notification of late lobbying fees two weeks after application for license, registration or authorization is submitted; or
2. Continue with the current process of sending notification of late lobbying fees within one business day of when application for license, registration or authorization is submitted.

On August 18, 2020, the Commission held a hearing for WIS. ADMIN. CODE ETH 26, Settlement Offer Schedule. At that hearing, the lobbying community requested clarification on when exactly lobbying fees are due. The Commission determined that lobbying fees are considered late after notice from the Commission that the fees are due. Settlements for late lobbying fees will be calculated starting from the day after staff emails the notice. Staff would like guidance on when “notice from the Commission” should take place.

Currently, staff manually sends notification that fees are late within one business day of when the application is submitted. The notification states fees are due at the time of application for a license, principal registration, or authorization, and may be found in violation of WIS. STAT. §§ [13.63](#), [13.64](#), [13.65](#), [13.75](#). The notification also includes specifics regarding the type of fee, and when the application was submitted. Lobbyists or principals whose fees are received less than thirty days after the application has been submitted receive a formal warning that fees are due at the time of application. If a lobbyist’s or principal’s fees are received more than thirty days after the application has been submitted, the lobbyist or principal is referred to the Commission for review.

The standard of notification within one business day has been strenuous to keep, especially during busier times of the legislative session or during campaign finance and lobbying filing deadlines. Additionally, staff is concerned about maintaining this standard during the beginning of the 2021-2022 Legislative Session. Using the 2019-2020 Legislative Session as a predictor, we can expect over 1,100 fees to be received between December 2020 and January 2021.

Wisconsin Ethics Commissioners

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Administrator

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Staff would like to send notice that lobbying fees are due two weeks, or fourteen calendar days, after an application for license, a registration, or an authorization is submitted. This notice would be implemented across the board. Every lobbyist or principal will have 14 calendar days to pay the fee before notice is sent to them that fees are outstanding. The day after the notice is sent will be the first day counted for purposes of the standard settlement schedule. For example, two weeks after a lobbyist license application is submitted, the lobbyist will be notified that their fee is now late and the lobbyist may be found in violation of WIS. STAT. §§ [13.63](#), [13.64](#), [13.65](#), [13.75](#). Providing two weeks before notification will allow ample time for those who submit payment via check to contact their accounts payable departments, and mail in payment well before monetary forfeiture and settlement. Staff will also be able to better account for mail delays around the holidays by sending pre-dated reminders. The pre-dated reminder would state:

“Ahead of the upcoming holidays, we are providing you advanced notice to pay your lobbying fees. The Commission allows lobbyists and principals two weeks before sending a notice that your fees are considered late. You submitted your application on (DATE). The end of this two-week window is on (DATE). If you pay your lobbying fees before (date two weeks after application), you will be compliant. Fees paid after (date two weeks from application) will be considered late and you may be found in violation of WIS. STAT. § [13.63](#), [13.64](#), [13.65](#), [13.75](#).”

Staff would like the Commission to adopt this process of sending notice of late lobbying fees two weeks after application for license, registration or authorization is submitted immediately because it will allow us to better handle lobbying fees for the 2021-2022 Legislative Session.

For reference, the standard settlement schedule for late lobbying fees is below. Instead of “Days Late” the first column of the standard settlement schedule could be referred to as “Days After Notice.”

Days After Notice	Lobbyist	Principal
1-30	Warning	Warning
31-45	\$100	\$200
46-60	\$200	\$400
61+	\$300	\$600



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
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(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the Commission Meeting on October 13, 2020

TO: Members, Ethics Commission

FROM: Ethics Commission Staff

SUBJECT: Ethics Commission Staff Report

Commission Administration

COVID-19 Agency Response

The Commission staff continue to follow the guidance of DOA on the response to the public health emergency. Staff are working remotely and will continue to do so until the office building is open to the public. As of September 25, 2020, we are still in Phase II of the Badger Bounce Back Government plan, which includes a phased reopening to the public. At this time, we do not know when the public will be allowed back into the building.

Biennial Budget 2021 – 23

The Commission staff submitted the biennial budget request on September 15, 2020. The State Budget Office conducted an initial review and found no issues.

Training

Since the last meeting, Commission staff conducted three more training sessions. The two most recent trainings were a part of the University of Wisconsin – Green Bay’s Municipal Clerk and Treasurer’s Institute on September 30th and October 1st. The Municipal Clerk and Treasurer’s Institute consists of a three-year program of classroom instruction that upon successful completion results in the student being awarded a professional certification. Commission staff inquired about presenting a course for the Institute last year and was requested to participate for the first time this year. The session on September 30th was a brand-new 2-hour training that was presented in coordination with the Wisconsin Elections Commission. The session included a heavy focus on campaign finance issues, including a discussion on the lifecycle of a candidate committee. The second class on October 1st was a newly created session focusing on ethics and conflicts of interest issues that occur at the municipal level. These sessions were conducted by Staff Counsel, David Buerger.

Additionally, Ethics Specialist Colette Greve, presented ethics training for the Wisconsin Department of Employee Trust Funds on September 17, 2020. Staff is scheduled to present ethics training for the Group Insurance Board on November 18, 2020. Staff will also participate in the new legislator trainings in December.

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Campaign Finance

September 2020

The September 2020 reports were due September 22, 2020. There were 330 candidates required to file this report, as well as any party, legislative campaign committee, PAC, independent expenditure committee, or conduit that supported or opposed a Fall 2020 candidate. There were 560 total committees that filed by September 22, 2020 (94.6%). An additional 9 committees filed after September 22 (1.5%). There are 22 committees that still have not filed (3.7%) at the time of this memo.

Lobbying

2019-2020 Legislative Session

As of September 21, 2020, there were 810 lobbying principals registered, 705 lobbyists licensed, and 1,780 lobbyist authorizations.

Statutes require each lobbying principal to submit a Statement of Lobbying Activities and Expenditures (SLAE) twice a year. The July – December 2020 SLAE is due on January 31, 2021. After principals and lobbyists file their reports, staff will conduct audits for late SLAEs, late 15-day reports, lobbying without authorization, and late payment of lobbying fees.

Planned launch of the new lobbying website was November 6, 2020. Due to COVID-19 delays, the launch will be delayed to 2021. Staff is currently evaluating the 2021 timeline to determine an ideal launch date, taking filing deadlines and the budget cycle into account.

Legislative Liaison Reporting

The 6-month legislative liaison report was due July 31, 2020. There are 90 state agencies that file, and 79 of them filed by the deadline of August 31. All agencies have now filed the July report, and the next report will be due by January 31, 2021.

Code of Ethics and Financial Disclosure

Statements of Economic Interests (SEIs)

As of September 18, 2020, there were 2,503 total state public officials required to file an SEI for 2020. There are 2251 annual filers who had their SEI due by April 30, 2020. Filing for the 2021 Spring Election begins December 1, 2020. Notices to reserve judges will go out in mid-December, and all other filers will receive notices in January 2021.

State of Wisconsin Investment Board Quarterly Reports

The 2020 second quarter reports were due by July 31, 2020. All but one of the 56 SWIB filers had filed by the deadline, and the one late report was filed in the next week. Staff electronically transferred all files to the Legislative Audit Bureau. The next quarterly reports will be due by October 31st, covering July 1st to September 30th.