

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Ethics Commission

101 E. Wilson Street, St. Croix Room
Madison, Wisconsin
Tuesday, June 18, 2019, 9:00 a.m.

Open Session Agenda

- | | | |
|---|------|----|
| A. Call to Order | | |
| B. Report of Appropriate Meeting Notice – Staff Counsel | | |
| C. Approval of Minutes of Prior Meetings | | |
| 1. Minutes of April 9, 2019, Open Session Meeting | Page | 3 |
| D. Personal Appearances | | |
| E. Ethics Opinion Review | Page | 7 |
| F. Administrative Rules Update and Hearing | Page | 13 |
| G. Review Settlement Schedules | Page | 35 |
| H. Staff Report | Page | 43 |
| I. Closed Session | | |
| 1. Requests for Advice | | |
| 2. Complaints and Investigations | | |
| 3. Personnel Matters | | |
| J. Appointment of Administrator to 2019-2023 Term | | |
| K. Consideration of Future Agenda Items | | |
| L. Adjourn | | |

Future Ethics Commission Meetings Scheduled:

- Tuesday, August 20, 2019 at 9:00 AM
- Tuesday, December 3, 2019 at 9:00 AM
- Tuesday, March 3, 2020 at 9:00 AM
- Tuesday, June 16, 2020 at 9:00 AM
- Tuesday, August 18, 2020 at 9:00 AM
- Tuesday, October 13, 2020 at 9:00 AM
- Tuesday, December 8, 2020 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

Campaign Finance | Lobbying | Ethics
101 East Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

Wisconsin Ethics Commission

101 E. Wilson Street
Wisconsin Room
Madison, Wisconsin
April 9, 2019
9:00 a.m.

Open Session Minutes

Present: Katie McCallum, Tamara Packard, Mac Davis, David Halbrooks,
Pat Strachota, and Timothy Van Akkeren

Staff Present: Daniel Carlton, David Buerger, Julie Nischik, Rich Bohringer,
Harry Broderick, and Caroline Russell

A. Call to Order

Commission Chair Katie McCallum called the meeting to order at 9:03 a.m.

B. Report of Appropriate Meeting Notice

Staff Counsel David Buerger reported that appropriate notice of the Commission meeting had been given to the public and news media.

C. Approval of Minutes of Prior Meeting

1. Minutes of March 5, 2019 Open Session Meeting

MOTION: Approve the March 5, 2019 open session minutes. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren.

Staff Counsel David Buerger noted a typo in item J of the minutes, the date should be April 9, 2019. The Commissioners agreed to the revision.

Motion carried unanimously.

D. Personal Appearances

There were no personal appearances by a member of the public.

E. Ethics Opinions Schedule Review

Staff Counsel David Buerger presented the memo on page 7 of the meeting materials.

The Commissioners discussed the opinions recommended for withdrawal.

MOTION: Withdraw opinions Eth. Bd. Op. 02-08, Eth. Bd. Op. 06-01, and Eth. Bd. Op. 92-32. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren.

Commissioner Davis requested to divide the question and take up Eth. Bd. Op. 92-32 separately.

MOTION: Withdraw opinions Eth. Bd. Op. 02-08 and Eth. Bd. Op. 06-01. Motion carried unanimously.

MOTION: Revise Eth. Bd. Op. 92-32 opening and closing paragraphs to be consistent with current and previous Board and Commission advice. Moved by Commissioner Davis, seconded by Commissioner Packard. Motion carried unanimously.

MOTION: For Eth. Bd. Op. 97-07, Eth. Bd. Op. 98-13, Eth. Bd. Op. 98-03 and Eth. Bd. Op. 08-01, accept the recommended revisions. Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried unanimously.

F. 2019 ETH 01 – Service on Boards of Directors

Staff Counsel David Buerger presented the memo on page 15 of the meeting materials.

MOTION: Approve the formal opinion. Moved by Commissioner Davis, seconded by Commissioner Van Akkeren. Motion carried unanimously.

G. Consideration of Additional Legislative Recommendations

Administrator Dan Carlton presented the memo on page 31 of the meeting materials.

The Commission discussed the two proposed additions to the Legislative agenda. The Commission directed staff to modify the language of the lobbying day recommendation to accommodate multiple scenarios, as well as the current practices.

MOTION: The Commission approved both legislative recommendations, with the revisions discussed. Moved by Commissioner Strachota, seconded by Commissioner Davis. Motion carried unanimously.

H. Administrator Performance Evaluation Process

Administrator Dan Carlton presented the memo on page 33 of the meeting materials.

Commissioner Davis expressed interest in getting feedback from the regulated community, and others outside of the Commission who work with the Administrator. The Commissioners also agreed that staff feedback can be provided directly to the Chair and Vice Chair. The Commissioners directed staff to set up an online survey with a few questions related to performance and a general feedback question, to be sent to the regulated community, legislators, and other government staff who have interacted with the Administrator. Responses should be sent to the Chair and Vice Chair. The first Administrator review will be conducted at the June 18, 2019 meeting in closed session.

I. Calendar Year 2020 Meeting Dates

Administrator Dan Carlton presented the memo on page 37 of the meeting materials.

The Commissioners changed the December meeting date to December 8, 2020. The optional September meeting date is changed to Friday September 11, 2020.

MOTION: The Commission adopted the meeting calendar with revisions as discussed. Moved by Commissioner Packard, seconded by Commissioner Van Akkeren. Motion carried unanimously.

J. Administrative Rules Update

Staff Counsel David Buerger presented the memo on page 39 of the meeting materials.

MOTION: For ETH 1 – Act 117 Amendments/Attributions, the Commission directs staff to submit the draft rule and associated documents to the Legislative Council’s Rules Clearinghouse and schedule a public hearing on this rule for the June 18, 2019 meeting. Moved by Commissioner Strachota, seconded by Commissioner Van Akkeren. Motion carried unanimously.

K. RDA Draft – Settlement Agreements

Commission staff Julie Nischik presented the memo on page 57 of the meeting materials.

Commissioner Davis amended the record series description to say “settlement agreements reached after an alleged violation...”

MOTION: Adopt the RDA with revisions as discussed. Moved by Commissioner Halbrooks, seconded by Commissioner Van Akkeren. Motion carried unanimously.

L. Staff Report

Commission Administrator Daniel Carlton presented the report on page 61 of the meeting materials.

The Commissioner discussed their preference of meeting rooms, indicating future meetings should be held in the St. Croix room. Meeting attendees can enter that room without requiring they identify themselves at the security desk.

M. Consideration of Future Agenda Items

Commissioner Halbrooks requested the Commission revisit the standard settlement schedules at a future meeting.

N. Closed Session

MOTION: The Commission went into closed session pursuant to WIS. STAT. §§ 19.50, 19.55(3), 19.85(1)(g), (h). Moved by Commissioner Packard, seconded by Commissioner Strachota. Motion carried unanimously.

1. Requests for Advice
2. Complaints and Investigations

O. Adjourn

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

Meeting adjourned at 1:26 p.m.

###

April 9, 2019 Wisconsin Ethics Commission meeting minutes prepared by:

Julie Nischik, Office Management Specialist June 18, 2019

April 9, 2019 Wisconsin Ethics Commission meeting minutes certified by:

Tamara Packard, Vice Chair June 18, 2019



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
101 E. Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the June 18, 2019 Meeting
TO: Members, Wisconsin Ethics Commission
FROM: Colette Greve, Ethics Specialist
SUBJECT: Review of Ethics Opinions of Previous Boards

FOR COMMISSION ACTION

The Commission may decide to:

- a. Withdraw, modify, and reaffirm opinions as recommended by staff;
- b. Withdraw, modify, and reaffirm opinions as amended by today's discussion; or
- c. Direct staff to continue review of the opinions.

Background

The Commission is continuing to review formal advisory opinions of the previous boards. Staff has conducted an initial review of opinions related to gifts, meals, travel, expenses, and other items of value provided to state officials.

The attached spreadsheet provides a link to each opinion, a summary of the advice given by the previous boards and the staff recommendation. Staff is recommending that 5 opinions be withdrawn and the remaining opinions in this group be reaffirmed.

Relevant Statutes

[WIS. STAT. §§ 19.42](#) provides the definitions for terms such as “anything of value,” “gift,” and “state/local public official.” The relevant statute sections for the opinion subjects listed above include WIS. STAT. §§ [19.45](#), [19.46](#), [19.56](#), and [19.59](#). There have been no major statutory changes relevant to the review of these opinions that would make any advice given in them inconsistent with current law.

Opinions Recommended for Withdrawal

Staff recommends that opinions be withdrawn for two reasons, either they are inconsistent with the Commission's current policy, advice, guidelines, or the opinions are vague and provide no substantive analysis. The following opinions were vague and provided no substantive analysis. Therefore, staff recommends withdrawing the opinions: [Eth. Bd. Op. 05-10](#) and [Eth. Bd. Op. 06-05](#).

Staff recommends that the following opinions be withdrawn as they are inconsistent with how the Commission would provide advice:

1. [Eth. Bd. Op. 93-11](#) – The question presented in this opinion is whether a state public official may retain a set of golf clubs that they won in a random drawing while attending a conference. All attendees of the conference were entered into the drawing, which was sponsored by a vendor at the conference. The Board advised that the official was not using their office to obtain something of value and that because the drawing was for all attendees and most were not Wisconsin state public officials, the official was not using their public office to obtain something of value. However, staff believes that the prize did arise from the official holding public office since entry in the drawing was contingent upon attending the conference that was held for public officials from several states. Furthermore, the examples used in footnote 3 are discussing different factual situations and not persuasive to the facts in this opinion.
2. [Eth. Bd. Op. 97-12](#) – The question presented in this opinion is whether a legislator or legislative employee may participate and accept a chance to win a drawing for a gift card. The drawing was part of a survey that a state agency sent out to all legislators and legislative staff to encourage participation. Staff does not find any issues with the outcome of the advice in this opinion, but rather the analysis of the Board in providing the advice, specifically the analysis related to the state benefit exception. When making a determination on whether an item received is primarily for the state benefit, the issue is not whether the state agency benefits from making the offer, but whether the state public official's acceptance of the offer is on behalf of the state and that the acceptance of that offer is primarily for the benefit of the state.
3. [2008 GAB 03](#) – The facts of this opinion provide that a county board was attempting to hold an employee recognition dinner for county employees and the county would be paying the costs of the dinner. The GAB advised that the recognition dinner and meal being provided was primarily a public benefit, as it could boost employee morale and retention. These benefits to the county outweighed the county employees' private benefit of a free dinner. The GAB advised that this analysis allowed for local officials to accept the meal, but state officials, including district attorneys and circuit court judges could not accept the meal. The opinion stated that no exception appeared to apply, but does not examine why the public benefits described would not also be a benefit to the state and therefore allowable under [WIS. STAT. § 19.56\(3\)\(c\)](#).

Attachments:

- A. Ethics Opinions Spreadsheet for June 18, 2019 Commission Meeting

Subject	Opinion Number	Summary of opinion	Withdraw/Reaffirm/Revise
Gifts, Improper Use of Office	Eth. Bd. Op. 91-05	A state public official may retain items presented for participation in opening ceremonies of a not-for-profit sporting event if they are presented for a reason unrelated to holding public office or are only of inconsequential value. Eth. Bd. 638 March 4, 1991	Reaffirm
Expenses; Legislators; Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 91-10	Consistent with the Ethics Code, a legislator, while attending a conference on behalf of the state, may accept meals, refreshment, and the like that are provided, sponsored, or sanctioned by the event organizer and authorized by the legislature. Eth. Bd. 654 August 22, 1991	Reaffirm
Expenses; Legislators; Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 91-11	The Ethics Code does not forbid a legislator from participation in a foreign study tour if such participation is authorized by the Senate Committee on Organization or by the Speaker of the Assembly. Eth. Bd. 689 August 22, 1991	Reaffirm
Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 92-04	A state public official may attend a dinner to which the official has been invited because of his or her public position if attendance is primarily for the benefit of the state and not for private benefit. OEB 92-4 March 24, 1992	Reaffirm
Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 92-07	A state public official may participate in a tour on which the official is invited because of his or her public position if it is primarily for the benefit of the state and not for private benefit. OEB 92-7 March 24, 1992	Reaffirm
Local Officials - Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 92-08	A local official should not permit another to pay the official's costs of a golf outing to which the official has been invited because of holding an official position. OEB 92-8 March 24, 1992	Reaffirm
Local Officials - Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 92-09	A local public official may attend a breakfast meeting sponsored by a private firm at a convention if the official's local governmental unit would otherwise pay the cost. OEB 92-9 March 24, 1992	Reaffirm
Local Officials - Improper Use of Office	Eth. Bd. Op. 92-17	A law firm should not purchase meals for officials of the local units of government the firm represents (nor should a local public official accept) unless, and only to the extent that, the local government would otherwise bear the official's expense and the governmental units' obligation to bear the expense is expressly authorized by, and in accordance with, established written criteria. OEB 92-17 April 27, 1992	Reaffirm
Local Code - Influencing Official Judgment; Local Code- Meals, Lodging, Travel and Entertainment	Eth. Bd. Op. 92-31	A vendor should not sponsor a river cruise for local public officials attending a convention if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the vendor's goods. OEB 92-31 (November 25, 1992)	Reaffirm

Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 93-02	The Department of Development may sponsor an anniversary celebration for a Wisconsin corporation if, but only if, the department determines that the event will benefit the State of Wisconsin and will promote business, economic development, or tourism. State and local public officials may accept food, drink, and lodging offered in connection with the celebration to the extent that the items are provided by the Department of Development. OEB 93-2 (January 27, 1993)	Reaffirm
Local Code - Meals, Lodging, Travel and Entertainment	Eth. Bd. Op. 93-08	A law firm should not sponsor a dinner or hospitality suite at a conference of local government officials if more than an insignificant number of the officials attending are responsible for making or approving purchasing decisions that could involve the firm. OEB 93-8 (November 3, 1993)	Reaffirm
Gifts; Improper Use of Office	Eth. Bd. Op. 93-11	A state public official may not use his or her office or position to obtain anything of substantial value for private benefit. The connection between an official's receipt of a prize at a conference and holding public office is too remote to conclude that public office was used to obtain the prize because (1) the prize was awarded by chance, (2) the prize was available to anyone attending the conference, and (3) the great majority of conference attendees were not Wisconsin public officials. An official must comply with any state policy to make available to the state items received at events attended on the state's behalf. OEB 93-11 (December 15, 1993)	Withdraw, inconsistent analysis and advise
Expenses; Gifts; Improper Use of Office; Lobbying; Meals, Lodging, Travel, Entertainment	Eth. Bd. Op. 95-02	Lobbying principals may furnish cash and in-kind contributions to a national organization or the Department of Development for the organization's annual meeting in Wisconsin. Wisconsin's officials may accept food and drink furnished at events that are provided, sponsored, or sanctioned by the national organization and authorized by the officials' agency. State officials generally may accept items that the national organization or the Department of Development furnishes. A state official should accept an item furnished by a vendor at the meeting only if the item is of insubstantial value and the vendor is not a lobbying principal. OEB 95-2 (June 1, 1995)	Reaffirm
Gifts; Improper Use of Office	Eth. Bd. Op. 96-02	In the case of an individual acting independently of Wisconsin's government and public officials, the Ethics Code does not restrict a private citizen's publishing information about Wisconsin's Legislature or about individual legislators on the internet's World Wide Web. If an individual or business offers to publish information on the internet at a legislator's behest, the legislator may, consistent with the Ethics Code, avail himself or herself of that opportunity if: (1) the Legislature has officially acted to accept that opportunity on behalf of the state; and (2) the legislator use the site to communicate about issues before the Legislature and state government processes and proposals, and not to publish information on private matters, including campaign matters. OEB 96-2 (February 22, 1996)	Reaffirm

Improper Use of Office; Use of State's Time, Facilities, Supplies and Services	Eth. Bd. Op. 96-04	A state public official may, consistent with statutes the Ethics Board administers, accept compensation from a publisher for a book the official will write on public policy and politics as long as (1) the official does not, in writing the book, rely upon the state's time, facilities, services, or supplies not generally available to everyone; (2) the terms of the contract are standard in the industry and were arrived at through an arms-length transaction; and (3) in the event that lobbyists, lobbying principals, or others having business before the official's agency arrange for significant purchases, outside the normal course of their business, the official turns over royalties arising from those purchases either to the state or to a charity with which the official is not associated. OEB 96-4 (February 29, 1996)	Reaffirm
Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 97-03	Agency officials may participate in a trip to a foreign country if the trip is authorized by the agency as an undertaking on behalf of the state and primarily for the state's benefit and the agency officials travel as the state's representatives. (June 27, 1997)	Reaffirm
Local Code - Gifts	Eth. Bd. Op. 97-15	The Ethics Board advises: An official of a school district who receives a gift from foreign dignitaries visiting the district should treat the gift as given to the school district. The school district may retain, sell or otherwise dispose of the item in accordance with the school district's policies and interests. This can include selling the item to an official of the district. (October 8, 1997)	Reaffirm
Improper Use of Office	Eth. Bd. Op. 98-09	The Ethics Board advises that a legislator and spouse may accept the offer of free membership in a not-for-profit organization that is not a lobbying principal as long as there is no benefit from membership apart from receiving the organization's newsletter and membership cards of unexceptional value.	Reaffirm
Reward for Official Action	Eth. Bd. Op. 99-05	The Ethics Board advises that a not-for-profit foundation not furnish an annuity to the director of a state agency in response to its concern about the director's level of compensation and retirement benefits.	Reaffirm
Improper Use of Office, Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 03-01	The Ethics Board advises: 1) Consistent with laws it administers, a legislator may participate in a charitable fundraising event that includes golf and a lunch of which the primary beneficiaries are charities with which the legislator is not associated; and 2) A legislator should not accept the offer to bring guests or to attend the awards dinner without paying the same amount as members of the public for those activities.	
Fees and Honorarium; Improper Use of Office	Eth. Bd. Op. 03-03	The Ethics Board advises: For chairing a conference about state government issues, a state public official may accept an award sanctioned, approved, endorsed by, and presented under the auspices of the organization that is sponsoring the conference but may not accept an award from another organization.	Reaffirm

Fees and Honorarium; Improper Use of Office	Eth. Bd. Op. 05-09	The Ethics Board advises that a crystal bowl, valued at \$125, is reasonable compensation for an elected official who spent eight to nine hours preparing a talk and presented a keynote address related to state government issues to an out-of-state organization.	Reaffirm
Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 05-10	The Ethics Board advises that state agency may accept funds from private sources to be used to reimburse a state official's travel expenses incurred by the official while engaged in official duties.	Reaffirm
Gifts	Eth. Bd. Op. 06-05	In determining whether a gift is of "substantial value," the Ethics Board looks at the totality of the circumstances.* Here, the value of the gifts is small in comparison to the time you devoted to the two organizations, the sentimental value of the gifts is greater than their monetary value, and the gifts are, in essence, commemorative in nature. In these circumstances, we conclude that the gifts are not of "substantial value" as that term is used in the Ethics Code, and you may keep them.	Withdraw, lack of substantive analysis
Meals, Lodging, Travel, and Entertainment	Eth. Bd. Op. 07-01	You ask whether laws administered by the Ethics Board restrict your acceptance of a trip to a foreign country jointly sponsored by organizations whose purposes include fostering better relationships between that country and the United States and fostering understanding, harmony, and cooperation among different religious traditions. You have indicated that you would be meeting with cultural groups and public officials, both to learn about the diverse cultures in the foreign country and potentially to develop cultural exchanges with that country.	Reaffirm
Gifts, Improper Use of Office	Eth. Bd. Op. 07-12	The Ethics Board advises that a legislator or legislative employee may accept from a state agency a chance to win a gift card valued at \$25 to \$30 for responding to a survey the agency conducted.	Withdraw, inconsistent analysis and advise
Local Officials - Meals, Lodging, Travel, and Entertainment	2008 GAB 03	The Government Accountability Board advises that ¶19.59, Wisconsin Statutes, does not prohibit a county board from hosting an appreciation dinner for county employees nor county employees from accepting the dinner. Section 19.45 (3) prohibits a district attorney and circuit court judge from accepting the meal without paying for it.	Withdraw, inconsistent analysis and advise



Wisconsin Ethics Commission

101 East Wilson Street | Room 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | ethics.wi.gov

DATE: For the June 18, 2019 Commission Meeting
TO: Members, Wisconsin Ethics Commission
FROM: David Buerger, Staff Counsel
SUBJECT: Administrative Rule Update and Hearing

FOR COMMISSION ACTION

1. For ETH 1, following the hearing and consideration of any public comments, does the Commission approve the draft rule and direct staff to submit the rule to the Governor for approval?

I. Chapter ETH 1 – Act 117 Amendments/Attribution

This draft rule would amend WIS. ADMIN. CODE ETH [1.20\(9\)](#), [1.26\(2\)](#), [1.26\(6\)](#), [1.60\(1\)\(b\)](#), [1.70\(1\)](#), and [1.855\(2\)](#) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of [WIS. STAT. § 11.1303](#).

The Commission initially approved the scope statement for this rule on August 21, 2018. Staff submitted the scope statement to the Department of Administration and received approval from the Governor to continue with rulemaking on November 15, 2018. The scope statement was submitted to the Legislative Reference Bureau for publication in the Administrative Register on November 15, 2018. The scope statement was published in Register No. 755A3 on November 19, 2018. On December 11, 2018, the Commission 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. Staff has submitted the draft rule to LRB for pre-submission editing and incorporated their comments. On April 9, 2019, the Commission approved the draft rulemaking documents and directed staff to submit them to the Legislative Council's Rules Clearinghouse. Staff submitted the draft rulemaking order on April 10, 2019 and submitted a Notice of Hearing to hold a public hearing on this draft rule today, June 18, 2019. The hearing notice was published in Administrative Register No. 760A3 on April 15, 2019.

On May 1, 2019, the Commission received the Legislative Council's report on the draft rule that proposed three changes for clarity and suggested a comprehensive review of ETH 1 to ensure consistency of terms between statute and the rule. Staff has incorporated the changes for clarity in the draft rule attached to this memorandum and has included

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator

Daniel A. Carlton, Jr.

other amendments to the rule provisions within the scope statement to use the same terms as the statute (e.g., “political party committee” is replaced by “political party”) and remove other terms that are no longer present in Chapter 11. Staff has identified eleven other provisions in ETH 1 that were not identified as inconsistent with 2015 Act 117 that include outdated language or may need other revisions: §§ [1.20\(3\)](#), [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\(3\)](#). If the Commission wishes to examine these other provisions in ETH 1 that were not included in the original scope statement, an amended scope statement would be necessary. Alternatively, the Commission could proceed with the rule to amend the current provisions and consider these further changes in a subsequent rulemaking process.

After all public comments have been considered and the rule is in its final draft form, it may be submitted to the Governor’s office for approval.

See Attachment A for the materials associated with ETH 1.

II. Chapter ETH 16 – Lobbying

This rule was referred to the Legislature for consideration on June 18, 2018, but as that was after the Legislature’s final general-business floor period, the rule was held over to the new session. The rule was referred to the Senate Committee on Elections, Ethics and Rural Issues on January 16, 2019. The rule was also referred to the Assembly Committee on Constitution and Ethics on January 22, 2019. The Senate committee referred the rule without objection to the Joint Committee on Review of Administrative Rules (JCRAR) on February 19, 2019. The Assembly committee referred the rule without objection to JCRAR on February 27, 2019. JCRAR requested a meeting with the agency on March 28, 2019, which extended its review period by 30 days, but ultimately no meeting was scheduled and JCRAR took no action on the rule before its review period expired.

The final step to promulgate the rule is to file a certified copy of the final rule with the Legislative Reference Bureau for publication in the Administrative Register. Staff will be submitting the certified copy for publication to the Legislative Reference Bureau after this meeting. The rule will be effective January 1, 2020. This will allow staff sufficient time to make changes to the Eye on Lobbying website and provide adequate training to the regulated community concerning how to report topics pursuant to the new rule prior to its implementation and enforcement.

III. Chapter ETH 1 – 2015 Act 117 Repeals

This final draft rule was approved by the Governor on March 26, 2019. This rule was referred to the Legislature for consideration on April 1, 2019. The rule was referred to the Senate Committee on Elections, Ethics and Rural Issues on April 11, 2019. The rule was also referred to the Assembly Committee on Campaigns and Elections on April 15, 2019. The Senate committee referred the rule without objection to the Joint Committee on Review of Administrative Rules (JCRAR) on May 13, 2019. The Assembly committee

referred the rule without objection to JCRAR on May 21, 2019. JCRAR is currently reviewing the rule and has not yet requested a meeting with the agency.

IV. Attachments

- A. ETH 1 – Act 117 Amendments/Attribution
 - 1. Proposed Rulemaking Order
 - 2. Notice of Submittal to Legislative Council Rules Clearinghouse
 - 3. Notice of Hearing
 - 4. Fiscal Estimate and Economic Impact Analysis
 - 5. Legislative Council Report

WISCONSIN ETHICS COMMISSION
Proposed Rule Making Order

INTRODUCTORY CLAUSE

The Wisconsin Ethics Commission proposes a rule to amend WIS. ADMIN. CODE ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats., 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 specific authority to specific small items or other communications to which s. 11.1303 (2), Stats., does not apply pursuant to s. 11.1303 (2) (f), Stats.

11.1303 Attribution of political contributions, disbursements and communications.
(2)

...
(f) This subsection does not apply to communications containing express advocacy printed on small items on which the information required by this subsection cannot be conveniently printed, including text messages, social media communications, and certain small advertisements on mobile phones. The commission may, by rule, specify small items or other communications to which this subsection shall not apply.

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 Wisconsin Ethics Commission is also authorized by s. 11.1303 (2) (f), Stats. to specify small items or other communications to which the attribution requirement shall not apply.

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 as well as references to outdated forms of the Government Accountability Board. The Ethics Commission previously sought to repeal the inconsistent provisions in CR 18-047, which is currently pending approval of the Governor, and now seeks to amend the remaining provisions affected by 2015 Act 117.

C. **Related statute(s) or rule(s):** CR 18-047.

D. **Plain language analysis:** The rule amends several provisions of ETH 1 to eliminate references to outdated forms and statutory provisions that were repealed under the new campaign finance law created by 2015 Act 117.

The Commission currently only advises committees as to the language required to comply with s. 11.1303 (2), Stats. However, the Commission regularly receives inquiries regarding the necessity of attributions on certain communications or on items where an attribution cannot be conveniently printed. The Commission also regularly receives inquiries as to the required size of an attribution statement. Wisconsin law currently requires that an attribution statement be “readable, legible, and readily accessible.” This rule will propose standards to better define when an attribution is readable, legible, and readily accessible; as well an exception for certain small items or other communications as allowed by s. 11.1303 (2) (f), Stats.

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

The Federal Elections Commission (FEC) provides a great deal of guidance as to the disclaimers required by federal law. Federal law requires the disclaimer to identify the person(s) who paid for a communication and whether the communication was authorized by

one or more candidates (e.g., “Paid for by the Sheridan for Congress Committee.”) Under federal law, any public communication made by a political committee – including communications that do not expressly advocate for the election or defeat of a clearly identified federal candidate or solicit a contribution – must display a disclaimer. The FEC also requires that disclaimers appear on political committee’s websites, and in certain email communications. All public communications that expressly advocate the election or defeat of a clearly identified candidate, electioneering communications, and all public communications that solicit any contribution require a disclaimer.

Disclaimers are not required when it cannot conveniently be printed (e.g., pens, buttons, similar small items), the display is not practical (e.g., apparel, water towers, skywriting), or when the item is of minimal value and does not contain a political message and is used for administrative purposes (e.g., a check). A disclaimer need not be on the front page of multi-page communications, as long as it is on one of the pages.

Similar to Wisconsin law, a disclaimer is also required when a communication is authorized by a committee even if the committee does not pay for it (e.g., “Paid for by the XYZ State Party Committee and authorized by Sheridan for Congress Committee”) or when another organization makes an express advocacy communication without the authorization of the candidate (e.g., “Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate’s committee.)

Federal disclaimers are required to be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. A printed disclaimer must be contained within a printed box set apart from the contents of the communication.

Example:

Paid for by the Save the Seahorses Committee and authorized by the McKay for Senate Committee.

The print of the disclaimer must be of sufficient size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. Federal regulations specifically provide a safe harbor for disclaimers using black text in 12-point font on a white background in printed material measuring no more than 24 inches x 36 inches. In the alternative to a white background, a safe harbor is also available where the degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

Television communications have similar guidelines for a “clearly readable” disclaimer at the end of the communication that must be displayed for a period of at least four seconds at a height of at least four percent of the picture height. Radio communications must contain an audio disclaimer, although no specifications are given for an audio disclaimer other than the general “clear and conspicuous” disclaimer requirement.

F. Comparison with similar rules in adjacent states:

Minnesota (MINN. STAT. § 211B.04)

Minnesota law requires a committee to include a disclaimer on campaign literature distributed by the candidate or committee. The required form of the disclaimer is: “Prepared and paid for by the committee, (address).” If the material was produced and distributed without cost, the words “paid for by” may be omitted. The disclaimer requirement does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate. A disclaimer is also not required for bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed; skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

Minnesota recently revised this requirement effective June 1, 2018. The revised disclaimer requirement makes the following changes:

- The disclaimer address must be either the committee’s mailing address or the committee’s website, if the website includes the committee’s mailing address.
- Adds an independent expenditure disclaimer (e.g., “This is an independent expenditure prepared and paid for by(name of entity participating in the expenditure,(address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.”
- The disclaimer requirement is met for an entire website or social media page when the disclaimer required appears once on the homepage of the site.
- For written communications other than an outdoor sign, website, or social media page, the disclaimer must be printed in 8-point font or larger.

Illinois (10 ILCS 5/9-9.5)

Illinois law requires that any committee that makes an expenditure for any kind of communication directed at voters and mentioning the name of a candidate in the next upcoming election must ensure that the communication clearly identifies the committee as having paid for it. This applies to any committee that pays for any part of the advertisement, including its production and distribution. This disclosure is not required if the item is too small to contain it. The disclosure is also not required for telephone surveys that use random sampling or other scientific survey methods to gauge public opinion about a candidate or public policy question. Finally, this disclosure requirement does not apply to expenditures for preparation or distribution of any printed communication paid for by a political committee controlled by a member of the Illinois General Assembly, provided the communication is directed at constituents and is made in connection with the performance of governmental or public service functions. Vendors who produce political communications are required

to keep records of the name and address of the person who made or requested the purchase and the amount paid.

Michigan (MICH. COMP. LAWS § 169.247, MICH. ADMIN. CODE r. 169.36)

Michigan law requires candidates and committees to place an identification on printed material referring to an election, candidate, or ballot question (e.g., “Paid for by the CTE Joe Smith, 123 Winners Lane, Lansing Michigan 48933.”) If the printed material is an independent expenditure, the statement must also include a disclaimer (e.g., “Not authorized by any candidate committee.”) Free social media such as Facebook, Twitter, or emails do not require an identification or disclaimer. An individual, other than a candidate, acting independently and not acting as an agent or any candidate or committee, is not required to provide an identification for printed material, but still must include an identification for radio/tv ads, robo-calls, or other paid electronic media. Michigan also requires certain identifications for certain mass communications referencing a clearly identified candidate or ballot question within 30/60 days of a primary/general election when the communication is targeted to the relevant electoral district.

Identifications and disclaimers must be in a place and in a print clearly visible to and readable by an observer. No specific font size is required, but the identification and/or disclaimer should be separate from any text and Michigan’s elections website specifically provides the example that a billboard identifier should be visible from the road. Michigan also lists a host of items that are exempted from the identification requirement due to size or difficulty of placement (e.g., aerial banners, pens, etc.)

Iowa (IOWA CODE § 68A.405, IOWA ADMIN. CODE r. 351-4.38 *et seq.*)

Iowa law requires a “paid for by” attribution statement on printed or displayed material that expressly advocates for or against a clearly identified candidate or ballot issue. The attribution shall identify the person paying for the material by name and address. If the material is an independent expenditure the attribution shall include that the material was not authorized by any candidate, candidate’s committee, or ballot issue committee.

Iowa’s attribution requirement does not apply to:

- Editorials, news articles, or other print or electronic media that are not paid political advertisements.
- Small items upon which the inclusion of the statement is impracticable (e.g., pens, buttons, etc.)
- T-shirts, caps, and other articles of clothing.
- An individual who acts alone and spends less than \$100 of his or her own money to advocate the passage or defeat of a ballot issue.
- Any material subject to federal regulations regarding an attribution requirement

Television, video, or motion picture advertising is required to display the attribution statement on screen for at least four seconds. Multi-page material need only include the

attribution on a single page. For a website, the attribution need only appear on the home page of the site.

G. Summary of factual data and analytical methodologies: N/A

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:

David P. Buerger
David.Buerger@wisconsin.gov
(608) 267-0951

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 17, 2019. 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 (9) is amended to read:

ETH 1.20 (9) Any registrant who makes or receives an in-kind contribution shall report the contribution on ~~Schedule 3-C~~ of its campaign finance report.

SECTION 2. ETH 1.26 (2) is amended to read:

ETH 1.26 (2) The return of a contribution is not a disbursement ~~subject to the limitations on disbursements in s. 11.31, Stats.,~~ and it is not a contribution subject to the limitations on contributions in ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats.

SECTION 3. ETH 1.26 (6) is amended to read:

ETH 1.26 (6) A registrant who receives a return of contribution shall report it on the campaign finance report, ~~Form EB-2,~~ on Schedule 1-C, OTHER INCOME, and shall designate this as “return of contribution.”

SECTION 4. ETH 1.60 (1) (b) is amended to read:

ETH 1.60 (1) (b) An authorized expenditure for consulting services made by a candidate, candidate's committee, political action committee, or political party ~~committee~~ on behalf of another candidate shall be reported as an in-kind contribution to the candidate on whose behalf the expenditure was made, ~~except that expenditures made by political party committees on behalf of that party's presidential candidates shall not be reportable and shall not count against that party's state or local candidates' applicable contribution limits under ss. 11.1101, 11.1103, 11.1104, and 11.1105, Stats., and spending limits under s. 11.31 (2), Stats.,~~ except as provided in par. (c).

SECTION 5. ETH 1.70 (1) is amended to read:

ETH 1.70 (1) A candidate for or a person elected to a state or local office does not make an in-kind contribution to another candidate for a state or local office in another district when a candidate or election official travels to the district of the other candidate for political purposes. The candidate for or person elected to state or local office may be reimbursed from his or her ~~personal campaign candidate~~ committee ~~subject to the applicable spending limits of s. 11.31 (2), Stats., and s. ETH 1.44~~ and is deemed to provide nonreportable volunteer services to the candidate in the other district.

SECTION 6. ETH 1.855 (2) is amended to read:

ETH 1.855 (2) A contribution from a conduit account shall be in the form of a check or other negotiable instrument made out to the named candidate or to the candidate's ~~personal campaign~~ committee, or to a legislative campaign committee, political party ~~committee,~~ or support

~~committee under s. 11.18, Stats~~ political action committee. A conduit may not make an in-kind contribution as defined in s. ETH 1.20 (1) (e).

SECTION 7. ETH 1.96 is created to read:

ETH 1.96 Attribution requirements.

- (1) DEFINITIONS. In this section:
 - (a) “Readable” means able to be read easily.
 - (b) “Legible” means each individual letter or character is clearly printed so it can be easily understood.
 - (c) “Readily accessible” means capable of being seen without much difficulty.
- (2) SPECIFICATIONS FOR ALL ATTRIBUTIONS. All attributions required by s. 11.1303, Stats., in written communications shall be readable, legible, and readily accessible.
- (3) MATERIAL THAT DOES NOT NEED AN ATTRIBUTION. Communications that are contained in or on any of the following do not require attributions under s. 11.1303, Stats.:
 - (a) Bumper stickers.
 - (b) Business cards.
 - (c) Buttons.
 - (d) Clothing.
 - (e) Online ads and similar electronic communications where the language required could not conveniently be included, and that link directly to a website that includes the language required by s. 11.1303, Stats.
 - (f) Pencils.
 - (g) Pens.
 - (h) Pins.
 - (i) Skywriting.
 - (j) Tickets.

SECTION 8. 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.

**Notice of Submittal of Proposed Rule to
Legislative Council Rules Clearinghouse**

On April 9, 2019, the Ethics Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule amends parts of Chapter ETH 1 to reflect the changes made by the new campaign finance law created by 2015 Act 117. The proposed rule also creates a new provision that would clarify the attribution requirements of s. 11.1303, Stats.

Statement of Scope

The scope statement for this rule, SS 116-18, was approved by the Governor on November 15, 2018, published in Register No. 755A3, on November 19, 2018, and approved by the Ethics Commission on December 11, 2018.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 18, 2019.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Ethics Commission

Agency Contact Person

David P. Buerger
P.O. Box 7125
Madison, WI 53707-7125
David.Buerger@wisconsin.gov
(608) 267-0951

Notice of Hearing

The Wisconsin Ethics Commission announces that it will hold a public hearing on a permanent rule to amend WIS. ADMIN. CODE ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create WIS. ADMIN. CODE ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats.; at the time and place shown below.

Hearing Information

Date: June 18, 2019

Time: 9:00 A.M.

Location: 101 East Wilson Street, St. Croix Room, Madison, WI 53703

Appearances at the Hearing and Submittal of Written Comments

The proposed rule may be reviewed at <http://docs.legis.wisconsin.gov/code> and <https://ethics.wi.gov/Pages/Resources/StatutesAndRules.aspx>.

Written comments may be submitted to David Buerger, Staff Counsel, Wisconsin Ethics Commission, P.O. Box 7125, Madison, WI 53707-7125, or by email to eth.rulecomments@wi.gov. Written comments must be received no later than June 17, 2019 to be included in the record of rulemaking proceedings.

Individuals who wish to provide their comments in person at the hearing are encouraged to also submit a written copy of their testimony for inclusion in the record.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

ETH 1 – Campaign Financing

3. Subject

Amend Wis. Admin. Code ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

2015 Wisconsin Act 117 removed certain provisions of campaign finance law that are referenced in parts of WIS. ADMIN. CODE ETH 1. This rule will remove references to outdated forms and statutory provisions as well as create a provision clarifying the attribution requirements of s. 11.1303, Stats. The Commission also may exempt certain items and other communications to which s. 11.1303 (2) may not apply.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

N/A

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Commission finds that the proposed rule will have no economic impact on small businesses.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Promulgating the rule would remove outdated portions of Chapter ETH 1 and provide clarity as to the requirements for attributions for the regulated community. The alternative would be to not create such a rule, but instead continue to not enforce the outdated provisions and analyze attributions on a case-by-case basis. Such inaction could continue to promote confusion among the regulated community and may lead to inadequate attribution of political communications.

14. Long Range Implications of Implementing the Rule

Promulgating the rule would bring WIS. ADMIN. CODE ETH 1 fully up to date with the changes made by 2015 Act 117 and would provide long-term certainty as to what is required to comply with s. 11.1303, Stats.

15. Compare With Approaches Being Used by Federal Government

The Federal Elections Commission (FEC) provides a great deal of guidance as to the disclaimers required by federal law. Federal law requires the disclaimer to identify the person(s) who paid for a communication and whether the communication was authorized by one or more candidates (e.g., "Paid for by the Sheridan for Congress Committee.")

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Under federal law, any public communication made by a political committee – including communications that do not expressly advocate for the election or defeat of a clearly identified federal candidate or solicit a contribution – must display a disclaimer. The FEC also requires that disclaimers appear on political committee’s websites, and in certain email communications. All public communications that expressly advocate the election or defeat of a clearly identified candidate, electioneering communications, and all public communications that solicit any contribution require a disclaimer.

Disclaimers are not required when it cannot conveniently be printed (e.g., pens, buttons, similar small items), the display is not practical (e.g., apparel, water towers, skywriting), or when the item is of minimal value and does not contain a political message and is used for administrative purposes (e.g., a check). A disclaimer need not be on the front page of multi-page communications, as long as it is on one of the pages.

Similar to Wisconsin law, a disclaimer is also required when a communication is authorized by a committee even if the committee does not pay for it (e.g., “Paid for by the XYZ State Party Committee and authorized by Sheridan for Congress Committee”) or when another organization makes an express advocacy communication without the authorization of the candidate (e.g., “Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate’s committee.)

Federal disclaimers are required to be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. A printed disclaimer must be contained within a printed box set apart from the contents of the communication.

Example:

Paid for by the Save the Seahorses Committee and authorized by the
McKay for Senate Committee.

The print of the disclaimer must be of sufficient size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. Federal regulations specifically provide a safe harbor for disclaimers using black text in 12-point font on a white background in printed material measuring no more than 24 inches x 36 inches. In the alternative to a white background, a safe harbor is also available where the degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

Television communications have similar guidelines for a “clearly readable” disclaimer at the end of the communication that must be displayed for a period of at least four seconds at a height of at least four percent of the picture height. Radio communications must contain an audio disclaimer, although no specifications are given for an audio disclaimer other than the general “clear and conspicuous” disclaimer requirement.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota (MINN. STAT. § 211B.04)

Minnesota law requires a committee to include a disclaimer on campaign literature distributed by the candidate or committee. The required form of the disclaimer is: “Prepared and paid for by the committee, (address).” If the material was produced and distributed without cost, the words “paid for by” may be omitted. The disclaimer requirement does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate. A disclaimer is also not required for bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed; skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

Minnesota recently revised this requirement effective June 1, 2018. The revised disclaimer requirement makes the following changes:

- The disclaimer address must be either the committee’s mailing address or the committee’s website, if the website includes the committee’s mailing address.
- Adds an independent expenditure disclaimer (e.g., “This is an independent expenditure prepared and paid for by(name of entity participating in the expenditure,(address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.”
- The disclaimer requirement is met for an entire website or social media page when the disclaimer required appears once on the homepage of the site.
- For written communications other than an outdoor sign, website, or social media page, the disclaimer must be printed in 8-point font or larger.

Illinois (10 ILCS 5/9-9.5)

Illinois law requires that any committee that makes an expenditure for any kind of communication directed at voters and mentioning the name of a candidate in the next upcoming election must ensure that the communication clearly identifies the committee as having paid for it. This applies to any committee that pays for any part of the advertisement, including its production and distribution. This disclosure is not required if the item is too small to contain it. The disclosure is also not required for telephone surveys that use random sampling or other scientific survey methods to gauge public opinion about a candidate or public policy question. Finally, this disclosure requirement does not apply to expenditures for preparation or distribution of any printed communication paid for by a political committee controlled by a member of the Illinois General Assembly, provided the communication is directed at constituents and is made in connection with the performance of governmental or public service functions. Vendors who produce political communications are required to keep records of the name and address of the person who made or requested the purchase and the amount paid.

Michigan (MICH. COMP. LAWS § 169.247, MICH. ADMIN. CODE r. 169.36)

Michigan law requires candidates and committees to place an identification on printed material referring to an election, candidate, or ballot question (e.g., “Paid for by the CTE Joe Smith, 123 Winners Lane, Lansing Michigan 48933.”) If the printed material is an independent expenditure, the statement must also include a disclaimer (e.g., “Not authorized by any candidate committee.”) Free social media such as Facebook, Twitter, or emails do not require an identification or disclaimer. An individual, other than a candidate, acting independently

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

and not acting as an agent or any candidate or committee, is not required to provide an identification for printed material, but still must include an identification for radio/tv ads, robo-calls, or other paid electronic media. Michigan also requires certain identifications for certain mass communications referencing a clearly identified candidate or ballot question within 30/60 days of a primary/general election when the communication is targeted to the relevant electoral district.

Identifications and disclaimers must be in a place and in a print clearly visible to and readable by an observer. No specific font size is required, but the identification and/or disclaimer should be separate from any text and Michigan's elections website specifically provides the example that a billboard identifier should be visible from the road. Michigan also lists a host of items that are exempted from the identification requirement due to size or difficulty of placement (e.g., aerial banners, pens, etc.)

Iowa (IOWA CODE § 68A.405, IOWA ADMIN. CODE r. 351-4.38 *et seq.*)

Iowa law requires a "paid for by" attribution statement on printed or displayed material that expressly advocates for or against a clearly identified candidate or ballot issue. The attribution shall identify the person paying for the material by name and address. If the material is an independent expenditure the attribution shall include that the material was not authorized by any candidate, candidate's committee, or ballot issue committee.

Iowa's attribution requirement does not apply to:

- Editorials, news articles, or other print or electronic media that are not paid political advertisements.
- Small items upon which the inclusion of the statement is impracticable (e.g., pens, buttons, etc.)
- T-shirts, caps, and other articles of clothing.
- An individual who acts alone and spends less than \$100 of his or her own money to advocate the passage or defeat of a ballot issue.
- Any material subject to federal regulations regarding an attribution requirement

Television, video, or motion picture advertising is required to display the attribution statement on screen for at least four seconds. Multi-page material need only include the attribution on a single page. For a website, the attribution need only appear on the home page of the site.

17. Contact Name

David P. Buerger

18. Contact Phone Number

(608) 267-0951

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **19-035**

AN ORDER to amend ETH 1.20 (9), 1.26 (2) and (6), 1.60 (1) (b), 1.70 (1) and 1.855 (2); and to create ETH 1.96, relating to campaign finance.

Submitted by **ETHICS COMMISSION**

04-10-2019 RECEIVED BY LEGISLATIVE COUNCIL.

05-01-2019 REPORT SENT TO AGENCY.

SG:KBO

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 19-035

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

4. Adequacy of References to Related Statutes, Rules and Forms

The entire chapter being amended, ETH 1, should be checked to ensure consistency of terms used in the rules with the terms used in current ch. 11, Stats. For example, ch. ETH 1 refers to “political party committee” and “candidate’s personal campaign committee”, while ch. 11, Stats., uses the defined terms “political party” and “candidate committee”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 7 of the proposed rule, s. ETH 1.96 (2) provides that “all attributions required by s. 11.1303, Stats., shall be readable, legible, and readily accessible”. The rule should specify that only attributions in *written* communications must be readable, legible and readily accessible, consistent with s. 11.1303 (2) (g), Stats., because the requirement is not applicable to certain communications such as radio ads.

b. In SECTION 7 of the proposed rule, s. ETH 1.96 (3) (intro.) is missing the word “of,” and should read “Communications that are contained in or on any of the following...”.

c. In SECTION 7 of the proposed rule, s. ETH 1.96 (3) (e) exempts from attribution requirements online ads and similar electronic communications where the required language cannot conveniently be “printed”, but which link to a website containing the required attribution language. Is the term “printed” appropriate for referring to language on online and electronic communications? Would it be more accurate to use “appear”, “contain”, or another verb?



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
101 E. Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the June 18, 2019 Meeting
TO: Members, Wisconsin Ethics Commission
FROM: Colette Greve, Ethics Specialist
SUBJECT: Standard Settlement Schedule Review

FOR COMMISSION ACTION

If, after today's review and discussion of the standard settlement schedule, the Commission wishes to make changes to any of the schedules, the Commission may direct staff to begin revising the schedules per today's discussion.

At the Commission meeting on April 9, 2019, the Commissioners directed staff to conduct a review of the standard settlement schedules. The schedules were developed pursuant to [WIS. STAT. § 19.49\(1\)\(b\)](#), which grants the Commission authority to settle violations of the statutes that it administers, and [WIS. STAT. § 19.49\(2\)\(b\)10.](#), which provides that the Commission shall by rule set forth categories of civil offenses which the Commission will settle without formal investigation upon payment of specified amounts.

The current standard settlement schedules, except for two new lobbying schedules, were adopted by the Commission at the meeting on August 23, 2016. These schedules were codified in [WIS. ADMIN. CODE ETH 26](#) and became effective on February 1, 2018. Currently, there are twelve standard settlement schedules for campaign finance, all of which are codified in [WIS. ADMIN. CODE ETH 26.02](#). Two of these standard schedules have not been used by the Commission as of this date. They are related to late contribution or 72-hour reporting and express advocacy reporting. The Commission does not have audits developed for these types of reporting at this time. There are two lobbying standard settlement schedules codified in [WIS. ADMIN. CODE ETH 26.03](#). In addition to the lobbying settlement schedules that are codified, the Commission approved two additional standard settlement schedules in 2018. If the Commission intends to continue to use these two additional schedules, it may wish to direct staff to begin the process of adding these schedules to the administrative rule by drafting a scope statement. There is one standard settlement schedule for ethics related to the Statement of Economic Interests filings codified in [WIS. ADMIN. CODE ETH 26.04](#). The schedules are attached to this memorandum.

Campaign Finance

1. **Failure to Timely File Campaign Finance Reports, [WIS. ADMIN. CODE ETH 26.02\(1\) and \(2\)](#).** – There are two separate standard schedules for late campaign finance reports. One schedule is for continuing reports and the other is for election-related reports. For continuing reports that are filed within 30 days of the due date, a written warning is issued, for both first

time violations and subsequent violations. After 30 days, the standard settlement of \$100.00 is issued for the first late report violation and \$200.00 for any subsequent late report violation. For every 30 days after the first thirty days, the standard settlement increases by \$100.00 until the maximum of \$500.00 for a report that is over 120 days late. For election-related reports, monetary settlements may be issued for a report that is only 1 day late. An election-related report that is filed 1 day late may result in a \$100.00 settlement, and each day the settlement increases by \$50.00, until day 9 when the maximum settlement of \$500.00 is reached.

Settlements for late campaign finance reports are issued the most frequently of all settlements. Most settlements are non-monetary warnings for filing continuing reports within 30 days of the deadline. The Commission has issued 263 late campaign finance settlements since adopting the standard schedule. Over half of the settlements issued were non-monetary warnings for filing within 30 days of the deadline. Only 5 committees have been issued the maximum \$500.00 settlement.

2. **Failure to Timely Pay a Filing Fee, [WIS. ADMIN. CODE ETH 26.02\(3\)](#)** – The standard settlement schedule for late payment of filing fees coincides with the [WIS. STAT. § 11.1400\(4\)](#), which provides that any person that fails to pay the fee within the time prescribed shall forfeit \$500.00 plus treble the amount of the fee payable by that person. The settlement for a filing fee that is paid within 15 days of the due date is a written warning. For filing fees paid between 16-45 days late the standard settlement is \$300.00, for 46-90 days late the standard settlement is \$500.00, and for 91 or more days late the standard settlement is \$800.00. The Commission has issued 9 settlements for late filing fees, none of which have been the maximum of \$800.00.
3. **Cash Balance Discrepancies, [WIS. ADMIN. CODE ETH 26.02\(8\)](#)**. – The cash balance discrepancy standard settlement schedule sets forth a standard settlement amount of \$100 plus 10% of the discrepancy. The larger the discrepancy or discrepancies in the reports, the larger the settlement offer. When committees have not been able to resolve discrepancies, the Commission has started a practice of offering settlements of \$100 plus 30% of the discrepancies. If the Commission wishes to continue this practice, it may wish to direct staff to begin the process of adding this modification of the schedule to the administrative rule by drafting a scope statement. The Commission has issued 166 settlements for cash balance discrepancies. The highest settlement issued was \$3,212.34, which was for several discrepancies over multiple filing periods. The majority of settlements issued were under \$200.00.
4. **Failure to Provide Contribution or Disbursement Information, [WIS. ADMIN. CODE ETH 26.02\(6\) and \(7\)](#)**. – This standard settlement schedule is used for the anonymous and unitemized transaction audit. As with the cash balance standard settlement schedule, this schedule sets forth an amount of \$100 plus 10% of the transactions missing information. There have been 20 settlements issued after the anonymous and unitemized transactions audit under this settlement schedule, and 2 settlements issued under this schedule related to an investigation. The highest settlement issued for anonymous and unitemized transactions was \$852.63 for a reported unitemized transaction of \$7,536.25. Settlements have ranged from \$852.63 to \$148.50.

5. **Exceeding Contribution Limits, [WIS. ADMIN. CODE ETH 26.02\(9\)](#).** – The standard settlement for receiving excess contributions is the amount by which the contribution exceeded the applicable limit. At the August 2016 meeting, when the standard settlement schedules were adopted, this schedule included enforcement for the contributor. The standard adopted for the contributor was, if the receiving committee forfeited the full amount of the contribution, there would not be a settlement for the contributor, but if the receiving committee did not forfeit the contribution, it would be handled on a case-by-case basis. This was not included in the administrative rule and the Commission has not yet enforced contribution limits by this means. The Commission has issued 13 settlements under this schedule. The highest settlement issued for exceeding contributions limits was \$3,075.00, for 5 contributions that exceeded the limit.
6. **Prohibited Corporate, Union, Association, or Tribal Contributions, [WIS. ADMIN. CODE ETH 26.02\(10\)](#).** – The standard settlement for the receiving committee is 1.5 times the amount of the contribution, up to a maximum of \$500.00 and surrendering the amount of the unlawful contribution. [WIS. ADMIN. CODE ETH 26.02\(10\)](#) also provides for enforcement against the contributor of 1.5 times the amount of the contribution, but the Commission has not yet enforced against the contributor. The Commission has only issued 2 settlements as the result of committees accepting corporate, union, association, or tribal contributions, the highest being \$3,500.00.
7. **Prohibited Lobbyist Contributions, [WIS. ADMIN. CODE ETH 26.02\(11\)](#).** – The standard settlement for making prohibited lobbyist contributions is 1.5 times the amount of the contribution, up to \$1,000.00, for the lobbyist. For the receiving candidate committee, the standard settlement is requiring that the contribution be returned to the lobbyist. The Commission has only enforced this against the lobbyist, and the settlement agreements issued to the lobbyist include a requirement to have the contribution returned to themselves. The Commission has issued 43 settlements for prohibited lobbyist contributions. The highest settlement that has been issued is \$1,725.00, which was for 5 contributions to different candidate committees.

Lobbying

1. **Failure to Timely File a Statement of Lobbying Activity and Expenditures, [WIS. ADMIN. CODE ETH 26.03\(1\)](#).** – This standard settlement schedule is for the late filing of the principal's semi-annual lobbying report. These types of settlements are issued to the principal. The monetary forfeiture increases with the number of days late and is higher for principals that have a second or greater offense. The Commission has issued 30 settlements for late semi-annual reports, the majority of the settlements have been non-monetary warnings. The largest settlement that the Commission issued was \$2,500.00 for multiple late semi-annual reports starting in the 2011-2012 session through the 2015-2016 session.
2. **Failure to File a 15-Day Report, [WIS. ADMIN. CODE ETH 26.03\(2\)](#).** – This standard settlement schedule is for late filing of periodic lobbying communication reports. Principals are required to report each initial lobbying communication for interests in legislative proposals, budget bills, administrative action, or topics. Each interest is assigned a percentage at the end of the 6-month lobbying reporting period. The standard settlement is based on the number of

past occurrences for late 15-day reports and percentage of total effort per interest/report. The Commission has issued 64 settlements for late 15-day reports. The highest settlement issued was \$400.00 for 4 late reports all greater than 10% of the principal's total effort.

3. **Unauthorized Lobbying** – This standard settlement schedule is not part of WIS. ADMIN. CODE ETH 26. It was developed in 2017, and the Commission only began issuing settlements under this schedule at the December 5, 2018, Commission meeting. A lobbyist must obtain authorization before lobbying on behalf of a principal. This standard settlement may be issued to the lobbyist and the principal if they engage in lobbying prior to obtaining authorization. The Commission has issued 8 settlements for unauthorized lobbying. The highest settlement issued is \$1,000.00.
4. **Late Payment of Lobbying Fees** – This settlement schedule is not part of WIS. ADMIN. CODE ETH 26. It was developed in 2017, and the Commission only began issuing settlements under this schedule at the December 5, 2018, Commission meeting. Lobbyists are responsible for payment of licensing fees, and principals must pay fees when they register and authorize a lobbyist. The amount of the settlement under this schedule increases every 15 days. If a fee is paid within the first 15 days there is no monetary settlement, only a warning. The settlement amount for the principal is double that of a lobbyist. The Commission has issued 45 settlements for late payment of fees. The highest settlement issued was \$200.00.

One issue that staff has identified with this audit and this standard settlement schedule is the “grace period” for non-monetary settlements being set at 15 days. There were many lobbyists and principals that responded stating that 15 days is often a difficult time frame for the fees to be paid, if they are being paid by check, due to the processes for obtaining checks from the principals or lobbyists and their employers. For example, in practice, a lobbyist often applies for their license, registers their principal, and authorizes themselves to lobby on the principal's behalf on the lobbying system all at the same time. This will then generate fees and the lobbyist may need to submit a request for the payment to be made by their employer or principal that could have to go through various personnel and steps in order to be paid. If the payment is made by check, it then must go through the mail and be received by the Commission. For some principals and employers, this has taken longer than 15 days, even when lobbyist or principal employee who is licensing and registering online submits a request for a check to be processed the same day that they complete the online licensing and registering. In addition to this, most of the licenses and registrations are completed in December, when holidays may interfere with business and the mail.

Ethics

1. **Failure to Timely File a Statement of Economic Interests, [WIS. ADMIN. CODE ETH 26.04](#)** – This standard settlement schedule is for Statement of Economic Interests (“SEI”) that are filed late. If a SEI is filed within 15 days of the due date a written warning will be issued. If the SEI is filed 16 or more days late, the standard settlement is \$100.00, plus \$100.00 for every additional 15 days late. The Commission has issued 12 settlements for late filing of SEIs. The highest settlement offer was \$400.00 and the remaining were all for \$100.00.

Campaign Finance Standard Settlement Schedules

Late Filing of Continuing Campaign Finance Reports

(Calendar) Days Late:	First Violation:	Second or Greater Violation:
0-30	Warning	Warning
31-60	\$100	\$200
61-90	\$200	\$300
91-120	\$300	\$400
Over 120	\$500	\$500

Late Filing of Pre-Primary, Pre-Election, and Special Post-Election Reports

(Business) Days Late:	Settlement Amount:
1	\$100
2	\$150
3	\$200
4	\$250
5	\$300
6	\$350
7	\$400
8	\$450
9	\$500

Late Payment of Annual Filing Fees

(Calendar) Days Late:	Settlement Amount:
1-15	Warning
16-45	\$300
46-90	\$500
91 or more	\$800

Cash Balance Discrepancies

Calendar Days Late:	Settlement Amount:
Up to 30 days from staff contact	Warning
31+ days from staff contact	\$100 plus 10% of discrepancy

Incomplete Contribution Information

Calendar Days Late:	Settlement Amount:
Up to 30 days from staff contact	Warning
31+ days from staff contact	\$100 plus 10 percent of contributions with incomplete information

Incomplete Distribution Information

Calendar Days Late:	Settlement Amount:
Up to 30 days from staff contact	Warning
31+ days from staff contact	\$100 plus 10 percent of disbursements with incomplete information

Exceeding Contributions Limits

Violation Type:	Settlement Amount:
Receiving Excess Contribution	Amount of excess contribution
Furnishing Excess Contribution	If receiving committee forfeits full amount of excess contribution, \$0; else, case-by-case basis

Prohibited Corporate Contributions

Violation Type:	Settlement Amount:
Receiving Committee	1.5 times amount of contribution
Corporate Contributor	1.5 times amount of contribution

Prohibited Lobbyist Contributions

Violation Type:	Settlement Amount:
Receiving Committee	Return of the contribution to the lobbyist
Lobbyist Contributor	1.5 times amount of contribution, up to \$1,000

Lobbying Standard Settlement Schedules

Unauthorized Lobbying

	First Session of Unauthorized Lobbying	Subsequent Session of Unauthorized Lobbying	Aggregate Total Maximum
Lobbyist	\$100 per excess communication	\$200 per excess communication	\$1,000 per principal
Principal	\$200 per excess communication	\$400 per excess communication	\$2,000 per lobbyist

Late Payment of Lobbying Fees

Days Late	Lobbyist	Principal
1-15	Warning	Warning
16-30	\$100	\$200
31-45	\$200	\$400
46+	\$300	\$600

Late filing of semi-annual lobbying report (§13.68) – maximum penalty \$5,000.

Days Late	First Offense	Second or Greater Offense
2 business days	No penalty	Warning

3-5 days	Warning	\$50
6-15 days	Warning	\$100
16-29 days	\$50	\$250
30+ days	\$100	\$500

Late reporting of the first communication on a lobbying matter.

Late Reports	Percent of Total Effort	Forfeiture
1st Occurrence of Late Reported Interest	< 10 percent	Warning
1st Occurrence of Late Reported Interest	>= 10 percent	\$25 Per Interest
2 nd Occurrence of Late Reported Interest	< 10 percent	\$50 Per Interest
2 nd Occurrence of Late Reported Interest	>= 10 percent	\$100 Per Interest
3 rd or Greater Occurrence of Late Reported Interest	Any	\$100 Per Interest

Ethics Standard Settlement Schedule

Late Filing of Statement of Economic Interest

Type of Official	Days Late	Result
Candidate	0+	N/A – Candidate denied ballot placement
Other Official	0-15	Warning
Other Official	16+	\$100 plus \$100 every 15 days
Other Official	30	Compensation temporarily withheld per § 19.43(7)



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
101 E. Wilson Street | Suite 127 | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

DATE: For the June 18, 2019 Meeting
TO: Members, Ethics Commission
FROM: Ethics Commission Staff
SUBJECT: Ethics Commission Staff Report

Attorney General Opinion Requests

The Commission has two pending requests for Attorney General Opinions. Staff of the Department of Justice appeared at the Commission meeting on March 5, 2019. At that appearance, the Department's staff advised that the Commission submit more focused opinion requests. Staff at the Department of Justice followed up with Commission staff via email to see if a determination has been made about how to proceed. Staff is currently considering whether changes that are in the Commission's legislative package will affect the need for responses to the pending questions. Staff will bring this matter up for the Commission's consideration at the next Commission meeting on August 20, 2019.

Prosecution of Violations

At the meeting on April 9, 2019, the Commission requested staff to contact the Department of Justice to determine whether the Department would prosecute violations of the laws within the Commission's jurisdiction when the Commission had extended a settlement offer and no agreement had been reached to resolve the alleged violations. The Administrator and Legal Counsel met with staff of the Department to discuss these issues. Staff of the Department indicated that a more concrete plan needed to be developed which would include criteria for the types of referrals the Commission would make to the Department. Once this plan is developed, the Department's staff will seek to obtain approval to represent the Commission in these matters. The Commission's staff will be reviewing outstanding settlement offers and preparing a memo for the Commission to consider that would establish criteria for referrals, address the process for referrals, and discuss other alternatives.

Commission Legislative Package

Since its inception, the Commission had adopted approximately 30 recommended legislative changes. Staff has worked with the Legislative Reference Bureau to prepare a draft and informational materials. At the Commission's last meeting, the Commission recommended two additional legislative recommendations. Staff has been working on language to address those recommendations and is, as of the time of this writing, preparing to submit a redraft request to finalize the draft. Staff does not expect any significant movement on the draft until after the Legislature concludes its work on the budget. In the meantime, staff is continuing to seek input from appropriate stakeholders.

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Tamara Packard | Pat Strachota | Timothy Van Akkeren

Administrator
Daniel A. Carlton, Jr.

Commission Administration

2019-21 Biennial Budget

The Governor's budget proposal was released on February 28, 2019. The Governor's proposed budget contains all standard budget adjustments and decision items that Commission included in its Agency Budget Request. On May 9, 2019, The Joint Committee on Finance ("Committee") met and considered a motion concerning the Ethics Commission's per diem decision item. That motion gave the Committee the option to provide \$1,600 to cover the full costs of per diem for 4 meetings, as requested by the Commission; \$2,400 to cover the costs of per diem for 5 Commission meetings; or to provide no additional funding for the Commission's per diem costs. The Committee voted to include the additional \$1,600 for per diems in the budget bill that was requested by the Commission. Currently, the budget bill funds the Commission consistent with its request. Staff continues to monitor the budget process.

Procurement and Fiscal Year End

Commission staff are preparing for the new fiscal year, which begins on July 1, 2019. As part of that process, staff will close out purchase orders, complete expense reports, and finalize all payments and deposits for fiscal year 2019. Staff will then officially close out the fiscal year by August 6, 2019. The new fiscal year requires new purchase orders for standard items such as the copy machine, a contractor, and maintenance of the CFIS system.

IT Systems Update

- Commission Servers – Staff has determined that the Commission's servers need to be upgraded, as Microsoft is discontinuing software support of the current versions. This will substantially alleviate some of the load issues that are occurring near deadlines. These upgrades should occur before the new lobbying website is ready to launch. Staff have received quotes for the software, and plan to upgrade the servers at the beginning of the fiscal year (July 1, 2019).
- Campaign Finance – Staff are proceeding with replacement of CFIS. At the August 21, 2018, commission meeting, the Commission directed staff to begin exploring the possibility of redeveloping the campaign finance system through custom development and utilization of existing software from the State of Massachusetts. At the September 14, 2018, Commission meeting, the Commission authorized staff to work with the Department of Administration's Division of Enterprise Technology to do a preliminary review of the Massachusetts code, to verify the quality of the code, confirm that it provides the required security, and is adaptable to the needs and requirements of the Commission and state statutes.

Staff have begun meeting with DET to discuss the code review and plan for the development of a new system based on the code we have received. Massachusetts went live with a code update in December 2018 and provided the documentation in April 2019. In addition to the code documentation, our contacts in Massachusetts have provided staff with testing credentials for the website, so staff is able to learn how the system works. DET is drafting a project plan for staff to review. This project plan will be submitted to the DOA IT Governance Steering Committee. After their review and approval, DET will set up the code in a testing environment

for Commission staff to evaluate the quality and test the business requirements of the system. The DET staff so far believe that their team is capable of working with the code, as the system requirements align with our system requirements and their skills and knowledge.

- Lobbying – Our work with the Web and Mobile Solutions (WaMS) team through DoIT (Department of Information Technology) at the University of Wisconsin—Madison to modernize the Eye on Lobbying website will continue at the beginning of the new fiscal year. Staff is currently working to define the detailed scope of each phase of the project and is excited to resume work to complete the project.
- Statements of Economic Interests –The candidate filing screens for the SEI website are partially complete and have been installed in the testing environment. Electronic filing for candidates will be available by December 2019 for the Spring 2020 election period.

Campaign Finance

Special Pre-Election Report

The Special Pre-Election reports were due April 22, 2019. There were 3 candidates for the Special Election in the 64th Assembly District required to file. All 3 candidates filed the report on time.

Future Campaign Finance Reports

The following reports will be required in the next three months:

- Special Post-Election Report Due: 6/14/2019
- July Continuing 2019 Due: 7/15/2019

Audits

Staff is finishing a cash balance discrepancy audit covering activity from the Fall Pre-Election 2018 to the January Continuing 2019 reports. The initial discrepancy notification was sent to committees for 118 reports with a discrepancy of more than \$100 either within a reporting period or from the end of one reporting period to the beginning of the next period. After 30 days to amend the reports and make corrections, there are less than 20 reports that still appear to have a discrepancy.

Committees are required to report contributor address information and provide occupation information for some contributions. While our predecessors did audit for such information, this Commission has not audited for occupation and address information. Staff has begun to review whether address and occupation information was properly reported for 2018 transactions. This is not done as an audit for enforcement purposes, rather it was done to determine whether the need exists to resume such auditing and to determine whether our processes need to be updated before doing so. Once staff has analyzed the data and processes used, staff will prepare a memo for the Commission concerning implementation of these audits.

Lobbying

2019-2020 Legislative Session

As of June 4, 2019, there are 714 lobbying principals registered, 591 lobbyists licensed, and 1,481 lobbyist authorizations.

Statutes require each lobbying principal to submit a Statement of Lobbying Activities and Expenditures (SLAE) twice a year. The next deadline is July 31, 2019, which will cover activity from January 1 – June 30, 2019. 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.

Legislative Liaison Reporting

The next legislative liaison report is due July 31, 2019.

Code of Ethics and Financial Disclosure

Design of a new SEI system

Kavita is working on adding functionality so candidates will be able to file SEIs online beginning with the 2020 Spring Election.

Statements of Economic Interests

The deadline for annual filing of SEIs is April 30, 2019. Departing officials that serve even one day in 2019 must file a 2019 SEI, and officials that start service, or begin a new term of office, must file within 21 days.

As of June 4th, there are 2,634 total filers required to file an SEI for 2019. There were 2,012 annual filers required to file an SEI by 4/30/2019. All but 129 filed by April 30th, and all but 14 filed by May 15th. Only one filer has not filed as of June 4th.

State of Wisconsin Investment Board Quarterly Reports

First quarter reports were all received on time and referred to the Legislative Audit Bureau. The next batch of quarterly reports will be due by July 31st, covering April 1st through June 30th.