

# NOTICE OF OPEN AND CLOSED MEETING

## Wisconsin Ethics Commission

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

Wednesday, June 15, 2022, 9:00 a.m.

### Open Session Agenda

- A. Call to Order
- B. Report of Appropriate Meeting Notice – Administrator
- C. Introduction of New Commissioner
- D. Approval of Minutes of Prior Meetings Page 3
  - 1. Open Session Minutes for Meeting on February 16, 2022
- E. Personal Appearances
- F. Election of New Chair and Vice Chair
- G. Administrative Rule Update and Consideration of Draft Page 5  
Complaint and Advice Rule
- H. Staff Report Page 35
- I. Consideration of Future Agenda Items
- J. Closed Session
  - 1. Requests for Advice
  - 2. Complaints and Investigations
  - 3. Personnel Matters
- K. Adjourn

#### Future Ethics Commission Meetings Scheduled:

- Tuesday, August 30, 2022, at 9:00 AM
- Tuesday, October 18, 2022, at 9:00 AM
- Tuesday, December 13, 2022, 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  
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## Wisconsin Ethics Commission

101 East Wilson Street, St. Croix Room  
Madison, Wisconsin  
February 16, 2022  
9:00 a.m.

### Open Session Minutes

Present: Awais Khaleel, Pat Strachota (Phone/Virtual), Shauntay Nelson, Timothy Van Akkeren, and Andrew D Weininger.

Staff Present: Daniel Carlton, David Buerger, Colette Greve, Sathya Sivaji, Richard Bohringer, Harry Broderick, Adam Harvell and Matthew Sorensen.

#### **A. Call to Order**

Commission Chair Awais Khaleel called the meeting to order at 9:03 a.m. A quorum was present. Chair Khaleel welcomed Commissioner Andrew Weininger and asked him to introduce himself. Commissioner Weininger introduced himself.

#### **B. Report of Appropriate Meeting Notice – Administrator**

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

#### **C. Approval of Minutes of Prior Meetings**

##### **1. Open Session Minutes for Meeting on December 14, 2021**

**MOTION:** To approve the minutes. Moved by Commissioner Van Akkeren, seconded by Vice Chair Strachota. Motion carried unanimously.

#### **D. Personal Appearances**

There were no personal appearances.

#### **E. Adoption of Formal Opinion 2022 ETH 01**

Assistant Administrator Colette Greve presented the memo on page 7 of the meeting materials.

**MOTION:** To adopt the formal opinion as drafted. Moved by Commissioner Van Akkeren, seconded by Commissioner Nelson. Motion carried unanimously.

**F. Staff Report**

Administrator Daniel Carlton presented the Staff Report on page 17 of the meeting materials. New Ethics Specialist Matthew Sorensen was introduced to the Commission.

**G. Reconsideration of June 2022 Commission Meeting Date**

**MOTION:** Change June Commission meeting to June 15,2022. Moved by Commissioner Nelson, seconded by Commissioner Van Akkeren. Motion carried unanimously.

**H. Consideration of Future Agenda Items**

The Commission did not discuss any future agenda items.

**I. Closed Session**

**MOTION:** To go into closed session to discuss requests for advice, complaints, investigations, and litigation. Moved by Commissioner Nelson seconded by Commissioner Van Akkeren. Motion carried unanimously.

- 1. Requests for Advice**
- 2. Complaints and Investigations**

**J. Adjourn**

**MOTION:** To adjourn the meeting. Moved by Commissioner Van Akkeren, seconded by Commissioner Nelson. Motion carried unanimously. Meeting adjourned at 2:19 P.M.

February 16, 2022, Wisconsin Ethics Commission meeting minutes prepared by:

\_\_\_\_\_  
Sathya Sivaji, Office Management Specialist                      June 15, 2022

February 16, 2022, Wisconsin Ethics Commission meeting minutes certified by:

\_\_\_\_\_  
Pat Strachota, Vice Chair    June 15, 2022



# 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 Commission Meeting on June 15, 2022  
**TO:** Members, Wisconsin Ethics Commission  
**FROM:** David Buerger, Staff Counsel  
**SUBJECT:** Administrative Rules Update

## FOR COMMISSION ACTION

1. For ETH 21 – Practice and Procedure, does the Commission approve of the draft rule and associated documents and direct staff to submit them to the Legislative Council Rules Clearinghouse?

### I. Chapter ETH 21 – Practice and Procedure

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

Commission staff has now drafted a proposed rule and associated documents (see attached). The proposed rule largely incorporates the Commission’s existing complaint process. However, it also adds several new provisions. Please see the below highlights of the proposed rule:

1. Page Limits – ETH 21.03(1)(intro) & ETH 21.05(intro)

Commission staff commonly receive voluminous complaints and responses that take significant amounts of time to review. Oftentimes, the bulk of the material submitted is not relevant or pertains to allegations beyond the Commission’s jurisdiction. The proposed rule would impose a 10-page limit, including any attachments, on complaints and responses. A complainant or respondent may exceed this limit with approval from the Administrator. Imposing a page limit would encourage complainants and respondents to narrow their submissions to just those allegations that would be within the Commission’s jurisdiction, while also providing for situations where longer complaints or responses may be appropriate.

*Wisconsin Ethics Commissioners*

(Vacant) | Shauntay Nelson | Pat Strachota | Timothy Van Akkeren | David Wambach | Andrew Weinger

*Administrator*

Daniel A. Carlton, Jr.

2. Separate Complaints for Each Respondent – ETH 21.03(1)(b)

If a complaint against multiple respondents is not well-organized as to the allegations against each respondent, it can lead to confusion by the respondents about which allegations pertain to each. Obviously, it is preferable for the complainant to specify the allegations that pertain to each respondent. As each respondent is also entitled to submit their own response to the allegations of the complaint, and the deadline to do so is based on the date the respondent received the complaint notice, Commission staff commonly create separate complaint files for each respondent. The proposed rule would require a complainant to file separate complaints against each respondent. The Commission would still retain the authority to consolidate separate complaints when appropriate.

3. Citation to Legal Authority – ETH 21.03(1)(d) & ETH 21.05(3)

Both complainants and respondents have, at times, indicated their positions were supported by legal authority without providing a clear citation to the underlying statute, rule, advisory opinion, or case. The proposed rule would require that if a complainant or respondent relies upon any legal authority in their complaint or response, they must provide a citation for that authority, with relevant page and paragraph pinpoint citation as appropriate. They must also include a public domain cite, if available.

4. Notice of Representation – ETH 21.03(1)(g) & ETH 21.05(5)

One of the exceptions to the Commission’s otherwise strict complaint confidentiality requirements is for communications with the attorney of a party to a complaint. *See* [WIS. STAT. § 19.50\(2\)\(c\)](#). However, there is currently no process to identify when an individual is the attorney or person authorized to communicate with the Commission regarding a complaint. The proposed rule would require an attorney or authorized person to include a notice of representation with the complaint or response that includes the name and address of the attorney or other authorized person.

5. Preliminary Review of Complaints – ETH 21.02(12), ETH 21.03(2) and (3), and ETH 21.04(1)(b) and (2)(c)

The Commission’s existing complaint procedures already provide that the Administrator shall review submitted complaints to ensure that they meet statutory requirements and allege a violation within the jurisdiction of the Commission. The proposed rule further clarifies this process, defines “sufficient allegations,” and provides an explicit notice to both complainants and respondents, if appropriate, when Commission staff find the complaint or a portion of the complaint to be insufficient or outside the Commission’s jurisdiction. It also codifies the Commission staff’s practice of notifying the Commission of these insufficient complaints.

#### 6. Response Deadline Extensions – ETH 21.04(2)(a) and (b)

Wisconsin law does not impose a response deadline on the respondent per se, but instead prohibits the Commission from voting on whether to take action regarding a complaint (except to dismiss a complaint) until fifteen days after the respondent receives notice of the complaint. See [WIS. STAT. § 19.49\(2\)\(b\)1](#). The proposed rule establishes that the Administrator shall notify the respondent that they have fifteen calendar days from receiving the complaint notice to submit a written response. The proposed rule would also provide that an extension of the deadline to file a written response may be granted by the administrator for good cause shown.

#### 7. Case Number Included with Response – ETH 21.05(1)

In addition to the above changes that would apply to both the complaint and response, the proposed rule imposes one further requirement on respondents. The response must include the case number assigned by Commission staff. This requirement is to address situations where multiple complaints have been filed against a single respondent and Commission staff may receive multiple responses from a single person.

#### 8. Preliminary Requests for Information – ETH 21.06

At times, the Commission has been presented with complaints or responses that do not provide relevant information and the Commission has been put in a position where it must either authorize an investigation to obtain the missing information or decide the matter based on limited information. The proposed rule would address two common situations where this situation arises: complaints against local candidates and attribution complaints. It would also generally provide that Commission staff can request public records and other publicly available information. If the Commission wished, it could choose to limit this last option to situations where such a request is directed by the Commission. Permitting preliminary requests for information by Commission staff would help avoid unnecessary investigations and give the Commission more information upon which to base its decisions.

#### 9. Exercises of Prosecutorial Discretion – ETH 21.09

The Commission's established complaint procedures already provide that the Commission may close a matter at any time. The proposed rule would codify this option and clarify that any such closure or termination of a complaint or investigation due to an exercise of prosecutorial discretion results in the dismissal of the complaint with a notice to each party.

#### 10. Requests for Written Advice – ETH 21.30

This provision is the only provision in the current ETH 21 and reflects the Commission's delegation of authority to the Administrator to issue informal advisory opinions. The Commission's conditions on that authority were that: (1) the request for an opinion be

received in writing, (2) the informal opinion be provided in writing, and (3) the response be consistent with all applicable statutes, opinion precedent, and case law.

The proposed rule would repeal and recreate this provision to retain these three conditions, but also expand on the process. It would specify that the Administrator would determine if a given request could be answered by existing statute, opinion precedent, or case law. If so, the Administrator could issue an informal opinion. If not, the request would be presented to the Commission. It also codifies the Commission staff's practice of providing a notice with the opinion as to the requirements of [WIS. STAT. § 19.46\(2\)\(a\)4](#). The proposed rule would also require a request for a public or private hearing on a formal opinion to be received no later than 21 calendar days before the requested hearing. It also provides that Commission staff may request additional information necessary to issue either a formal or informal opinion. Finally, it also codifies the Commission's practice of permitting a requestor to voluntarily waive their confidentiality so that Commission staff can share the opinion they received or other records as authorized by the requestor.

If the Commission initially approves of the draft rule language, Commission staff will submit the proposed rule and associated documents to the Legislative Council Rules Clearinghouse and schedule a public hearing for the Commission's next meeting on August 30, 2022. After the receipt of the Legislative Council's report, the public hearing, and consideration of the report and any public comments, the Commission could give its final approval to submit the proposed rule to the Governor for final approval before it is transmitted to the Legislature.

Pursuant to [WIS. STAT. § 227.135\(5\)](#), a statement of scope expires 30 months after the date on which it is published in the Wisconsin Administrative Register. The scope statement for this rule was published on May 18, 2020. As such, it will expire on November 18, 2022. Commission staff anticipate that if the Commission is able to conduct the public hearing at its meeting on August 30, 2022, there should be sufficient time for the Governor's office to approve the rule and have it submitted to the Legislature before the scope statement would expire.

## **II. Chapter ETH 26 – Settlement Offer Schedule**

At its meeting on February 23, 2021, the Commission directed staff to begin the rulemaking process to revise ETH 26 to codify its practice of making a reduced settlement offer to committees whose late reports reflected no activity during the reporting period or who requested termination. The existing rule already permits the Commission to consider mitigating circumstances in determining the terms of any settlement offer that may be extended.

Staff had originally anticipated working this revision into a larger review and revision of the settlement schedule. However, no review or revision to ETH 26 was conducted in 2021. If the Commission wants to review and revise its settlement schedule this year for potential implementation in 2023, Commission staff can prepare a scope statement for the August meeting that includes both this revision as well as a broader review of the entire



settlement schedule. Alternatively, if the Commission does not want to review and revise its full settlement schedule, Commission staff can prepare a scope statement for the August meeting that would only address this specific revision.

**III. Attachments**

- A. ETH 21 – Draft Rulemaking Order
- B. ETH 21 – Draft Fiscal Estimate and Economic Impact Analysis
- C. ETH 21 – Draft Notice of Hearing
- D. ETH 21 – Draft Notice of Submittal of Proposed Rule to Rules Clearinghouse

SS# 041-20, Wisconsin Administrative Register No. 773A4, 06/22/2020

WISCONSIN ETHICS COMMISSION  
**Proposed Rule Making Order**

**INTRODUCTORY CLAUSE**

The Wisconsin Ethics Commission proposes an order to repeal and recreate ETH 21.30; and to create ETH 21.02, 21.03, 21.04, 21.05, 21.06, 21.07, 21.08, 21.09, and 21.10, relating to the processes for complaints and requests for advice.

**RULE SUMMARY**

- A. **Statutes interpreted:** ss. 19.46(2) and 19.49(2), Stats.
- B. **Statutory authority:** The Commission has general authority for the promulgation of rules to carry out the requirements of Chapters 11, 13, and 19.

s. 11.1304(17), Stats.:

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

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.

- C. **Explanation of agency authority:** The Wisconsin Ethics Commission is charged with investigating violations of the laws it administers under s. 19.49(2)(a), Stats. It is also required to review requests for an advisory opinion under s. 19.46(2)(a)1., Stats. Pursuant to the above grants of authority, the Commission is empowered to promulgate rules to promote the orderly administration of these processes.

- D. **Related statute(s) or rule(s):** ss. ETH 1.96 and ETH 6.03.

- E. **Plain language analysis:** The proposed rule would clarify and further establish the procedures to be followed to submit a complaint to the Wisconsin Ethics Commission under s. 19.49 (2) (b), Stats. It would also clarify the procedures to be followed to request either a formal or informal opinion of the Commission pursuant to s. 19.46 (2), Stats.
- F. **Summary of, and comparison with, existing or proposed federal regulations:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.
- G. **Comparison with similar rules in adjacent states:**

### **Illinois**

Complaints regarding campaign finance shall be filed in writing [10 ILCS5/9-20(1)]. Minimum requirements for a verified complaint include the name of the candidate or chairman or treasurer of a political committee against whom the complaint is directed [10 ILCS5/9-20(2)], the statutory provisions which are alleged to have been violated [10 ILCS5/9-20(3)], and the time, place, and nature of the alleged offense [10 ILCS5/9-20(4)]. The complaint shall be verified, dated, and signed by the person filing the complaint [10 ILCS5/9-20(4)]. Verified complaints received by the Secretary of State are processed in the following manner: a copy of the complaint is served by the Board of Elections to the complainant and respondent, and a closed preliminary hearing, with reasonable notice, is held to provide an opportunity for the complainant and respondent to testify at the hearing, and the Board determines if the complaint appears to have been filed on justifiable grounds [10 ILCS5/9-21]. The Board may dismiss the complaint if the Board fails to determine that the complaint was filed on justifiable grounds [10 ILCS5/9-21]. The parties to the complaint may dispose of the complaint by written stipulation, agreed settlement, or consent order [10 ILCS5/9-21]. The Board shall render its final judgement within 60 days of the date the complaint is filed, except that during the 60 days preceding the date of the election in reference in which the complaint is filed, the Board shall render its final judgement within 7 days of the date the complaint is filed, and during the 7 days preceding such election, the Board shall render such judgement before the date of such election, if possible [10 ILCS5/9-21]. The Board of Elections shall establish and maintain on its official website a searchable database, accessible to the public, of each complaint filed with the Board with respect to which Board action was taken, and the database must be updated within 5 business days after an action is taken or penalty is imposed [10 ILCS5/9-23.5].

Complaints regarding suspected violations of the Illinois Governmental Ethics Act (5 ILCS 420) are authorized under 5 ILCS 420/25-45, 5 ILCS 420/25-50, and the Operational Rules of the Illinois Legislative Ethics Commission R1-1 et. seq. A standard case initiation form is authorized under R17-5 and available to the public on the Illinois Office of the Legislative Inspector General webpage. Complainants shall file complaints with the Office of the Legislative Inspector. Minimum requirements for a complete case initiation form include the name of the employee or officer who is alleged to have committed a violation [R17-10(a)], the identity of the state agency that employs the employee or officer [R17-10(b)], the name, address, and telephone number of the complainant [R17-10(c)], the date and time of the

alleged violation [R17-10(d)], a description of the facts and circumstances that surrounded the alleged violation [R17-10(e)], the names of any other person who witnessed or participated in the alleged violation [R17-10(f)], an address to which the completed case initiation form may be mailed [R17-10(g)], a statement of the confidentiality of the identity of the complainant [R17-10(h)], a statement that the Legislative Inspector General's investigatory files and reports are confidential and exempt from disclosure under the Freedom of Information Act [R17-10(i)], a statement that allegations, pleadings, and related documents are exempt from disclosure under the Freedom of Information Act so long as the Commission does not make a finding of a violation [R17-10(j)], a statement that penalties may be imposed for intentionally making a false report alleging a violation [R17-10(k)], and any other information that the Legislative Inspector General reasonably requires [R17-10(l)]. Upon receipt of a completed case initiation form, the Legislative Inspector General shall create an investigation file [R17-15(a)] and commence an investigation with advance notice to the Commission [R17-25]. Only the Legislative Inspector General may bring actions before the Legislative Ethics Commission [5 ILCS 420/25-45(a)]. Cases before the Commission are commenced by the filing of a petition for leave to file a complaint with the Commission [R20-15(a)], with the Legislative Inspector General designated as the petitioner and the person alleged to have violated the act designated as the respondent [R20-15(b)]. Complaints must be filed with the Commission within 18 months after the most recent act of the alleged violation except where there is reasonable cause to believe that fraudulent concealment has occurred [5 ILCS 420/25-50(c)]. A respondent may file objections to the petition within 30 days after notice of the petition has been served on the respondent [5 ILCS 420/25-50(c-10)(e)] [R20-30]. Within 60 days after the time for a respondent to file an objection to the petition has expired, the Commission shall meet to review the sufficiency of the petition [R20-35(a)]. If the petition is sufficient, the Commission shall notify the parties by certified mail and schedule a hearing within 4 weeks after the date of the notice [5 ILCS 420/25-50(f)] [R20-35(b)]. All hearings are closed to the public [5 ILCS 420/25-50(g)] [R20-55(b)]. Within 60 days after the hearing, the Commission shall enter a decision [5 ILCS 420/25-50(h)] [R20-60(a)]. The decision shall include a description of the alleged misconduct, the decision of the Commission, including any fines levied and any recommendations of discipline, and the reasoning for that decision [R20-60(b)]. All decisions shall be sent to the parties, including the Legislative Inspector General, the ultimate jurisdictional authority, the head of the appropriate state agency, and the Attorney General [R20-60(d)]. Within 30 days after the issuance of a final decision that concludes that a violation occurred, the Commission shall make public the entire record of proceedings before the Commission, the decision, any recommendation, any discipline imposed, and the response from the agency head or ultimate jurisdictional authority to the Legislative Ethics Commission [5 ILCS 420/25-50(l)].

## **Iowa**

Complaints regarding suspected violations of the Iowa Campaign Disclosure Act (Iowa Code § 68A) and the Iowa Government Ethics and Lobbying Act (Iowa Code § 68B) are authorized under Iowa Code § 68B.32B and Iowa Administrative Code 351-9.1 et seq. A standard complaint form is authorized under Iowa Code § 68B.32B(1) and Iowa Administrative Code 351-9.1(1), and available to the public on the Iowa Ethics and

Campaign Disclosure Board webpage. Minimum requirements for a valid complaint include name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge [Iowa Code § 68B.32B(1)]. Submitted complaints received by Board are processed in the following manner. Board staff shall determine if the complaint is sufficient and refer the complaint for legal review [Iowa Code § 68B.32B(2)]. If Board staff determine that the complaint is insufficient, then the complaint is returned to the complainant with a statement of deficiency and description of cure [Iowa Code § 68B.32B(2)]. If legal counsel determines that the complaint contains a legally sufficient allegation, then the complaint is deemed accepted [Iowa Administrative Code 351-9.1(2)]. If legal counsel and the Board determine that the complaint does not contain a legally sufficient allegation, then the complaint is dismissed [Iowa Code § 68B.32B(6)] [Iowa Administrative Code 351-9.1(2)]. Legal sufficiency of a complaint is determined by facts that would establish a violation of a provision of statute or rule [Iowa Code § 68B.32B(4)(a)], facts that would establish that the conduct providing the basis for the complaint occurred within 3 years of the complaint [Iowa Code § 68B.32B(4)(b)], and facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board [Iowa Code § 68B.32B(4)(c)]. The Board provides a copy of the accepted complaint to the respondent within 3 working days of the acceptance determination [Iowa Code § 68B.32B(3)]. Legally sufficient complaints are referred to Board staff for investigation of probable cause [Iowa Code § 68B.32B(6)] [Iowa Administrative Code 351-9.2(1)]. Complete investigations with probable cause determination are reported to the Board for action [Iowa Code § 68B.32B(8)] [Iowa Administrative Code 351-9.2(4)]. The Board may redirect the matter for further investigation [Iowa Administrative Code 351-9.2(5)(a)], dismiss the matter for lack of probable cause to believe a violation has occurred [Iowa Administrative Code 351-9.2(5)(b)], dismiss the matter without determination regarding probable cause as an exercise of administrative discretion [Iowa Administrative Code 351-9.2(5)(c)], make a determination that probable cause exists to believe a violation has occurred and direct administrative resolution of the matter [Iowa Administrative Code 351-9.2(5)(d)], or make a determination that probable cause exists to believe a violation has occurred and direct the issuance of a statement of charges to initiate a contested case proceeding [Iowa Administrative Code 351-9.2(5)(e)]. If the Board determines that probable cause exists to believe that a violation of any statute or rule under its jurisdiction has occurred, except for a late-filed disclosure report, the Board may order administrative resolution of the violation by imposing a civil penalty not to exceed \$500 [Iowa Administrative Code 351-9.4(7)]. At any stage during the investigation or after the initiation of a contested case proceeding, the Board may approve a settlement regarding an alleged violation [Iowa Administrative Code 351-9.2(10)]. The entire record of any contested case proceeding initiated by the Board shall be a public record [Iowa Code § 68B.32B(11)].

## **Michigan**

Complaints regarding suspected violations of the Michigan Campaign Finance Act (Act 388 of 1976) are authorized under MCL § 169.215 Section 15 and the Michigan Department of State Elections Division Campaign Financing Administrative Rules R169.51, R169.52,

R169.53, R169.54, R169.55, and R169.56. A standard complaint form is authorized under MCL § 169.215 Section 15(7) and available to the public on the Elections Division Campaign Finance webpage. Complainants may file typewritten or handwritten complaints [R169.52(1)] with the Secretary of State in person or by mail [R169.51]. Minimum requirements for a valid complaint include the complainant's signature [MCL § 169.215 Section 15(6)(a)], the complainant's name, address, and telephone number [MCL § 169.215 Section 15(6)(b)], the complainant's certification that any factual contention is or is not supported by evidence [MCL § 169.215 Section 15(6)(c)], the name and address of the alleged violator, a description in reasonable detail of the alleged violation, and an identification of all available evidentiary material [R169.52(2)]. Complainants who file a complaint with a false certification are responsible for a civil violation [MCL § 169.215 Section 15(8)] and may incur penalties that include payment to the Secretary of State some or all of the expenses incurred as a result of the complaint filing [MCL § 169.215 Section 15(16)(a)] or payment to the respondent some or all of the expenses, including reasonable attorney fees, incurred as a result of the complaint filing [MCL § 169.215 Section 15(16)(b)]. Incomplete, illegible, indefinite, or unsigned complaints may be summarily dismissed, and the complainant notified of dismissal in writing as to the reason for dismissal [R169.53]. Valid complaints received by the Secretary of State are processed in the following manner. Respondents are given notice of the complaint, including a copy of the complaint, within 5 business days. Respondents are given 15 business days to submit a response to the complaint, with an additional 15 business days extension granted for good cause. Complainants are provided the respondent's complaint response and provided 10 business days from the date of response mailing to submit a rebuttal statement, with an additional 10 business days extension granted for good cause. Respondents are provided with the complainant's rebuttal statement [MCL § 169.215 Section 15(5)]. The Secretary of State is obliged to communicate to a respondent that a complaint has been made alleging possible violation of the act or rules [R169.54(a)], the specifics of the alleged violation [R169.54(b)], the identity of the complainant [R169.54(c)], and the provision of rules relative to complaints and investigations [R169.54(d)]. No later than 45 business days following receipt of a rebuttal statement, or if no rebuttal statement is received, the Secretary of State shall post on the Secretary's website whether there may be reason to believe that a violation of the act or rule occurred [MCL § 169.215 Section 15(10)]. The Secretary of State may conduct a preliminary review of an alleged violation to determine if there may be reason to believe that a violation of the act or rule has occurred [R169.55(1)]. The Secretary of State may commence, with notice given, a hearing to determine whether a violation of the act or rule has occurred [MCL § 169.215 Section 15(10)] [R169.55(3)(a)], attempt to correct the violation by conference, conciliation, or persuasion [MCL § 169.215 Section 15(10)] [R169.55(3)(b)] [R169.56(2)], or dismiss the allegation with notice given to complainant and respondent [R169.55(2)] [R169.56(1)]. If a conciliation agreement is signed, the Secretary of State is obliged to post the agreement on the Secretary's website within 30 days [MCL § 169.215 Section 15(10)]. Within 30 days of determination that a violation of the act or rule has occurred, the Secretary of State shall post on the Secretary's website any complaint, response, rebuttal statement, and any correspondence between the Secretary of State and the complainant or respondent [MCL § 169.215 Section 15(10)]. If the Secretary of State determines that a violation of the act or rule has occurred, the respondent may be assessed a civil fine not more than triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation



[MCL § 169.215 Section 15(11)]. The Secretary of State may refer the matter to the attorney general for enforcement of a criminal penalty [MCL § 169.215 Section 15(13)] [R169.56(3)].

Complaints regarding suspected violations of the Michigan Standards of Conduct for Public Officers and Employees Act (Act 196 of 1973) are authorized under MCL § 15.345 Section 5 and the Michigan State Board of Ethics Administrative Rules R15.1, R15.1a, R15.2, R15.3, R15.4, R15.5, R15.6, R15.7, R15.8, R15.9, R15.10. A standard complaint form is authorized under MCL § 15.346 Section 6, R15.1a, and R15.5 and available to the public on the State Board of Ethics webpage. Complainants shall file complaints in writing [R15.5(2)(a)] with the Executive Secretary at the Board of Ethics office [R15.5(2)(f)]. Minimum requirements for a valid complaint include the specification of one or more standards of prohibited conduct outlined in section 2 of the Act [MCL § 15.342 Section 2], include evidentiary facts supporting the complaint allegations [R15.5(2)(c)], contain a statement that the complainant or designee has read the complaint and believes the alleged violations to be true [R15.5(2)(d)], and contain the signature of the complainant or designee before a notary [R15.5(2)(e)]. Complaints may be dismissed if the Board of Ethics lacks jurisdiction over the person subject to the complaint [R15.5(11)(a)], if the Board lacks jurisdiction over the subject matter [R15.5(11)(b)], if the complainant lacks the legal capacity to file the complaint [R15.5(11)(c)], if the complainant is barred because of release, prior judgement, or other disposition of the claim before the complaint was filed [R15.5(11)(d)], if the complaint on its face fails to state a claim of unethical conduct [R15.5(11)(e)], if one or more complaints regarding the same matter are pending [R15.5(4)(a)], or if the Board previously addressed the subject matter [R15.5(4)(b)]. Valid complaints received by the Board of Ethics are processed in the following manner. Respondents are promptly served a copy of the complaint [R15.5(5)]. Respondents are given 21 calendar days to file an answer to the complaint with the Executive Secretary, with additional time granted for good cause [R15.5(6)]. A copy of the respondent's answer is served to the complainant [R15.5(6)]. Complainants and respondents are given 21 calendar days before the date of the Board meeting scheduled to address the complaint to file any additional written information [R15.5(8)]. Opposing parties are given 14 days before the date of the Board meeting to file responses to the additional written material [R15.5(8)]. Upon expiration of the time provided for all submissions, the Board is presented with all materials for its consideration [R15.5(9)]. The Board may schedule a hearing [R15.5(13)] [R15.8] and the complainant and respondent shall have an opportunity to address the Board to address the complaint [R15.5(10)]. The complainant and respondent have the right to be represented at the hearing by legal counsel [R15.5(10)]. The Board shall issue a complaint decision and transmit copies of the decision to the complainant, respondent, and other persons as the Board directs [R15.5(14)]. The Board shall publish its decisions and opinions, including dissents, and make them available for the public at its office, on its website, and in the appropriate state agencies [R15.5(19)(1)].

Advisory opinions relating to matters affecting the ethical conduct of a public officer or employee are authorized under MCL § 15.345 Section 5(1)(e) and R15.6. Requests for advisory opinion must be made in writing and filed at the Board of Ethics office with the Executive Secretary [R15.6(1)]. The Board may dismiss a request for an advisory opinion if one or more requests regarding the same matter are pending [R15.6(3)(a)] or if the Board previously addressed the subject matter [R15.6(3)(b)]. The Board shall schedule a meeting to

address the advisory opinion and shall afford the person requesting the opinion or the person subject to the request to speak at the meeting [R15.6(5)]. The Board may schedule a hearing to resolve the request for advisory opinion [R15.6(8)] or may issue an opinion without a hearing [R15.6(7)]. The Board may issue an advisory opinion decision if the Board lacks the jurisdiction over the person subject to the advisory opinion [R15.6(6)(a)], the Board lacks jurisdiction over the subject matter [R15.6(6)(b)], the person asserting the claim lacks the legal capacity to file the request for an advisory opinion [R15.6(6)(c)], the request for advisory opinion is barred because of release, prior judgement, or other disposition of the claim [R15.6(6)(d)], or if the request for advisory opinion on its face fails to delineate any unethical conduct [R15.6(6)(e)]. The Executive Secretary shall transmit copies of the Board's order to the party filing the request, the person subject to the request, and other persons as the board directs [R15.6(9)].

## **Minnesota**

Complaints regarding suspected violations of the Minnesota Campaign Finance and Public Disclosure law (Minnesota Statute § 10A) and Minnesota Fair Campaign Practices law (Minnesota Statute § 211B) are authorized under Minnesota Statute § 10A.022(3), Minnesota Statute § 211B.32(1), and Minnesota Campaign Finance and Public Disclosure Board Administrative Rule R4525.0200. A standard complaint form is authorized under R4525.0200(2) and available to the public on the Minnesota Campaign Finance and Public Disclosure Board webpage. Complaints must be submitted in writing [R4525.0200(2)] to the Board [R4525.0200(1)]. Complaints regarding a violation of Minnesota Fair Campaign Practices law must be filed within one year after the occurrence of the act or failure to act unless the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during the one-year period [Minnesota Statute § 211B.32(2)]. Minimum requirements for a complete complaint include the name and address of the person making the complaint, the name and address of the alleged violator, a description of the complainant's knowledge of the violation, any evidentiary material supporting the complaint, and the signature of the complainant or an individual authorized to act on behalf of the complainant [R4525.0200(2)]. Complaints alleging a violation of Minnesota Statute § 211B.32 must be made under oath [Minnesota Statute § 211B.32(3)]. Complaints alleging a violation of Minnesota Statute § 211B.32 must be accompanied by a \$50 filing fee [Minnesota Statute § 211B.32(5)] which may be refunded to a complainant who prevails on the merits of the complaint [Minnesota Statute § 211B.32(5)(c)]. Valid complaints received by the Board are processed in the following manner. Upon receipt of a written complaint, the Board promptly makes a determination whether the complaint alleges a prima facie violation [Minnesota Statute § 10A.022(3)(3)(c)] [Minnesota Statute § 211B.33(2)]. A complaint is dismissed if it does not allege a prima facie violation and the complainant is notified and given opportunity to cure [Minnesota Statute § 10A.022(3)(3)(c)]. The Board determines within 45 days whether probable cause exists to believe the alleged prima facie violation warrants a formal investigation [Minnesota Statute § 10A.022(3)(3)(d)]. The respondent is given an opportunity to answer the complaint allegations and appear, with sufficient notice [Minnesota Statute § 10A.022(3)(3)(4)], before the Board to address the complaint [Minnesota Statute § 10A.022(3)(3)(e)][R4525.0200(6)]. Complaints under staff review may result in a determination of no violation [Minnesota Statute § 10A.022(3)(3)(3b)] or resolved



by conciliation agreement [Minnesota Statute § 10A.022(3)(3)(3a)]. Complaints not dismissed or resolved by conciliation agreement are submitted to the Board for final determination [Minnesota Statute § 10A.022(3)(3)(3d)]. The Board’s final determination must be issued at the conclusion of the investigation or within 60 days after the probable cause determination if the complaint alleges a violation of Minnesota Statute § 10A.25 or Minnesota Statute § 10A.27 [Minnesota Statute § 10A.022(3)(3)(e)]. Complaints alleging a violation of Minnesota Statute § 211B.33 may require an expedited probable cause hearing if the complaint was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates [Minnesota Statute § 211B.33(2)(b)]. A hearing before the Board or action concerning a complaint or investigation other than findings, conclusions, and orders or a conciliation agreement is confidential [Minnesota Statute § 10A.022(5)] [R.425.0200(5)]. Complaint matters before the Board may result in a criminal offense and may be prosecuted by a city or county attorney [Minnesota Statute § 10A.022(7)].

Advisory opinions may be requested from the Minnesota Campaign Finance and Public Disclosure Board by or on behalf of an individual or association who wish to use the opinion to guide the individual’s or the association’s own conduct. Requests for an advisory opinion must be made in writing and must be received at least 3 weeks before a Board meeting. Unless the requester consents to the publication of the requester’s identity, the request and the opinion are non-public data.

**H. Summary of factual data and analytical methodologies:** Commission staff reviewed the complaint processes of other state agencies and other states’ agencies that administer and enforce campaign finance, lobbying, and ethics laws. Commission staff also reviewed the processes by which an individual could request an advisory opinion of other states’ agencies that provide for such a process.

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

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

**K. Agency contact person:**

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

**L. 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 August 29, 2022. 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**

SECTION 1. ETH 21.02 is created to read:

**ETH 21.02 Definitions.** As used in this chapter:

- (1) “Administrator” means an individual appointed by the commission pursuant to s. 15.62 (1) (b), Stats. or, upon delegation by the administrator, the assistant administrator or staff counsel.
- (2) “Assistant administrator” means an individual appointed by the administrator to serve as assistant administrator pursuant to s. 19.47 (2), Stats.
- (3) “Commission” means the Wisconsin Ethics Commission.
- (4) “Complainant” means a person filing a complaint with the commission under s. 19.49 (2) (b), Stats.
- (5) “Formal opinion” means an advisory opinion issued by the commission under s. 19.46 (2) (c), Stats.
- (6) “Informal opinion” means an advisory opinion issued by the commission, or by the administrator, assistant administrator, or staff counsel, as authorized by the commission, pursuant to s. 19.46 (2) (a) and (b), Stats.
- (7) “Local registrant” means an individual or organization registered with a filing officer other than the commission.
- (8) “Probable cause” means the facts, circumstances, and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.
- (9) “Reasonable suspicion” means specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant further investigation.
- (10) “Respondent” means a person alleged to have committed a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, by a complainant.
- (11) “Staff counsel” means an employee of the commission designated by the administrator to serve as legal counsel of the commission pursuant to s. 19.47 (2), Stats.
- (12) “Sufficient allegations” means allegations of fact and reasonable inferences drawn from those allegations that, if proven, would satisfy each element of the applicable law.

SECTION 2. ETH 21.03 is created to read:

**ETH 21.03 Receipt and preliminary review of complaints.**

- (1) COMPLAINT FORM AND CONTENTS. A complaint shall be filed in writing. The complaint, together with all attachments shall not exceed 10 pages without prior approval of the administrator. A complaint shall include all of the following:
  - (a) The full name and address of the complainant.
  - (b) The full name and address of the respondent against whom the complaint is filed. If multiple persons are alleged to have committed a violation, a complainant shall file a separate complaint for each respondent.

- (c) A concise statement of the facts supporting each alleged violation that differentiates between statements based on personal knowledge and those based on information and belief. Statements not based on personal knowledge shall identify the source of the information.
  - (d) Citation to any legal authority which the complainant relies on in support of their complaint. Citations to cases shall include a public domain cite, if available. Citations shall also include page or paragraph numbers, if appropriate.
  - (e) Any relevant documentation supporting the allegations, if available.
  - (f) The notarized signature of the complainant, the complainant's attorney, or other authorized person filing the complaint on behalf of the complainant.
  - (g) If a complaint is filed by an attorney or other authorized person on behalf of the complainant, the attorney or other authorized person shall include a notice of representation that includes the name and address of the attorney or other authorized person.
- (2) PRELIMINARY REVIEW. The administrator shall conduct a preliminary review of each complaint filed with the commission and shall dismiss a complaint or the relevant portion of a complaint if it does not comply with sub. (1) or if:
- (a) The complainant does not file the complaint within the time period specified by s. 19.49 (2) (f), Stats.
  - (b) The commission does not have jurisdiction over the violation alleged.
  - (c) The complaint does not contain sufficient allegations.
- (3) The administrator shall inform the commission of each complaint that was dismissed under sub. (2) since its last meeting.

SECTION 3. ETH 21.04 is created to read:

**ETH 21.04 Acknowledgement and notice of complaints.** After preliminary review of a complaint under s. ETH 21.03 (2), the administrator shall:

- (1) Send a written notice to the complainant within 5 calendar days of receipt of the complaint that provides the following:
- (a) An acknowledgement that the commission received the complaint.
  - (b) A notice if the complaint or any portion of the complaint was dismissed under s. ETH 21.03 (2).
    1. If the complaint or any portion of the complaint was dismissed for failure to comply with the requirements of s. ETH 21.03 (1), the notice shall include an explanation of the relevant requirements and inform the complainant that the complainant may re-file the complaint once it conforms to the requirements of s. ETH 21.03 (1).
    2. If the complaint or any portion of the complaint was dismissed pursuant to s. ETH 21.03 (2) (a), the notice shall indicate the relevant deadline to file the complaint, if known.
    3. If the complaint or any portion of the complaint was dismissed pursuant to s. ETH 21.03 (2) (b), the notice shall inform the complainant of the governmental agency with jurisdiction over the matter, if known.
    4. If the complaint or any portion of the complaint was dismissed pursuant to s. ETH 21.03 (2) (c), the notice shall specify what additional allegations would be required to satisfy each element of the applicable law, if known.
- (2) If the complaint was not dismissed, send a written notice to the respondent within 5 calendar days of receipt of the complaint that provides the following:

- (a) A statement that the respondent has 15 calendar days from receipt of the notice to submit a written response demonstrating to the commission that the commission should take no action against the respondent on the basis of the complaint.
- (b) A notice that an extension of the deadline to file a written response may be granted by the administrator for good cause shown.
- (c) If any portion of the complaint was dismissed upon preliminary review under s. ETH 21.03 (2), a statement describing which allegations have been dismissed.
- (d) A copy of the complaint.

SECTION 4. ETH 21.05 is created to read:

**ETH 21.05 Response form and contents.** A response to a complaint, if any, shall be filed in writing. The response, together with all attachments shall not exceed 10 pages without prior approval of the administrator. A response, if any, shall include all of the following:

- (1) The case number assigned to the case.
- (2) A concise statement of the facts supporting the respondent's response to each alleged violation that differentiates between statements based on personal knowledge and those based on information and belief. Statements not based on personal knowledge shall identify the source of the information.
- (3) Citation to any legal authority which the respondent relies on in support of their response. Citations to cases shall include a public domain cite, if available. Citations shall also include page or paragraph numbers, if appropriate.
- (4) Any relevant documentation supporting the response, if available.
- (5) If a response is filed by an attorney or other authorized person on behalf of the respondent, the attorney or other authorized person shall include a notice of representation that includes the name and address of the attorney or other authorized person.

SECTION 5. ETH 21.06 is created to read:

**ETH 21.06 Preliminary requests for information.** Before a determination of reasonable suspicion, the administrator may request:

- (1) If the complaint alleges a violation by any local registrant, a copy of the campaign registration statement and any campaign finance reports filed by the local registrant.
- (2) If the complaint alleges a violation of s. 11.1303, Stats., any information or documentation related to the specifications provided in s. ETH 1.96.
- (3) Any public records or other publicly available information.

SECTION 6. ETH 21.07 is created to read:

**ETH 21.07 Determination of reasonable suspicion.**

- (1) In making its determination as to whether reasonable suspicion of a violation exists, the commission may consider the complaint, the response, information provided upon request under s. ETH 21.06, publicly available information, and the analysis and recommendations of commission staff.

(2) If the commission finds no reasonable suspicion or fails to find there is reasonable suspicion that a violation has occurred or is occurring, the commission shall dismiss the complaint and the parties shall be notified pursuant to s. ETH 21.10.

(3) If the commission finds reasonable suspicion that a violation has occurred or is occurring, the commission may do any of the following:

- (a) Authorize an investigation by resolution. The resolution shall specifically set forth any matter that is authorized to be investigated.
- (b) Issue a written warning.
- (c) Extend a settlement offer.

SECTION 7. ETH 21.08 is created to read:

**ETH 21.08 Determination of probable cause.**

(1) At the conclusion of its investigation, the commission shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation has occurred or is occurring.

(2) In making its determination as to whether probable cause of a violation exists, the commission may consider the complaint, the response, information provided upon request pursuant to s. ETH 21.06, publicly available information, information obtained pursuant to an investigation, and the analysis and recommendations of commission staff.

(3) If the commission finds that no probable cause exists, it shall dismiss the complaint and the parties shall be notified pursuant to s. ETH 21.10.

(4) If the commission finds that there is probable cause to believe that a violation has occurred or is occurring, the commission may do any of the following:

- (a) Authorize the administrator to file a civil complaint against the alleged violator.
- (b) Issue a written warning.
- (c) Extend a settlement offer.
- (d) Refer the matter to one of the following:
  - 1. To the district attorney for the county in which the alleged violator resides.
  - 2. If the alleged violator is a nonresident, to the district attorney for the county where the matter arises.
  - 3. If the alleged violator is a district attorney, a circuit court judge, or a candidate for either such office, to the attorney general.

SECTION 8. ETH 21.09 is created to read:

**ETH 21.09 Exercises of prosecutorial discretion.** Pursuant to the authority granted in s. 19.49

(2) (b) 4., Stats., the commission may vote to terminate a complaint or investigation at any time notwithstanding a finding of reasonable suspicion or probable cause that a violation has occurred or is occurring. If a complaint or investigation is terminated, it is deemed to be dismissed by the commission and the parties shall be notified pursuant to s. ETH 21.10.

SECTION 9. ETH 21.10 is created to read:

**ETH 21.10 Notification of dismissal.** After a determination that either no reasonable suspicion or no probable cause of a violation exists, or where any complaint is deemed to be dismissed by

the commission, the administrator shall send a written notice to the complainant and respondent within 5 calendar days.

SECTION 10. ETH 21.30 is repealed and recreated to read:

**ETH 21.30 Requests for written advice.**

(1) GENERAL PROVISIONS.

(a) If a person requests in writing the commission's written advice regarding the propriety of a matter to which the person is or may become a party, the administrator may advise the person in writing.

(b) The written advice shall be consistent with all applicable formal advisory opinions issued by the commission, statute or other law, and case law as required by s. 19.46 (2) (b) 1., Stats. as well as the United States and Wisconsin constitutional law.

(c) Written advice prepared by the administrator has the full force and effect of written advice given by the ethics commission.

(2) REQUESTS FOR INFORMAL OPINIONS.

(a) If a person requests an informal opinion, the administrator shall determine whether the request can be answered by existing statute, opinion precedent, or case law.

1. If the request cannot be answered by existing statute, opinion precedent, or case law, the request shall be considered by the commission at its next regular meeting.

2. If the request can be answered by existing statute, opinion precedent, or case law, the administrator may issue an informal opinion on behalf of the commission.

a. Any such opinion shall include a notice to the requestor that the opinion shall be reported to the commission at its next regular meeting pursuant to s. 19.46 (2) (a) 4., Stats. The notice shall advise the requestor that if the commission disagrees with the opinion, the commission may withdraw the opinion, issue a revised opinion, or request an opinion from the attorney general. The notice shall also state that, if the opinion is withdrawn or revised, no person relying upon the withdrawn or revised opinion is exempted from prosecution under s. 19.46 (2) (a) 3., Stats. after withdrawal or revision. If the commission issues a revised opinion, the revised opinion provides exemption from civil or criminal prosecution under s. 19.46 (2) (a) 3., Stats.

b. Any such opinion shall be reported to the commission at its next regular meeting pursuant to s. 19.46 (2) (a) 4., Stats.

(b) The administrator, assistant administrator, or staff counsel may request any additional information from the requestor that is necessary to issue the opinion.

(3) REQUESTS FOR FORMAL OPINIONS.

(a) If a person requests a formal opinion or requests a review or modification of a previously issued formal opinion, the commission shall review the request and may issue a formal opinion.

(b) The administrator, assistant administrator, or staff counsel may request any additional information from the requestor that is necessary to issue the opinion.

(c) Any person requesting a formal opinion may request a public or private hearing before the commission to discuss the opinion pursuant to s. 19.46 (2) (b), Stats. Any such request for a hearing must be received no later than 21 calendar days prior to the requested hearing date. The commission shall grant any such request for a public or private hearing.

(4) VOLUNTARY WAIVER OF CONFIDENTIALITY. In addition to waiver by making an opinion public or purporting to make an opinion public as provided in s. 19.55 (4) (b), Stats., a person who receives an informal or formal opinion may voluntarily waive confidentiality of the request and any records obtained or prepared by the commission in connection with the request for an informal or formal opinion by submitting a statement in writing to the administrator that the person is waiving confidentiality. Any records obtained or prepared by the commission includes the opinion.

#### SECTION 11. 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.



## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original    Updated    Corrected

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2. Administrative Rule Chapter, Title and Number

ETH 21 – Practice and Procedure

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3. Subject

Procedure for requests for advice and complaints.

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4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

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5. Chapter 20, Stats. Appropriations Affected

N/A

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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

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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)

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

Yes    No

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9. Policy Problem Addressed by the Rule

The Commission proposes a rule to clarify the complaint and request for advisory opinion processes of WIS. STAT. §§ 19.46(2) and 19.49. These clarifications should reduce the number of unnecessary investigations and provide better information to the Commission when deciding complaints. This rule will also codify some existing practices regarding the handling of requests for advice that should streamline the process and allow for more transparency.

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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

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

N/A

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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.

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

Promulgating the rule would provide clarity as to the existing complaint and advisory opinion request processes. The proposed rule would also codify existing Commission practices and provide better transparency to the individuals involved. Finally, the proposed rule would likely reduce the number of unnecessary investigations.

The alternative would be to not create such a rule, but instead continue to rely on the Commission's established complaint and advisory opinion policies. Such inaction could lead to confusion among the individuals involved in these processes as to the process to be used as well as proper procedure. Lack of a rule may also result in more investigations being authorized, which may be time-consuming for both the persons investigated as well as Commission staff.

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14. Long Range Implications of Implementing the Rule

Promulgating the rule would permit the Commission to increase the transparency and efficiency of its complaint and advisory opinion processes.

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## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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#### 15. Compare With Approaches Being Used by Federal Government

Any person may file a complaint with the Federal Election Commission (“FEC”) if that person believes a violation of the federal election campaign laws or FEC regulations has occurred or is about to occur. The FEC reviews every complaint filed. If the FEC finds that a violation occurred, possible outcomes can range from a letter reiterating compliance obligations to a conciliation agreement, which may include a monetary civil penalty. All FEC enforcement matters are kept confidential until they are resolved.

Anyone may request an advisory opinion of the FEC, as long as the requestor is affected by the question he or she presents. A requestor cannot ask for an advisory opinion about someone else’s activities, hypothetical situations, or general questions of law. Advisory opinion requests must be in writing. The request must include a complete description of all facts relevant to the specific transaction or activity. Within ten days of receiving the request, the FEC’s Office of General Counsel must determine whether it qualifies as a complete advisory opinion request. A request does not qualify as a complete advisory opinion request if it:

- Asks a general question of interpretation.
- Asks about a hypothetical situation.
- Asks about the activities of someone other than the requestor.
- Asks about past activities that the requestor does not plan to continue in the future.
- Does not contain all of the factual information relevant to the activity that is the subject of the request.

If the request does not qualify as an advisory opinion request, the Office of General Counsel notifies the requestor of the specific deficiencies in the request. If the request qualifies as an advisory opinion request, it is assigned an AOR number and made public. The FEC accepts public comment on its pending advisory opinion requests. Before the meeting where the FEC is scheduled to consider an advisory opinion, the FEC will make public any draft answers to the advisory opinion request. Copies of these drafts are emailed to the requestor and made public. Draft advisory opinions are usually considered at FEC meetings, which are open to the public. Requestors or their counsel may appear before the FEC to answer questions at this open meeting. Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the FEC’s technical capabilities. The law generally requires the FEC to issue an advisory opinion within 60 days of receiving a complete advisory opinion request. But if the request is submitted by a federal candidate within 60 days before an election, and the request asks about a specific transaction or activity related to that election, then the FEC must respond within 20 days. In addition, the FEC has an informal practice through which it tries to respond to certain significant, time-sensitive requests within 30 days. The FEC issues an advisory opinion when four or more Commissioners vote to approve the draft advisory opinion before it. These votes almost always occur during an open meeting of the FEC. A requestor has the option to appear before the FEC at the open session where the FEC considers his or her advisory opinion request. A requestor can withdraw an advisory opinion request by submitting a written statement of withdrawal before the FEC votes to approve the advisory opinion. If at least four Commissioners do not vote to approve a draft advisory opinion in response to a request, the FEC’s Office of General Counsel will send the requestor a letter stating that the FEC was unable to approve an advisory opinion. This letter is also included in the public record.

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

##### **Illinois**

Complaints regarding campaign finance shall be filed in writing [10 ILCS5/9-20(1)]. Minimum requirements for a verified complaint include the name of the candidate or chairman or treasurer of a political committee against whom the complaint is directed [10 ILCS5/9-20(2)], the statutory provisions which are alleged to have been violated [10 ILCS5/9-20(3)], and the time, place, and nature of the alleged offense [10 ILCS5/9-20(4)]. The complaint shall be verified, dated, and signed by the person filing the complaint [10 ILCS5/9-20(4)]. Verified complaints received by the Secretary of State are processed in the following manner: a copy of the complaint is served by the Board of Elections to the complainant and respondent, and a closed preliminary hearing, with reasonable notice, is held to provide an opportunity for the

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## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

complainant and respondent to testify at the hearing, and the Board determines if the complaint appears to have been filed on justifiable grounds [10 ILCS5/9-21]. The Board may dismiss the complaint if the Board fails to determine that the complaint was filed on justifiable grounds [10 ILCS5/9-21]. The parties to the complaint may dispose of the complaint by written stipulation, agreed settlement, or consent order [10 ILCS5/9-21]. The Board shall render its final judgement within 60 days of the date the complaint is filed, except that during the 60 days preceding the date of the election in reference in which the complaint is filed, the Board shall render its final judgement within 7 days of the date the complaint is filed, and during the 7 days preceding such election, the Board shall render such judgement before the date of such election, if possible [10 ILCS5/9-21]. The Board of Elections shall establish and maintain on its official website a searchable database, accessible to the public, of each complaint filed with the Board with respect to which Board action was taken, and the database must be updated within 5 business days after an action is taken or penalty is imposed [10 ILCS5/9-23.5].

Complaints regarding suspected violations of the Illinois Governmental Ethics Act (5 ILCS 420) are authorized under 5 ILCS 420/25-45, 5 ILCS 420/25-50, and the Operational Rules of the Illinois Legislative Ethics Commission R1-1 et. seq. A standard case initiation form is authorized under R17-5 and available to the public on the Illinois Office of the Legislative Inspector General webpage. Complainants shall file complaints with the Office of the Legislative Inspector. Minimum requirements for a complete case initiation form include the name of the employee or officer who is alleged to have committed a violation [R17-10(a)], the identity of the state agency that employs the employee or officer [R17-10(b)], the name, address, and telephone number of the complainant [R17-10(c)], the date and time of the alleged violation [R17-10(d)], a description of the facts and circumstances that surrounded the alleged violation [R17-10(e)], the names of any other person who witnessed or participated in the alleged violation [R17-10(f)], an address to which the completed case initiation form may be mailed [R17-10(g)], a statement of the confidentiality of the identity of the complainant [R17-10(h)], a statement that the Legislative Inspector General's investigatory files and reports are confidential and exempt from disclosure under the Freedom of Information Act [R17-10(i)], a statement that allegations, pleadings, and related documents are exempt from disclosure under the Freedom of Information Act so long as the Commission does not make a finding of a violation [R17-10(j)], a statement that penalties may be imposed for intentionally making a false report alleging a violation [R17-10(k)], and any other information that the Legislative Inspector General reasonably requires [R17-10(l)]. Upon receipt of a completed case initiation form, the Legislative Inspector General shall create an investigation file [R17-15(a)] and commence an investigation with advance notice to the Commission [R17-25]. Only the Legislative Inspector General may bring actions before the Legislative Ethics Commission [5 ILCS 420/25-45(a)]. Cases before the Commission are commenced by the filing of a petition for leave to file a complaint with the Commission [R20-15(a)], with the Legislative Inspector General designated as the petitioner and the person alleged to have violated the act designated as the respondent [R20-15(b)]. Complaints must be filed with the Commission within 18 months after the most recent act of the alleged violation except where there is reasonable cause to believe that fraudulent concealment has occurred [5 ILCS 420/25-50(c)]. A respondent may file objections to the petition within 30 days after notice of the petition has been served on the respondent [5 ILCS 420/25-50(c-10)(e)] [R20-30]. Within 60 days after the time for a respondent to file an objection to the petition has expired, the Commission shall meet to review the sufficiency of the petition [R20-35(a)]. If the petition is sufficient, the Commission shall notify the parties by certified mail and schedule a hearing within 4 weeks after the date of the notice [5 ILCS 420/25-50(f)] [R20-35(b)]. All hearings are closed to the public [5 ILCS 420/25-50(g)] [R20-55(b)]. Within 60 days after the hearing, the Commission shall enter a decision [5 ILCS 420/25-50(h)] [R20-60(a)]. The decision shall include a description of the alleged misconduct, the decision of the Commission, including any fines levied and any recommendations of discipline, and the reasoning for that decision [R20-60(b)]. All decisions shall be sent to the parties, including the Legislative Inspector General, the ultimate jurisdictional authority, the head of the appropriate state agency, and the Attorney General [R20-60(d)]. Within 30 days after the issuance of a final decision that concludes that a violation occurred, the Commission shall make public the entire record of proceedings before the Commission, the decision, any recommendation, any discipline imposed, and the response from the agency head or ultimate jurisdictional authority to

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

the Legislative Ethics Commission [5 ILCS 420/25-50(1)].

#### **Iowa**

Complaints regarding suspected violations of the Iowa Campaign Disclosure Act (Iowa Code § 68A) and the Iowa Government Ethics and Lobbying Act (Iowa Code § 68B) are authorized under Iowa Code § 68B.32B and Iowa Administrative Code 351-9.1 et seq. A standard complaint form is authorized under Iowa Code § 68B.32B(1) and Iowa Administrative Code 351-9.1(1), and available to the public on the Iowa Ethics and Campaign Disclosure Board webpage. Minimum requirements for a valid complaint include name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge [Iowa Code § 68B.32B(1)]. Submitted complaints received by Board are processed in the following manner. Board staff shall determine if the complaint is sufficient and refer the complaint for legal review [Iowa Code § 68B.32B(2)]. If Board staff determine that the complaint is insufficient, then the complaint is returned to the complainant with a statement of deficiency and description of cure [Iowa Code § 68B.32B(2)]. If legal counsel determines that the complaint contains a legally sufficient allegation, then the complaint is deemed accepted [Iowa Administrative Code 351-9.1(2)]. If legal counsel and the Board determine that the complaint does not contain a legally sufficient allegation, then the complaint is dismissed [Iowa Code § 68B.32B(6)] [Iowa Administrative Code 351-9.1(2)]. Legal sufficiency of a complaint is determined by facts that would establish a violation of a provision of statute or rule [Iowa Code § 68B.32B(4)(a)], facts that would establish that the conduct providing the basis for the complaint occurred within 3 years of the complaint [Iowa Code § 68B.32B(4)(b)], and facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board [Iowa Code § 68B.32B(4)(c)]. The Board provides a copy of the accepted complaint to the respondent within 3 working days of the acceptance determination [Iowa Code § 68B.32B(3)]. Legally sufficient complaints are referred to Board staff for investigation of probable cause [Iowa Code § 68B.32B(6)] [Iowa Administrative Code 351-9.2(1)]. Complete investigations with probable cause determination are reported to the Board for action [Iowa Code § 68B.32B(8)] [Iowa Administrative Code 351-9.2(4)]. The Board may redirect the matter for further investigation [Iowa Administrative Code 351-9.2(5)(a)], dismiss the matter for lack of probable cause to believe a violation has occurred [Iowa Administrative Code 351-9.2(5)(b)], dismiss the matter without determination regarding probable cause as an exercise of administrative discretion [Iowa Administrative Code 351-9.2(5)(c)], make a determination that probable cause exists to believe a violation has occurred and direct administrative resolution of the matter [Iowa Administrative Code 351-9.2(5)(d)], or make a determination that probable cause exists to believe a violation has occurred and direct the issuance of a statement of charges to initiate a contested case proceeding [Iowa Administrative Code 351-9.2(5)(e)]. If the Board determines that probable cause exists to believe that a violation of any statute or rule under its jurisdiction has occurred, except for a late-filed disclosure report, the Board may order administrative resolution of the violation by imposing a civil penalty not to exceed \$500 [Iowa Administrative Code 351-9.4(7)]. At any stage during the investigation or after the initiation of a contested case proceeding, the Board may approve a settlement regarding an alleged violation [Iowa Administrative Code 351-9.2(10)]. The entire record of any contested case proceeding initiated by the Board shall be a public record [Iowa Code § 68B.32B(11)].

#### **Michigan**

Complaints regarding suspected violations of the Michigan Campaign Finance Act (Act 388 of 1976) are authorized under MCL § 169.215 Section 15 and the Michigan Department of State Elections Division Campaign Financing Administrative Rules R169.51, R169.52, R169.53, R169.54, R169.55, and R169.56. A standard complaint form is authorized under MCL § 169.215 Section 15(7) and available to the public on the Elections Division Campaign Finance webpage. Complainants may file typewritten or handwritten complaints [R169.52(1)] with the Secretary of State in person or by mail [R169.51]. Minimum requirements for a valid complaint include the complainant's signature [MCL §

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

169.215 Section 15(6)(a), the complainant's name, address, and telephone number [MCL § 169.215 Section 15(6)(b)], the complainant's certification that any factual contention is or is not supported by evidence [MCL § 169.215 Section 15(6)(c)], the name and address of the alleged violator, a description in reasonable detail of the alleged violation, and an identification of all available evidentiary material [R169.52(2)]. Complainants who file a complaint with a false certification are responsible for a civil violation [MCL § 169.215 Section 15(8)] and may incur penalties that include payment to the Secretary of State some or all of the expenses incurred as a result of the complaint filing [MCL § 169.215 Section 15(16)(a)] or payment to the respondent some or all of the expenses, including reasonable attorney fees, incurred as a result of the complaint filing [MCL § 169.215 Section 15(16)(b)]. Incomplete, illegible, indefinite, or unsigned complaints may be summarily dismissed, and the complainant notified of dismissal in writing as to the reason for dismissal [R169.53]. Valid complaints received by the Secretary of State are processed in the following manner. Respondents are given notice of the complaint, including a copy of the complaint, within 5 business days. Respondents are given 15 business days to submit a response to the complaint, with an additional 15 business days extension granted for good cause. Complainants are provided the respondent's complaint response and provided 10 business days from the date of response mailing to submit a rebuttal statement, with an additional 10 business days extension granted for good cause. Respondents are provided with the complainant's rebuttal statement [MCL § 169.215 Section 15(5)]. The Secretary of State is obliged to communicate to a respondent that a complaint has been made alleging possible violation of the act or rules [R169.54(a)], the specifics of the alleged violation [R169.54(b)], the identity of the complainant [R169.54(c)], and the provision of rules relative to complaints and investigations [R169.54(d)]. No later than 45 business days following receipt of a rebuttal statement, or if no rebuttal statement is received, the Secretary of State shall post on the Secretary's website whether there may be reason to believe that a violation of the act or rule occurred [MCL § 169.215 Section 15(10)]. The Secretary of State may conduct a preliminary review of an alleged violation to determine if there may be reason to believe that a violation of the act or rule has occurred [R169.55(1)]. The Secretary of State may commence, with notice given, a hearing to determine whether a violation of the act or rule has occurred [MCL § 169.215 Section 15(10)] [R169.55(3)(a)], attempt to correct the violation by conference, conciliation, or persuasion [MCL § 169.215 Section 15(10)] [R169.55(3)(b)] [R169.56(2)], or dismiss the allegation with notice given to complainant and respondent [R169.55(2)] [R169.56(1)]. If a conciliation agreement is signed, the Secretary of State is obliged to post the agreement on the Secretary's website within 30 days [MCL § 169.215 Section 15(10)]. Within 30 days of determination that a violation of the act or rule has occurred, the Secretary of State shall post on the Secretary's website any complaint, response, rebuttal statement, and any correspondence between the Secretary of State and the complainant or respondent [MCL § 169.215 Section 15(10)]. If the Secretary of State determines that a violation of the act or rule has occurred, the respondent may be assessed a civil fine not more than triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation [MCL § 169.215 Section 15(11)]. The Secretary of State may refer the matter to the attorney general for enforcement of a criminal penalty [MCL § 169.215 Section 15(13)] [R169.56(3)].

Complaints regarding suspected violations of the Michigan Standards of Conduct for Public Officers and Employees Act (Act 196 of 1973) are authorized under MCL § 15.345 Section 5 and the Michigan State Board of Ethics Administrative Rules R15.1, R15.1a, R.15.2, R15.3, R15.4, R15.5, R15.6, R15.7, R15.8, R15.9, R15.10. A standard complaint form is authorized under MCL § 15.346 Section 6, R15.1a, and R15.5 and available to the public on the State Board of Ethics webpage. Complainants shall file complaints in writing [R15.5(2)(a)] with the Executive Secretary at the Board of Ethics office [R15.5(2)(f)]. Minimum requirements for a valid complaint include the specification of one or more standards of prohibited conduct outlined in section 2 of the Act [MCL § 15.342 Section 2], include evidentiary facts supporting the complaint allegations [R15.5(2)(c)], contain a statement that the complainant or designee has read the complaint and believes the alleged violations to be true [R15.5(2)(d)], and contain the signature of the complainant or designee before a notary [R15.5(2)(e)]. Complaints may be dismissed if the Board of Ethics lacks jurisdiction over the person subject to the complaint [R15.5(11)(a)], if the Board lacks jurisdiction over the subject matter [R15.5(11)(b)], if the complainant lacks the legal capacity to file the complaint [R15.5(11)(c)], if the complainant is barred because of release, prior judgement, or other disposition of the claim before the complaint was filed [R15.5(11)(d)], if the complaint on its face



## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

fails to state a claim of unethical conduct [R15.5(11)(e)], if one or more complaints regarding the same matter are pending [R15.5(4)(a)], or if the Board previously addressed the subject matter [R15.5(4)(b)]. Valid complaints received by the Board of Ethics are processed in the following manner. Respondents are promptly served a copy of the complaint [R15.5(5)]. Respondents are given 21 calendar days to file an answer to the complaint with the Executive Secretary, with additional time granted for good cause [R15.5(6)]. A copy of the respondent's answer is served to the complainant [R15.5(6)]. Complainants and respondents are given 21 calendar days before the date of the Board meeting scheduled to address the complaint to file any additional written information [R15.5(8)]. Opposing parties are given 14 days before the date of the Board meeting to file responses to the additional written material [R15.5(8)]. Upon expiration of the time provided for all submissions, the Board is presented with all materials for its consideration [R15.5(9)]. The Board may schedule a hearing [R15.5(13)] [R15.8] and the complainant and respondent shall have an opportunity to address the Board to address the complaint [R15.5(10)]. The complainant and respondent have the right to be represented at the hearing by legal counsel [R15.5(10)]. The Board shall issue a complaint decision and transmit copies of the decision to the complainant, respondent, and other persons as the Board directs [R15.5(14)]. The Board shall publish its decisions and opinions, including dissents, and make them available for the public at its office, on its website, and in the appropriate state agencies [R15.5(19)(1)].

Advisory opinions relating to matters affecting the ethical conduct of a public officer or employee are authorized under MCL § 15.345 Section 5(1)(e) and R15.6. Requests for advisory opinion must be made in writing and filed at the Board of Ethics office with the Executive Secretary [R15.6(1)]. The Board may dismiss a request for an advisory opinion if one or more requests regarding the same matter are pending [R15.6(3)(a)] or if the Board previously addressed the subject matter [R15.6(3)(b)]. The Board shall schedule a meeting to address the advisory opinion and shall afford the person requesting the opinion or the person subject to the request to speak at the meeting [R15.6(5)]. The Board may schedule a hearing to resolve the request for advisory opinion [R15.6(8)] or may issue an opinion without a hearing [R15.6(7)]. The Board may issue an advisory opinion decision if the Board lacks the jurisdiction over the person subject to the advisory opinion [R15.6(6)(a)], the Board lacks jurisdiction over the subject matter [R15.6(6)(b)], the person asserting the claim lacks the legal capacity to file the request for an advisory opinion [R15.6(6)(c)], the request for advisory opinion is barred because of release, prior judgement, or other disposition of the claim [R15.6(6)(d)], or if the request for advisory opinion on its face fails to delineate any unethical conduct [R15.6(6)(e)]. The Executive Secretary shall transmit copies of the Board's order to the party filing the request, the person subject to the request, and other persons as the board directs [R15.6(9)].

### **Minnesota**

Complaints regarding suspected violations of the Minnesota Campaign Finance and Public Disclosure law (Minnesota Statute § 10A) and Minnesota Fair Campaign Practices law (Minnesota Statute § 211B) are authorized under Minnesota Statute § 10A.022(3), Minnesota Statute § 211B.32(1), and Minnesota Campaign Finance and Public Disclosure Board Administrative Rule R4525.0200. A standard complaint form is authorized under R4525.0200(2) and available to the public on the Minnesota Campaign Finance and Public Disclosure Board webpage. Complaints must be submitted in writing [R4525.0200(2)] to the Board [R4525.0200(1)]. Complaints regarding a violation of Minnesota Fair Campaign Practices law must be filed within one year after the occurrence of the act or failure to act unless the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during the one-year period [Minnesota Statute § 211B.32(2)]. Minimum requirements for a complete complaint include the name and address of the person making the complaint, the name and address of the alleged violator, a description of the complainant's knowledge of the violation, any evidentiary material supporting the complaint, and the signature of the complainant or an individual authorized to act on behalf of the complainant [R4525.0200(2)]. Complaints alleging a violation of Minnesota Statute § 211B.32 must be made under oath [Minnesota Statute § 211B.32(3)]. Complaints alleging a violation of Minnesota Statute § 211B.32 must be accompanied by a \$50 filing fee [Minnesota Statute § 211B.32(5)] which may be refunded to

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

a complainant who prevails on the merits of the complaint [Minnesota Statute § 211B.32(5)(c)]. Valid complaints received by the Board are processed in the following manner. Upon receipt of a written complaint, the Board promptly makes a determination whether the complaint alleges a prima facie violation [Minnesota Statute § 10A.022(3)(3)(c)] [Minnesota Statute § 211B.33(2)]. A complaint is dismissed if it does not allege a prima facie violation and the complainant is notified and given opportunity to cure [Minnesota Statute § 10A.022(3)(3)(c)]. The Board determines within 45 days whether probable cause exists to believe the alleged prima facie violation warrants a formal investigation [Minnesota Statute § 10A.022(3)(3)(d)]. The respondent is given an opportunity to answer the complaint allegations and appear, with sufficient notice [Minnesota Statute § 10A.022(3)(3)(4)], before the Board to address the complaint [Minnesota Statute § 10A.022(3)(3)(e)][R4525.0200(6)]. Complaints under staff review may result in a determination of no violation [Minnesota Statute § 10A.022(3)(3)(3b)] or resolved by conciliation agreement [Minnesota Statute § 10A.022(3)(3)(3a)]. Complaints not dismissed or resolved by conciliation agreement are submitted to the Board for final determination [Minnesota Statute § 10A.022(3)(3)(3d)]. The Board's final determination must be issued at the conclusion of the investigation or within 60 days after the probable cause determination if the complaint alleges a violation of Minnesota Statute § 10A.25 or Minnesota Statute § 10A.27 [Minnesota Statute § 10A.022(3)(3)(e)]. Complaints alleging a violation of Minnesota Statute § 211B.33 may require an expedited probable cause hearing if the complaint was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates [Minnesota Statute § 211B.33(2)(b)]. A hearing before the Board or action concerning a complaint or investigation other than findings, conclusions, and orders or a conciliation agreement is confidential [Minnesota Statute § 10A.022(5)] [R.425.0200(5)]. Complaint matters before the Board may result in a criminal offense and may be prosecuted by a city or county attorney [Minnesota Statute § 10A.022(7)].

Advisory opinions may be requested from the Minnesota Campaign Finance and Public Disclosure Board by or on behalf of an individual or association who wish to use the opinion to guide the individual's or the association's own conduct. Requests for an advisory opinion must be made in writing and must be received at least 3 weeks before a Board meeting. Unless the requester consents to the publication of the requester's identity, the request and the opinion are non-public data.

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17. Contact Name David P. Buerger	18. Contact Phone Number (608) 267-0951
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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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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)

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

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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

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5. Describe the Rule's Enforcement Provisions

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

- Yes    No
-

## Notice of Hearing

The Wisconsin Ethics Commission proposes a rule to repeal and recreate ETH 21.30; and to create ETH 21.02, 21.03, 21.04, 21.05, 21.06, 21.07, 21.08, 21.09, and 21.10, relating to the processes for complaints and requests for advice.

### Hearing Information

Date: August 30, 2022

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](mailto:eth.rulecomments@wi.gov). Written comments must be received no later than August 29, 2022 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).



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

On June 15, 2022, 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 would clarify and further establish the procedures to be followed to submit a complaint to the Wisconsin Ethics Commission under s. 19.49 (2) (b), Stats. It would also clarify the procedures to be followed to request either a formal or informal opinion of the Commission pursuant to s. 19.46 (2), Stats.

### **Statement of Scope**

The scope statement for this rule, SS# 041-20, was approved by the Governor on May 7, 2020, published in Register No. 773A4, on June 22, 2020. A preliminary public comment period and hearing was noticed and held as directed on August 18, 2020, and the scope statement was approved by the Ethics Commission after the preliminary public hearing on the scope statement on August 18, 2020.

### **Agency Procedure for Promulgation**

A public hearing is required and will be held on August 30, 2022.

### **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





# 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](mailto:ethics@wi.gov) | <https://ethics.wi.gov>

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**DATE:** For the Commission Meeting on June 15, 2022

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Ethics Commission Staff

**SUBJECT:** Ethics Commission Staff Report

## **Commission Administration**

### Commission Legislative Package

The Commission's bills passed and were signed into law by the Governor. The new provisions relating to ethics and lobbying were effective April 17, 2022. The provisions relating to campaign finance go into effect January 3, 2023.

Commission staff has already begun incorporating the new provisions related to ethics and lobbying into training materials and advice. Additionally, staff will be making changes to the SEI website to incorporate the new requirement that an official file a final SEI within 21 days after the official leaves state service. Once this election cycle is complete, staff will begin preparing to implement the new campaign finance changes and provide training sessions to filing officers about the new changes.

### Lobbying Website

The Commission's new lobbying website is now live. Before going live, Commission staff did two demonstrations with members of the Association of Wisconsin Lobbyists. Additionally, staff did two live virtual demonstrations for all registrants. A recording of the full demonstration is now live on the Commission's website for the public to view. Additionally, there are two brief video modules posted online: one covering lobbyist time reporting and the other covering how to file an SLAE. While there have been one or two minor issues, the Commission's IT Contractor, Kavita Dornala, was able to remedy them quickly.

Staff plans on surveying users after the July SLAEs are filed and again after the January 2023 SLAEs are filed. This will enable staff to incorporate any user feedback. In the meantime, if anything occurs, staff will monitor and fix as appropriate.

## **Campaign Finance**

The Spring 2022 Election only had 33 state candidates not claiming exemption who were, therefore, required to file a Spring Pre-Primary report by February 7, 2022. We had 30 committees

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*Wisconsin Ethics Commissioners*

Paul Connell | Awais Khaleel | Shauntay Nelson | Pat Strachota | Timothy Van Akkeren | David Wambach

*Administrator*

Daniel A. Carlton, Jr.

file on time, with 3 filing 1 day late. For the Spring Pre-Election 2022 report due March 28, 2022, there were 48 committees required to file with only 1 filing 1 day late.

The next required report will be the July Continuing 2022 report. All committees not claiming exemption are required to file this report for activity through June 30, 2022. The report is due July 15, 2022.

All candidates and committees active in the 2022 Fall Primary will be required to file the Fall Pre-Primary report by August 1, 2022.

### Trainings

Since the last Commission meeting, staff has been very busy working on training and educational materials. Staff has updated the candidate training materials to reflect recent advice. In terms of campaign finance trainings, staff conducted a training for local filing officers on February 24, 2022. This training was recorded and is available online for local filing officers to review. Staff also presented a refresher on the 50 Piece Rule to legislative staff. Staff also conducted webinars targeted to the Fall 2022 candidates on April 14, 2022, and again on May 5, 2022. Staff also gave a brief presentation to new candidates and treasurers at the Republican Assembly Campaign Committee Campaign School on June 1, 2022. Additionally, staff has presented ethics training to legislative staff on May 10, 11, and 13. Finally, staff participated in a discussion with international visiting leaders in conjunction with the International Institute of Wisconsin on May 27, 2022.

Future webinars are planned for this summer for PACs and Political Party Committees. Additionally, staff have three other trainings scheduled for June and July.

### Audits

Staff conducted the cash balance audit in March for all reports filed for calendar year 2021. Committees have 30 days to amend the reports to resolve the discrepancies. Committees unable to resolve the discrepancies within 30 days were issued a standard settlement offer, consistent with the authority delegated to the Administrator.

Staff also conducted the corporate contribution audit in April for calendar years 2020 and 2021. This audit was looking for contributions entered as coming from a business or the contributor's name appeared to be a corporation, union, or other prohibited source. Committees were contacted and given 30 days to amend the report to resolve the discrepancy. Many of the identified transactions were data entry errors of reporting a PAC as a business or reporting an unregistered committee by the business name with no indication of PAC or Committee. Committees that were unable to resolve the discrepancy within the 30 days were issued a standard settlement offer, consistent with the authority delegated to the Administrator.

### **Lobbying**

#### 2021-2022 Legislative Session

As of June 1, 2022, there are 655 lobbyists licensed, 832 principals registered, and 1,685 lobbyist authorizations.

The next Statement of Lobbying Activities and Expenditures (SLAE) covering January-June 2022 will be due July 31, 2022.

### Legislative Liaison Reporting

The last 6-month legislative liaison report was due January 31, 2022. Out of 90 agencies, 81 filed by the due date. The last agency filed February 28<sup>th</sup>. The next legislative liaison report is due August 1, 2022.

### **Code of Ethics and Financial Disclosure**

#### Statements of Economic Interests (SEIs)

Annual Statements of Economic Interests were due by May 2, 2022. Email notices were initially sent in January, and one month, one week, and one day before the deadline. Late filers received multiple emails, as well as a phone call and a mailing one week after the SEI was due. There were 162 filers who had not filed as of May 2, 2022, and 153 of them filed by the end of the grace period on May 17, 2022. Of the nine remaining filers, 6 have filed as of June 1<sup>st</sup>, and 3 are still outstanding. Staff will issue standard settlements for the late filers and appeals of those settlements will be presented at the August meeting.

Candidates on the November 2022 ballot must file an SEI by 4:30 p.m. on June 6, 2022. Staff emailed the candidates when they first registered to run for office and again one week before the SEI was due. The day after the June 1, 2022, deadline to file nomination papers, staff will email all candidates with outstanding SEIs, and call candidates one day before the deadline.

In April 2022, a new law was passed that eliminated the requirement for SEI filers to report mutual funds, money market funds, and exchange-traded funds and notes. In addition, any SEI filer who leaves office must now file a “final” SEI within 21 days. Staff have made temporary modifications to the SEI website to inform filers of the new requirements and allow them to file final SEIs. More permanent changes will be made over the rest of the calendar year.

#### State of Wisconsin Investment Board Quarterly Reports

The 2022 first quarter reports were due by May 2, 2022. All SWIB filers filed within the grace period, the last SEI and Quarterly Report was filed May 16, 2022. Staff referred all SEIs and Quarterly Reports to the Legislative Audit Bureau on May 19, 2022. The next Quarterly Reports are due August 1, 2022.

