

# NOTICE OF OPEN AND CLOSED MEETING

## Wisconsin Ethics Commission

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

Tuesday, August 30, 2022, 9:00 a.m.

### Open Session Agenda

- A. Call to Order
- B. Report of Appropriate Meeting Notice – Administrator
- C. Approval of Minutes of Prior Meetings
  - 1. Open Session Minutes for Meeting on June 15, 2022 Page 3
- D. Personal Appearances
- E. 2023 and 2024 Meeting Schedules Page 7
- F. Administrative Rule Matters Page 13
  - 1. Public Hearing for ETH 21 - Draft Complaint and Advice Rule
  - 2. Initial Review of Scope Statement ETH 26 - Settlement Schedule
- G. 2023-2025 Budget Request Page Supp. - 3
- H. 2021-2022 Annual Report Page Supp. - 15
- I. Staff Report Page 53
- J. Consideration of Future Agenda Items
- K. Closed Session
  - 1. Requests for Advice
  - 2. Complaints and Investigations
  - 3. Personnel Matters
- L. Adjourn

Future Ethics Commission Meetings Scheduled:

- Tuesday, 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  
101 East 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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**Wisconsin Ethics Commission**  
101 East Wilson Street, St. Croix Room  
Madison, Wisconsin  
June 15, 2022  
9:00 a.m.

## Open Session Minutes

Present: Pat Strachota, David Wambach (Teams/Virtual), Maryann Sumi, Shauntay Nelson, Timothy Van Akkeren, and Andrew D. Weininger

Staff Present: Daniel A. Carlton, Jr., Colette Greve, David Buerger, Sathya Sivaji, Richard Bohringer, and Harry Broderick

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

Vice Chair Pat Strachota called the meeting to order at 9:00 a.m. A quorum was present.

Vice Chair Strachota welcomed Commissioner Maryann Sumi. Commissioner Sumi introduced herself.

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

Administrator Daniel Carlton notified the Commission that 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 February 16, 2022**

**MOTION:** To approve the minutes. Moved by Commissioner Van Akkeren, seconded by Commissioner Weininger.

Commissioner Nelson: Aye      Commissioner Van Akkeren: Aye      Commissioner Wambach: Aye

Vice Chair Strachota: Aye      Commissioner Weininger: Aye      Commissioner Sumi: Abstain

Motion carried 5-0.

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

There were no personal appearances.

#### **E. Election of New Chair and Vice Chair**

**MOTION:** Vice Chair Strachota to serve as Chair from 7/1/2022 – 6/30/2024.

Moved by Commissioner Weininger, seconded by Commissioner Van Akkeren.

Motion carried unanimously.

**MOTION:** Commissioner Nelson to serve as Vice Chair from 7/1/2022 – 6/30/2024.

Moved by Commissioner Van Akkeren, seconded by Commissioner Weininger.

Motion carried unanimously.

#### **F. Administrative Rules Update**

Staff Counsel Buerger presented the memo on page 5 of the meeting materials.

**MOTION:** To approve of the draft rule.

Moved by Commissioner Van Akkeren, seconded by Commissioner Nelson.

Motion carried unanimously.

#### **G. Ethics Commission Staff Report**

Administrator Daniel Carlton presented the report on page 35 of the meeting materials.

#### **H. Consideration of Future Agenda Items**

The Commission requested that staff bring a proposed meeting schedule for 2023 meetings in August.

#### **I. Closed Session**

**MOTION:** To go into closed session to discuss requests for advice, complaints, investigations, and litigation.

Moved by Commissioner Van Akkeren, seconded by Commissioner Sumi.

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 Weininger.

Motion carried unanimously.

Meeting adjourned at 3:38 P.M.

Wisconsin Ethics Commission meeting minutes for the Commission meeting on June 15, 2022, prepared by:

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Sathya Sivaji, Office Management Specialist                      August 30, 2022

Wisconsin Ethics Commission meeting minutes for the Commission meeting on June 15, 2022, certified by:

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Shauntay Nelson, Vice Chair    August 30, 2022





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**DATE:** For the Commission Meeting on August 30, 2022

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Daniel A. Carlton, Jr., Administrator

**SUBJECT:** 2023 and 2024 Commission Meeting Dates

## FOR COMMISSION ACTION

The Commission may:

1. Adopt the schedule discussed herein; or
2. Adopt a different schedule in accordance with today's discussion.

## Introduction

Pursuant to [WIS. STAT. § 15.06\(5\)](#), the Wisconsin Ethics Commission is required to meet at least 4 times each year. Between 2017 until 2020, the Commission met at least 7 times per year. In 2021, the Commission met 5 times. In 2022, the Commission has met twice and has three more meetings scheduled (including this one) for a total of 5 meetings. An additional meeting may be needed to address the Commission's budget request and/or annual report.

Over the last few years, the Commission has adopted practices and policies that make meetings much more efficient. As it has done so, the need for meetings has reduced. Additionally, over the past few years, staff has noticed that even-numbered years tend to generate more complaints and requests for advice than typically happens in odd-numbered years. There are also fewer campaign finance related deadlines in odd-numbered years. Staff believes that fewer meetings will be required in 2023. In light of this, staff has prepared two potential meeting schedules for 2023, one with four meetings and one with 5 meetings.

Finally, there are two important notes. First, the Commission is not bound to these proposed dates and can select alternative dates. Additionally, the Commission can add additional meetings if necessary.

## Methodology

Ideally, the meetings will be scheduled at equal intervals. This will have a couple of benefits: First, it will maintain a relatively consistent workload. Second, it will create a more structured routine. So, staff sought to evenly space the meetings in 2023. Staff then calculated the amount of time between meetings for both a 4-meeting schedule (13 weeks) and a 5-meeting schedule (10-11 weeks). Starting with the meeting on December 13, 2022, staff calculated the date of the next

*Wisconsin Ethics Commissioners*

Shauntay Nelson | Pat Strachota | Maryann Sumi | Timothy Van Akkeren | David Wambach | Andrew Weinger

*Administrator*

Daniel A. Carlton, Jr.

meeting using the intervals in the parenthesis above and subsequent meetings with the same intervals between each. Staff considered known election dates, filing deadlines, and other important dates for that year. Finally, staff excluded any dates that any Commissioner indicated he/she was unavailable.

**2023 Proposed Schedules**

If the Commission would like to have a four-meeting schedule, staff proposes the following dates for the year 2023:<sup>1</sup>

| Commission Meeting Date | Materials Deadline |
|-------------------------|--------------------|
| February 21, 2023       | February 9, 2023   |
| June 20, 2023           | June 8, 2023       |
| September 12, 2023      | August 31, 2023    |
| December 12, 2023       | November 30, 2023  |

If the Commission would like to have a five-meeting schedule, staff proposes the following meeting dates for the year 2023:

| Commission Meeting Date | Materials Deadline |
|-------------------------|--------------------|
| February 21, 2023       | February 9, 2023   |
| June 20, 2023           | June 8, 2023       |
| July 11, 2023           | June 29, 2023      |
| September 19, 2023      | September 7, 2023  |
| December 12, 2023       | November 30, 2023  |

**2024 Proposed Schedule**

In addition to setting the meeting schedule for 2023, the Commission may also want to consider adopting a schedule for 2024. Setting the schedule for 2024 this far in advance may be desirable because it will allow the Commissioners to plan for that year as well. If members do not have any plans yet for 2024, it will allow a more evenly spaced meeting schedule. This will make it easier for staff to prepare for the meetings as well as plan for any other matters. However, the Commission may not want to set the calendar for 2024 yet because the terms for three of the Commissioners expire May 1, 2024. Obviously, we do not know whether each member will continue to serve after that. Of course, if there is a new member, we can always move dates to accommodate their schedule if needed.

For calendar year 2024, staff suggests that the Commission meet 5 times. There are a number of reasons for this including, increased complaint and advice activity in even-numbered years, the addition of the biennial budget request, and more filing deadlines occur in an even-numbered year. In trying to set as consistent of a schedule as possible, to calculate an appropriate interval staff divided

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<sup>1</sup> While there is no statutory requirement to provide materials to the Commissioners by a particular time, staff practice has been to send meeting materials to the Commission members approximately two weeks prior to the next meeting. These dates are subject to change and are provided for reference only. If an alternate meeting date is suggested, it is important to also consider any events occurring two weeks prior to the alternate date.



the 52 weeks of the year by 5 (the number of meetings). The result was 10.4 weeks between meetings. This number was rounded up to 11 weeks between meetings. This 11-week interval begins to run after the December 12, 2023, meeting date. From there, the other considerations discussed above were also considered. As a result, the proposed meeting schedule for 2024 would be:

| Commission Meeting Date | Materials Deadline |
|-------------------------|--------------------|
| February 27, 2024       | February 15, 2024  |
| May 14, 2024            | May 2, 2024        |
| July 23, 2024           | July 11, 2024      |
| October 15, 2024        | October 3, 2024    |
| December 17, 2024       | December 5, 2024   |

**Attachments:** Attachment A – 2023 Agency Calendar  
Attachment B – 2024 Agency Calendar

# 2023 Ethics Commission Calendar

Calendar for year 2023 (United States)



| January |    |    |    |    |    |    | February |    |    |    |    |    |    | March |    |    |    |    |    |    | April |    |    |    |    |    |    |
|---------|----|----|----|----|----|----|----------|----|----|----|----|----|----|-------|----|----|----|----|----|----|-------|----|----|----|----|----|----|
| S       | M  | T  | W  | T  | F  | S  | S        | M  | T  | W  | T  | F  | S  | S     | M  | T  | W  | T  | F  | S  | S     | M  | T  | W  | T  | F  | S  |
| 1       | 2  | 3  | 4  | 5  | 6  | 7  |          |    |    | 1  | 2  | 3  | 4  |       |    |    | 1  | 2  | 3  | 4  |       |    |    |    |    |    | 1  |
| 8       | 9  | 10 | 11 | 12 | 13 | 14 | 5        | 6  | 7  | 8  | 9  | 10 | 11 | 5     | 6  | 7  | 8  | 9  | 10 | 11 | 2     | 3  | 4  | 5  | 6  | 7  | 8  |
| 15      | 16 | 17 | 18 | 19 | 20 | 21 | 12       | 13 | 14 | 15 | 16 | 17 | 18 | 12    | 13 | 14 | 15 | 16 | 17 | 18 | 9     | 10 | 11 | 12 | 13 | 14 | 15 |
| 22      | 23 | 24 | 25 | 26 | 27 | 28 | 19       | 20 | 21 | 22 | 23 | 24 | 25 | 19    | 20 | 21 | 22 | 23 | 24 | 25 | 16    | 17 | 18 | 19 | 20 | 21 | 22 |
| 29      | 30 | 31 |    |    |    |    | 26       | 27 | 28 |    |    |    |    | 26    | 27 | 28 | 29 | 30 | 31 | 23 | 24    | 25 | 26 | 27 | 28 | 29 |    |
|         |    |    |    |    |    |    |          |    |    |    |    |    |    |       |    |    |    |    |    |    | 30    |    |    |    |    |    |    |

  

| May |    |    |    |    |    |    | June |    |    |    |    |    |    | July |    |    |    |    |    |    | August |    |    |    |    |    |    |
|-----|----|----|----|----|----|----|------|----|----|----|----|----|----|------|----|----|----|----|----|----|--------|----|----|----|----|----|----|
| S   | M  | T  | W  | T  | F  | S  | S    | M  | T  | W  | T  | F  | S  | S    | M  | T  | W  | T  | F  | S  | S      | M  | T  | W  | T  | F  | S  |
|     | 1  | 2  | 3  | 4  | 5  | 6  |      |    |    |    | 1  | 2  | 3  |      |    |    |    |    |    | 1  |        |    | 1  | 2  | 3  | 4  | 5  |
| 7   | 8  | 9  | 10 | 11 | 12 | 13 | 4    | 5  | 6  | 7  | 8  | 9  | 10 | 2    | 3  | 4  | 5  | 6  | 7  | 8  | 6      | 7  | 8  | 9  | 10 | 11 | 12 |
| 14  | 15 | 16 | 17 | 18 | 19 | 20 | 11   | 12 | 13 | 14 | 15 | 16 | 17 | 9    | 10 | 11 | 12 | 13 | 14 | 15 | 13     | 14 | 15 | 16 | 17 | 18 | 19 |
| 21  | 22 | 23 | 24 | 25 | 26 | 27 | 18   | 19 | 20 | 21 | 22 | 23 | 24 | 16   | 17 | 18 | 19 | 20 | 21 | 22 | 20     | 21 | 22 | 23 | 24 | 25 | 26 |
| 28  | 29 | 30 | 31 |    |    |    | 25   | 26 | 27 | 28 | 29 | 30 | 23 | 24   | 25 | 26 | 27 | 28 | 29 | 27 | 28     | 29 | 30 | 31 |    |    |    |
|     |    |    |    |    |    |    |      |    |    |    |    |    |    | 30   | 31 |    |    |    |    |    |        |    |    |    |    |    |    |

  

| September |    |    |    |    |    |    | October |    |    |    |    |    |    | November |    |    |    |    |    |    | December |    |    |    |    |    |    |
|-----------|----|----|----|----|----|----|---------|----|----|----|----|----|----|----------|----|----|----|----|----|----|----------|----|----|----|----|----|----|
| S         | M  | T  | W  | T  | F  | S  | S       | M  | T  | W  | T  | F  | S  | S        | M  | T  | W  | T  | F  | S  | S        | M  | T  | W  | T  | F  | S  |
|           |    |    |    |    | 1  | 2  | 1       | 2  | 3  | 4  | 5  | 6  | 7  |          |    |    | 1  | 2  | 3  | 4  |          |    |    |    |    | 1  | 2  |
| 3         | 4  | 5  | 6  | 7  | 8  | 9  | 8       | 9  | 10 | 11 | 12 | 13 | 14 | 5        | 6  | 7  | 8  | 9  | 10 | 11 | 3        | 4  | 5  | 6  | 7  | 8  | 9  |
| 10        | 11 | 12 | 13 | 14 | 15 | 16 | 15      | 16 | 17 | 18 | 19 | 20 | 21 | 12       | 13 | 14 | 15 | 16 | 17 | 18 | 10       | 11 | 12 | 13 | 14 | 15 | 16 |
| 17        | 18 | 19 | 20 | 21 | 22 | 23 | 22      | 23 | 24 | 25 | 26 | 27 | 28 | 19       | 20 | 21 | 22 | 23 | 24 | 25 | 17       | 18 | 19 | 20 | 21 | 22 | 23 |
| 24        | 25 | 26 | 27 | 28 | 29 | 30 | 29      | 30 | 31 |    |    |    |    | 26       | 27 | 28 | 29 | 30 |    |    | 24       | 25 | 26 | 27 | 28 | 29 | 30 |
|           |    |    |    |    |    |    |         |    |    |    |    |    |    |          |    |    |    |    |    |    | 31       |    |    |    |    |    |    |

- Jan 16** ● Dr. Martin Luther King, Jr. Day
- Jan 17** ● Jan. Continuing 2023 Filing Deadline
- Jan 31** ● SLAE Deadline
- Feb 13** ● Spring Pre-Primary Filing Deadline
- Feb 21** ● Spring Primary Election
- Mar 27** ● Spring Pre-Election 2023 Filing Deadline
- Apr 4** ● Spring Election
- Apr 9** ● Easter
- May 1** ● SEI Deadline
- May 29** ● Memorial Day
- Jul 4** ● Independence Day
- Jul 17** ● July Continuing 2023 Filing Deadline
- Jul 31** ● SLAE Deadline
- Sep 4** ● Labor Day
- Oct 9** ● Columbus Day
- Nov 23** ● Thanksgiving
- Dec 25** ● Christmas

# 2024 Ethics Commission Calendar

Calendar for year 2024 (United States)



## January

| S  | M  | T  | W  | T  | F  | S  |
|----|----|----|----|----|----|----|
|    | 1  | 2  | 3  | 4  | 5  | 6  |
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## February

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## March

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| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 |    |    |    |    |    |    |

## April

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| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 |    |    |    |    |

## May

| S  | M  | T  | W  | T  | F  | S  |
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| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
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## June

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## July

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## August

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| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

## September

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| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 |    |    |    |    |    |

## October

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| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 |    |    |

## November

| S  | M  | T  | W  | T  | F  | S  |
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| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |

## December

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| 8  | 9  | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 |    |    |    |    |

- |  |  |  |   |
|--|--|--|---|
| <b>Jan 15</b> ● Dr. Martin Luther King, Jr. Day      | <b>Mar 25</b> ● Spring Pre-Election 2024 Filing Deadline | <b>Jul 15</b> ● July Continuing 2024 Filing Deadline | <b>Oct 14</b> ● Columbus Day                      |
| <b>Jan 16</b> ● Jan. Continuing 2024 Filing Deadline | <b>Mar 31</b> ● Easter                                   | <b>Jul 31</b> ● SLAE Deadline                        | <b>Oct 28</b> ● Fall Pre-Election Report Deadline |
| <b>Jan 31</b> ● SLAE Deadline                        | <b>Apr 30</b> ● SEI Deadline                             | <b>Aug 5</b> ● Fall Pre-Primary Report Deadline      | <b>Nov 28</b> ● Thanksgiving                      |
| <b>Feb 12</b> ● Spring Pre-Primary Filing Deadline   | <b>May 27</b> ● Memorial Day                             | <b>Sep 2</b> ● Labor Day                             | <b>Dec 25</b> ● Christmas                         |
|  | <b>Jul 4</b> ● Independence Day                          | <b>Sep 30</b> ● September Report Deadline            | <b>Dec 31</b> ● New Year's Eve                    |





# Wisconsin Ethics Commission

101 East Wilson Street | Room 127 | P.O. Box 7125 | Madison, WI 53707-7125  
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**DATE:** For the Commission Meeting on August 30, 2022  
**TO:** Members, Wisconsin Ethics Commission  
**FROM:** David Buerger, Staff Counsel  
**SUBJECT:** Administrative Rules Update and Hearing

## FOR COMMISSION ACTION

1. For ETH 21 – Practice and Procedure, following the public hearing and consideration of any public comments:
  - a. Does the Commission approve the revised draft rule?
  - b. Does the Commission wish to further revise the rule?
  - c. Does the Commission direct staff to submit the final draft rule to the Governor for final approval before it is transmitted to the Legislature?
2. For ETH 26 – Settlement Offer Schedule, does the Commission approve the draft scope statement and direct staff to submit the scope statement to the Governor for initial approval?

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

This draft rule is scheduled for a public hearing at the Commission’s meeting on August 30, 2022. The chairperson shall convene the hearing by initially explaining the purpose of the hearing and describing how testimony will be received. Prior to receiving testimony, Commission staff will briefly present a summary of the factual information on which the proposed rule is based. After each interested person or their representative has been afforded an opportunity to present any facts, opinions, or arguments in writing or orally, the hearing shall be closed.

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. The draft rule and associated documents were presented to the Commission at its meeting on June 15, 2022. At that meeting, the Commission initially approved of the draft rule and associated documents and directed staff to submit them to the Legislative Council Rules Clearinghouse.

*Wisconsin Ethics Commissioners*

Shauntay Nelson | Pat Strachota | Maryann Sumi | Timothy Van Akkeren | David Wambach | Andrew Weinger

*Administrator*

Daniel A. Carlton, Jr.

Commission staff submitted the draft rule and associated documents to the Legislative Council Rules Clearinghouse on June 15, 2022.

The Legislative Council Rules Clearinghouse submitted a report to the Commission regarding this draft rule on June 24, 2022. The report made fourteen comments and Commission staff adopted and incorporated each comment except for one. Upon consultation with Legislative Council staff, comment 4.d. was determined to have been included out-of-context and no changes were needed in response.

No public comments were received prior to the drafting of this memo. If any public comments are received before the Commission meeting, they will be included in the supplemental materials for this meeting.

If the Commission approves the revised draft rule, Commission staff will submit the revised draft rule and associated documents to the Governor for final approval before the rule is transmitted to the Legislature.

## **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. Commission staff anticipated working this rule into a broader rulemaking that would revise ETH 26 more comprehensively later that year. However, no comprehensive revision of ETH 26 was conducted in 2021.

At its meeting on June 15, 2022, the Commission directed staff to bring this matter back for a broader review of the Commission's settlement schedule along with a proposed scope statement. A copy of the current version of ETH 26 is attached for the Commission to review.

Commission staff has prepared the attached draft scope statement to begin the process of making the following changes to ETH 26:

1. Reduce the amounts sought for late reports by 50% if there was no activity during the applicable reporting period or the committee requested termination.
2. Treat late September reports similarly to late pre-primary or pre-election reports.
3. Create a new settlement schedule for late post-election reports.
4. Create a new settlement schedule for violations of the attribution requirement.

Another change that the Commission may wish to consider that is not incorporated in the current draft scope statement is whether the final SEI required by [Wis. STAT. § 19.43\(2m\)](#) merits a different treatment than other SEIs. The current settlement schedule would provide for a warning if a final SEI was filed within 15 calendar days of the due date.

[WIS. ADMIN. CODE ETH 26.04\(1\)\(a\)](#). If a final SEI was filed 16 or more calendar days after the due date, the current rule prescribes a settlement offer of \$100, plus \$100 for every additional 15 calendar days after the 16th calendar day following the due date. [WIS. ADMIN. CODE ETH 26.04\(1\)\(b\)](#). Arguably, a final SEI may merit a different schedule that escalates more quickly as a departing official may be harder to reach the further removed they are from state service. However, a countervailing argument may be that there is less harm in a late final SEI as the official is no longer holding a public position. Even if the Commission does not wish to treat the final SEI differently, it may be worth specifically mentioning the final SEI in the definition of an SEI in the rule so that no future official required to file can argue that the rule does not cover the final SEI. See [WIS. ADMIN. CODE ETH 26.01\(22\)](#).

If the Commission wishes to consider this or any other changes to ETH 26, Commission staff can amend the draft scope statement accordingly. If the Commission approves of the draft scope statement, the next step would be to send the scope statement to the Governor for initial approval. If the Governor approves the scope statement, Commission staff will send the scope statement to the Legislative Reference Bureau for publication in the Administrative Register, as well as to the Chief Clerks of each house of the Legislature. The co-chairs of the Joint Committee for the Review of Administrative Rules then have ten days to direct the Commission to hold a preliminary public hearing and comment period on the scope statement. If a preliminary public hearing on the scope statement is required, Commission staff will plan to hold that hearing at the Commission's next available meeting.

### **III. Attachments**

- A. ETH 21 – Legislative Council Report on Rule 22-052
- B. ETH 21 – Revised Draft Rulemaking Order
- C. ETH 21 – Fiscal Estimate and Economic Impact Analysis
- D. ETH 21 – Notice of Hearing
- E. ETH 21 – Notice of Submittal of Proposed Rule to Rules Clearinghouse
- F. ETH 26 – Current Version
- G. ETH 26 – Draft Scope Statement



# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

**Scott Grosz**  
Clearinghouse Director

**Anne Sappenfield**  
Legislative Council Director

**Margit Kelley**  
Clearinghouse Assistant Director

### CLEARINGHOUSE REPORT TO AGENCY

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

#### CLEARINGHOUSE RULE **22-052**

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.

Submitted by **ETHICS COMMISSION**

06-15-2022 RECEIVED BY LEGISLATIVE COUNCIL.

06-23-2022 REPORT SENT TO AGENCY.

MSK:KBO



**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

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

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES                             NO
  
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES                             NO
  
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES                             NO
  
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]  
Comment Attached            YES                             NO
  
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES                             NO
  
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES                             NO
  
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES                             NO



# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

**Scott Grosz**  
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Legislative Council Director

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Clearinghouse Assistant Director

### CLEARINGHOUSE RULE 22-052

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 2. Form, Style and Placement in Administrative Code

a. In s. ETH 21.03 (1), the section requires a complaint to contain certain content, including a concise statement of facts supporting each alleged violation that differentiates between personal knowledge and other information and belief under par. (c). However, the subsection does directly require a complaint to allege a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats., or to identify a particular statute that was violated. If the intent is to require complainants to clearly identify the violation at issue, this should be enumerated as a separate requirement under par. (c), and the requirement for “a concise statement of facts” should be renumbered as par. (d).

b. In s. ETH 21.03 (2) (intro.), a phrase indicating the applicability and relationship of the subunits should be added. For example, depending on the commission’s intent, the phrase “any of the following applies” could be inserted before the colon. [s. 1.11 (2), Manual.]

c. In s. ETH 21.03 (3), a subsection title should be inserted, for consistency with subs. (1) and (2). [s. 1.10 (2) (a) 2., Manual.]

d. In s. ETH 21.04 (1) (intro.) and (2) (intro.), it appears that the phrase “all of” should be inserted in both instances before the phrase “the following”. Also, in sub. (1) (b) (intro.), an introductory statement should be added to specify that the notice shall inform the complainant of any (or all?) of the following applicable information. The introductory statement should end with a colon. [s. 1.11 (2) and (3), Manual.]

e. In s. ETH 21.06 (intro.), the phrase “any of the following” should be added.

f. In s. ETH 21.30 (2) (a) (intro.) and 2. (intro.), introductory statements should be added, and each statement should end with a colon.

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

a. In s. ETH 21.02 (2) (c), the section requires the administrator to conduct a preliminary review of a complaint and dismiss the complaint if it fails to meet certain requirements, including that it “does not contain sufficient allegations”. Presumably, par. (c) refers to insufficient

allegations to establish that a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats., has potentially occurred. However, this could be stated explicitly.

b. In s. ETH 21.02 (5), the rule creates a definition of “formal opinion” that refers to an opinion issued under s. 19.46 (2) (c), Stats. The statutory language in par. (a) of that provision also allows for an individual to request formal advisory opinion. Should the definition of “formal opinion” refer to an opinion issued under s. 19.46 (2) (a) **and** those issued under par. (c)?

c. In s. ETH 21.02 (10), the rule creates a definition of respondent that means a “person” alleged to have committed a violation of campaign finance, lobbying, or ethics laws. Is this use of “person” intended to include committees, political parties, and conduits, which would allow complaints to be filed against these entities? Does the rule assume that the general definition of “person” under s. 990.01 (26), Stats., incorporates these entities and would permit complaints to be filed against them? Regardless, it may be helpful to a reader to create a separate definition of “person” within s. ETH 21.02 and to explicitly include a reference to these entities.

d. In s. ETH 21.30 (1) (b), the section requires any written advice issued by the administrator to be consistent with prior commission opinions, statutes, and case law “as required by s. 19.46 (2) (b) 1., Stats.”, in addition to constitutional law. The cited section does not require consistency with prior opinions, statutes, or case law. Instead, the cited section permits the administrator to issue informal written advice if authorized to do so by the commission. If the purpose of the citation is to indicate that the administrator may only issue written advice if authorized to do so by the commission, then this idea should be referenced earlier in the subsection.

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

a. In s. ETH 21.04, the introductory language and language of sub. (1) are inconsistent. The introductory language refers to events that must occur “after preliminary review of a complaint”, while subs. (1) and (2) require written notice within five days “of receipt of the complaint”. Is the intent that notice be sent within five days after the *preliminary review* is completed? Or, is the intent that the notice be sent within five days after the complaint is *received* (regardless of when the preliminary review occurs)? This should be clarified.

b. In s. ETH 21.06 (intro.), the rule provides that the administrator may request certain items “before a determination of reasonable suspicion”. Does this refer to the administrator making a determination of reasonable suspicion? Or, alternatively, does it simply allow the administrator to request certain information before the commission makes the reasonable suspicion determination? This should be clarified.

c. In s. ETH 21.06 (intro.), the rule permits the administrator to request certain information. Is the administrator requesting that the complainant provide this information? Is the administrator themselves obtaining the enumerated documents, e.g., requesting documents from a state agency or local government official? Does the rule intend to allow for either? This could be clarified.

d. In s. ETH 21.30, the section addresses requests for formal and informal opinions, but a reader may have difficulty determining the difference between the two. It may be helpful to state within the “General Provisions” section that a person may request either a formal or an informal opinion and potentially address the differences, such as the ability in the formal opinion process to request a hearing, and reiterating that the administrator issues some informal opinions while the commission itself issues formal opinions.

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 a formal advisory opinion issued by the commission under s. 19.46 (2) (a) or (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) “Person” includes any of the following:
  - (a) An individual.
  - (b) A candidate as defined by s. 11.0101(1), Stats.
  - (c) A candidate committee as defined by s. 11.0101 (2), Stats.
  - (d) A conduit as defined by s. 11.0101 (7), Stats.
  - (e) An independent expenditure committee as defined by s. 11.0101 (17), Stats.
  - (f) A legislative campaign committee as defined by s. 11.0101 (19), Stats.
  - (g) A political action committee as defined by s. 11.0101 (25), Stats.
  - (h) A political party as defined by s. 11.0101 (26), Stats.
  - (i) A recall committee as defined by s. 11.0101 (27), Stats.
  - (j) A referendum committee as defined by s. 11.0101 (28), Stats.
  - (k) An agency official as defined by s. 13.62 (3), Stats.
  - (L) An elective state official as defined by s. 13.62 (6), Stats.
  - (m) A legislative employee as defined by s. 13.62 (8m), Stats.
  - (n) A lobbyist as defined by s. 13.62 (11), Stats.
  - (o) A lobbying principal as defined by s. 13.62 (12), Stats.
  - (p) A local public official as defined by s. 19.42 (7x), Stats.
  - (q) An official required to file as defined by s. 19.42 (10), Stats.
  - (r) A state public official as defined by s. 19.42 (14), Stats.
  - (s) Any other person as defined by s. 990.01 (26), Stats.
- (9) “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.

- (10) “Reasonable suspicion” means specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant further investigation.
- (11) “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.
- (12) “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.
- (13) “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) An allegation of a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats.
  - (d) 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.
  - (e) 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.
  - (f) Any relevant documentation supporting the allegations, if available.
  - (g) The notarized signature of the complainant, the complainant’s attorney, or other authorized person filing the complaint on behalf of the complainant.
  - (h) 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 any of the following applies:
- (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 to establish that a violation of ch. 11, subch. III of ch. 13, or subch. III of ch. 19, Stats., has potentially occurred.
- (3) NOTICE OF DISMISSALS. 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), but within 5 calendar days of receipt of the complaint, the administrator shall:

- (1) Send a written notice to the complainant that provides all of 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 that provides all of 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 the commission makes a determination of reasonable suspicion, the administrator may request from any person any of the following:

- (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) A person may request either a formal or an informal advisory opinion of the commission. An informal opinion may be issued by the administrator and is issued only to the person requesting the opinion. A formal opinion is issued by the commission itself, allows an opportunity for a hearing, and the request and opinion are anonymized and published on the commission's Internet site.

(b) 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.

(c) 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.

(d) 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 if any of the following applies:

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. If the administrator issues an informal opinion on behalf of the commission, all of the following applies:

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<br><input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | 5. Chapter 20, Stats. Appropriations Affected<br>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**

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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

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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**

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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<br>David P. Buerger | 18. Contact Phone Number<br>(608) 267-0951 |
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**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

## Chapter ETH 26

## SETTLEMENT OFFER SCHEDULE

ETH 26.01 Definitions.  
ETH 26.02 Settlement of campaign finance violations.

ETH 26.03 Settlement of lobbying violations.  
ETH 26.04 Settlement of ethics violations.

**ETH 26.01 Definitions.** In this chapter:

(1) “15 day report” means the report referred to in s. 13.67, Stats.

(1m) “Business day” means any day Monday to Friday, excluding Wisconsin legal holidays as defined in s. 995.20, Stats.

(2) “Commission” means the Wisconsin Ethics Commission.

(3) “Continuing report” includes the campaign finance reports due in January and July referred to in ss. 11.0204 (2) (c), (3) (b), (4) (c) and (d), (5) (b) and (c), and (6) (a) and (b), 11.0304 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c), 11.0404 (2) (c) and (d) and (3) (b) and (c), 11.0504 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c), 11.0604 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c), 11.0704 (2), (3) (a), (4) (a) and (b), and (5) (a) and (b), 11.0804 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c), and 11.0904 (2) (c), (3) (b), (4) (c) and (d), and (5) (b) and (c), Stats.

(4) “Contribution” has the meaning given in s. 11.0101 (8), Stats.

(5) “Contributor” means a person or committee who makes a contribution.

(6) “Contributor information” includes the information required by ss. 11.0204 (1) (a) 1. and 3., 11.0304 (1) (a) 1. and 3., 11.0404 (1) (a) 1. and 3., 11.0504 (1) (a) 1. and 3., 11.0604 (1) (a) 1. and 3., 11.0704 (1) (b) 1. and 2., 11.0804 (1) (a) 1. and 2., and 11.0904 (1) (a) 1. and 3., Stats.

(7) “Disbursement” has the meaning given in s. 11.0101 (10), Stats.

(8) “Disbursement information” includes the information required by ss. 11.0204 (1) (a) 8., 11.0304 (1) (a) 8., 11.0404 (1) (a) 8., 11.0504 (1) (a) 8., 11.0604 (1) (a) 8., 11.0804 (1) (a) 7., and 11.0904 (1) (a) 8., Stats., regarding disbursements greater than \$20.

(9) “Excess contribution” means a contribution that exceeds any of the limits set in ss. 11.1101, 11.1104, 11.1107, and 11.1108, Stats.

(10) “Filing fee” means the fee required by s. 11.0102 (2), Stats.

(11) “Late contribution” means a contribution or contributions of \$1,000 or more cumulatively from a single contributor made later than 15 days prior to a primary or election as described in ss. 11.0204 (7), 11.0304 (7), and 11.0404 (4), Stats.

(12) “Late contribution report” includes the campaign finance reports referred to in ss. 11.0204 (7), 11.0304 (7), and 11.0404 (4), Stats., that are due no later than 72 hours after receiving a late contribution if the late contribution was not previously included in the registrant’s preprimary or preelection report.

(12m) “Lobbying communication” has the meaning given in s. 13.62 (10g), Stats.

(13) “Lobbyist” has the meaning given in s. 13.62 (11), Stats.

(14) “Post–election campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (3) (c) and (5) (d), 11.0304 (3) (c) and (5) (d), 11.0404 (3) (d), 11.0504 (3) (c) and (5) (d), 11.0604 (3) (c) and (5) (d), and 11.0704 (3) (b) and (5) (c), Stats., that are due no earlier than 23 days and no later than 45 days after a special election.

(15) “Preelection campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (2) (b), (3) (a), (4) (b), and (5) (a), 11.0304 (2) (b), (3) (a), (4) (b), and (5) (a), 11.0404 (2) (b) and (3) (a), 11.0504 (2) (b), (3) (a), (4) (b), and (5) (a), 11.0604 (2) (b), (3) (a), (4) (b), and (5) (a), 11.0804 (2) (b), (3) (a), (4) (b), and (5) (a), and 11.0904 (2) (b), (3) (a), (4) (b), and (5) (a), Stats., that are due no earlier than 14 days and no later than 8 days before an election.

(16) “Preprimary campaign finance report” includes the campaign finance reports referred to in ss. 11.0204 (2) (a) and (4) (a), 11.0304 (2) (a) and (4) (a), 11.0404 (2) (a), 11.0504 (2) (a) and (4) (a), 11.0604 (2) (a) and (4) (a), 11.0804 (2) (a) and (4) (a), and 11.0904 (2) (a) and (4) (a), Stats., that are due no earlier than 14 days and no later than 8 days before a primary.

(17) “Principal” has the meaning given in s. 13.62 (12), Stats.

(18) “Prior offense” means a previous violation of the same provision within the past 3 years.

(19) “Registrant” means an individual or organization registered with the ethics commission.

(20) “September report” includes the campaign finance reports due in September referred to in ss. 11.0204 (4) (d), (5) (c), and (6) (b), 11.0304 (4) (d) and (5) (c), 11.0404 (2) (d) and (3) (c), 11.0504 (4) (d) and (5) (c), 11.0604 (4) (d) and (5) (c), 11.0704 (4) (b) and (5) (b), 11.0804 (4) (d) and (5) (c), and 11.0904 (4) (d) and (5) (c), Stats.

(21) “Specific express advocacy report” includes the campaign finance reports referred to in ss. 11.0505, 11.0605, and 11.1001, Stats., that are due no later than 72 hours after making a disbursement on express advocacy during the period beginning on the day that is 60 days prior to the day of the primary or election and ending on the day of the primary or election.

(22) “Statement of economic interests” means a statement of economic interests that an individual is required to file under s. 19.43, Stats.

(23) “Statement of lobbying activity and expenditures” means the statement referred to in s. 13.68, Stats.

**History:** CR 17–035: cr., Register January 2018 No. 745 eff. 2–1–18; correction in (3), (6), (14), (15), (16), (20), made under s. 35.17, Stats., Register January 2018 No. 745; CR 20–019: cr. (1m), (12m) Register June 2021 No. 786, eff. 7–1–21.

**ETH 26.02 Settlement of campaign finance violations.**

(1) FAILURE TO TIMELY FILE A CONTINUING REPORT OR SEPTEMBER REPORT. (a) If the commission receives a continuing or September report within 30 calendar days after the due date for that report, the commission may issue a written warning to the registrant.

(b) If the commission receives a continuing or September report within 31 to 60 calendar days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:

1. If the registrant has committed no prior offenses, a settlement offer of \$100 may be extended.

2. If the registrant has committed a prior offense, a settlement offer of \$200 may be extended.

(c) If the commission receives a continuing or September report within 61 to 90 calendar days after the due date for that

report, the commission may extend a settlement offer to the registrant as follows:

1. If the registrant has committed no prior offenses, a settlement offer of \$200 may be extended.

2. If the registrant has committed a prior offense, a settlement offer of \$300 may be extended.

(d) If the commission receives a continuing or September report within 91 to 120 calendar days after the due date for that report, the commission may extend a settlement offer to the registrant as follows:

1. If the registrant has committed no prior offenses, a settlement offer of \$300 may be extended.

2. If the registrant has committed a prior offense, a settlement offer of \$400 may be extended.

(e) If the commission receives a continuing or September report more than 120 calendar days after the due date for that report, the commission may extend a settlement offer of \$500.

**(2) FAILURE TO TIMELY FILE A PREPRIMARY, PREELECTION, OR POST-ELECTION REPORT.** (a) If the commission receives a preprimary, preelection, or post-election report one calendar day after the due date for that report, the commission may extend a settlement offer of \$100.

(b) If the commission receives a preprimary, preelection, or post-election report 2 calendar days after the due date for that report, the commission may extend a settlement offer of \$150.

(c) If the commission receives a preprimary, preelection, or post-election report 3 calendar days after the due date for that report, the commission may extend a settlement offer of \$200.

(d) If the commission receives a preprimary, preelection, or post-election report 4 calendar days after the due date for that report, the commission may extend a settlement offer of \$250.

(e) If the commission receives a preprimary, preelection, or post-election report 5 calendar days after the due date for that report, the commission may extend a settlement offer of \$300.

(f) If the commission receives a preprimary, preelection, or post-election report 6 calendar days after the due date for that report, the commission may extend a settlement offer of \$350.

(g) If the commission receives a preprimary, preelection, or post-election report 7 calendar days after the due date for that report, the commission may extend a settlement offer of \$400.

(h) If the commission receives a preprimary, preelection, or post-election report 8 calendar days after the due date for that report, the commission may extend a settlement offer of \$450.

(i) If the commission receives a preprimary, preelection, or post-election report 9 or more calendar days after the due date for that report, the commission may extend a settlement offer of \$500.

**(3) FAILURE TO TIMELY PAY A FILING FEE.** (a) If the commission receives a filing fee within one to 15 calendar days after the due date, the commission may issue a written warning to the registrant.

(b) If the commission receives a filing fee within 16 to 45 calendar days after the due date, the commission may extend a settlement offer of \$300.

(c) If the commission receives a filing fee within 46 to 90 calendar days after the due date, the commission may extend a settlement offer of \$500.

(d) If the commission receives a filing fee more than 90 calendar days after the due date, the commission may extend a settlement offer of \$800.

**(4) FAILURE TO TIMELY FILE A LATE CONTRIBUTION REPORT.** If a registrant fails to timely file a late contribution report, the commission may extend a settlement offer of 5 percent of the total amount of the late contribution.

**(5) FAILURE TO TIMELY FILE A SPECIFIC EXPRESS ADVOCACY REPORT.** If a person fails to timely file a specific express advocacy

report, the commission may extend a settlement offer of 5 percent of the disbursement not timely reported.

**(6) FAILURE TO PROVIDE CONTRIBUTOR INFORMATION.** (a) If contributor information is not included on a campaign finance report, but is received within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.

(b) If contributor information is not included on a campaign finance report, but is received more than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the total amount of contributions with incomplete contributor information.

**(7) FAILURE TO PROVIDE DISBURSEMENT INFORMATION.** (a) If disbursement information is not included on a campaign finance report, but is received within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.

(b) If disbursement information is not included on a campaign finance report, but is received more than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the total amount of disbursements with incomplete disbursement information.

**(8) CASH BALANCE DISCREPANCIES.** If a registrant's cash balance at the beginning of a reporting period does not match the registrant's cash balance reported at the end of the prior reporting period; or the reported beginning balance of a report, plus all receipts, minus all expenditures, does not equal the reported ending balance of that report; and the cash balance is corrected:

(a) Within 30 calendar days after notification from the commission, the commission may issue a written warning to the registrant.

(b) More than 30 calendar days after notification from the commission, the commission may extend a settlement offer of \$100 plus 10 percent of the cash balance discrepancy.

**(9) EXCEEDING CONTRIBUTION LIMITS.** If a registrant receives an excess contribution, the commission may extend a settlement offer in the amount by which the contribution exceeded the applicable limit.

**(10) PROHIBITED CORPORATE, UNION, ASSOCIATION, OR TRIBAL CONTRIBUTIONS.** (a) If a registrant receives a contribution contrary to s. 11.1112, Stats., the commission may extend a settlement offer in the amount of 1.5 times the amount of the contribution, up to a maximum of \$500, plus surrendering the amount of the unlawful contribution.

(b) If a person makes a contribution contrary to s. 11.1112, Stats., the commission may extend a settlement offer in the amount of 1.5 times the amount of the contribution.

**(11) PROHIBITED LOBBYIST CONTRIBUTIONS.**

(a) If a candidate committee receives a contribution in violation of s. 13.625, Stats., the commission may extend a settlement offer requiring the return of the contribution to the lobbyist.

(b) If a lobbyist makes a contribution in violation of s. 13.625, Stats., the commission may extend a settlement offer in the amount of 1.5 times the amount of the contribution, up to a maximum of \$1,000.

**(12) AGGRAVATING OR MITIGATING CIRCUMSTANCES.** Notwithstanding the settlement offer amounts specified in this section, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

**History:** CR 17-035: cr., Register January 2018 No. 745 eff. 2-1-18; CR 20-019: am. (1) (a), (b) (intro.), (c) (intro.), (d) (intro.), (e), (2) (a) to (i), (3) (a) to (d), (6), (7), (8) (a), (b) Register June 2021 No. 786, eff. 7-1-21.

### ETH 26.03 Settlement of lobbying violations.

**(1) FAILURE TO TIMELY FILE A STATEMENT OF LOBBYING ACTIVITY AND EXPENDITURES.** (a) If the commission receives a statement of

lobbying activity and expenditures within 2 business days after the due date for that report:

1. If the principal has committed no prior offenses, no penalty may be imposed.

2. If the principal has committed a prior offense, the commission may issue a written warning to the principal.

(b) If the commission receives a statement of lobbying activity and expenditures within 3 to 5 business days after the due date for that report:

1. If the principal has committed no prior offenses, the commission may issue a written warning to the principal.

2. If the principal has committed a prior offense, the commission may extend a settlement offer of \$50.

(c) If the commission receives a statement of lobbying activity and expenditures within 6 to 15 business days after the due date for that report:

1. If the principal has committed no prior offenses, the commission may issue a written warning to the principal.

2. If the principal has committed a prior offense, the commission may extend a settlement offer of \$100.

(d) If the commission receives a statement of lobbying activity and expenditures within 16 to 29 business days after the due date for that report:

1. If the principal has committed no prior offenses, the commission may extend a settlement offer of \$50.

2. If the principal has committed a prior offense, the commission may extend a settlement offer of \$250.

(e) If the commission receives a statement of lobbying activity and expenditures 30 business days or more after the due date for that report:

1. If the principal has committed no prior offenses, the commission may extend a settlement offer of \$100.

2. If the principal has committed a prior offense, the commission may extend a settlement offer of \$500.

**(2) FAILURE TO TIMELY FILE A 15 DAY REPORT.** (a) If the commission does not timely receive a 15 day report and the principal has no prior offenses:

1. If the unreported interest is less than 10 percent of the principal's total effort, the commission may issue a written warning to the principal.

2. If the unreported interest is 10 percent or more of the principal's total effort, the commission may extend a settlement offer of \$25 per late reported interest.

(b) If the commission does not timely receive a 15 day report and the principal has one prior offense:

1. If the unreported interest is less than 10 percent of the principal's total effort, the commission may extend a settlement offer of \$50 per late reported interest.

2. If the unreported interest is 10 percent or more of the principal's total effort, the commission may extend a settlement offer of \$100 per late reported interest.

(c) If the commission does not timely receive a 15 day report and the principal has 2 or more prior offenses, the commission may extend a settlement offer of \$100 per late reported interest.

**(3a) UNAUTHORIZED LOBBYING.** If a lobbyist makes a lobbying communication on behalf of a lobbying principal prior to authorization as required by s. 13.65, Stats.:

(a) If the lobbyist has committed no prior offenses, the commission may extend a settlement offer of \$100 per unauthorized lobbying communication that occurred that reporting period on behalf of the principal, up to an aggregate total maximum of \$1,000 per principal per session.

(b) If the lobbyist has committed a prior offense, the commission may extend a settlement offer of \$200 per unauthorized lobbying communication that occurred that reporting period on

behalf of the principal, up to an aggregate total maximum of \$1,000 per principal per session.

(c) If the principal has committed no prior offenses, the commission may extend a settlement offer of \$200 per unauthorized lobbying communication that occurred that reporting period on behalf of the principal, up to an aggregate total maximum of \$2,000 per lobbyist per session.

(d) If the principal has committed a prior offense, the commission may extend a settlement offer of \$400 per unauthorized lobbying communication that occurred that reporting period on behalf of the principal, up to an aggregate total maximum of \$2,000 per lobbyist per session.

**(4) FAILURE TO TIMELY PAY LOBBYING FEES.** (a) *Lobbyist license fees.* 1. If the commission receives a lobbyist license fee within one to 30 calendar days after notification from the commission that fees are outstanding, the commission may issue a written warning to the lobbyist.

2. If the commission receives a lobbyist license fee within 31 to 45 calendar days after notification from the commission that fees are outstanding, the commission may extend a settlement offer of \$100.

3. If the commission receives a lobbyist license fee within 46 to 60 calendar days after notification from the commission that fees are outstanding, the commission may extend a settlement offer of \$200.

4. If the commission receives a lobbyist license fee more than 60 calendar days after notification from the commission that fees are outstanding, the commission may extend a settlement offer of \$300.

(b) *Lobbying principal registration fees or lobbying principal authorization fees.* 1. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within one to 30 calendar days after notification from the commission that fees are outstanding, the commission may issue a written warning to the principal.

2. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within 31 to 45 calendar days after notification from the commission that fees are outstanding, the commission may extend a settlement offer of \$200.

3. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee within 46 to 60 calendar days after notification from the commission that fees are outstanding, the commission may extend a settlement offer of \$400.

4. If the commission receives a lobbying principal registration fee or lobbying principal authorization fee more than 60 calendar days after notification from the commission that fees are outstanding, the commission may extend a settlement offer of \$600.

**(5) AGGRAVATING OR MITIGATING CIRCUMSTANCES.** Notwithstanding the settlement terms provided in this section, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

**History:** CR 17-035: cr., Register January 2018 No. 745 eff. 2-1-18; CR 20-019: am. (1) (b) (intro.), (c) (intro.), (d) (intro.), (e) (intro.), renum. (3) to (5), cr. (3a), (4) Register June 2021 No. 786, eff. 7-1-21.

**ETH 26.04 Settlement of ethics violations. (1) FAILURE TO TIMELY FILE A STATEMENT OF ECONOMIC INTERESTS.** (a) If the commission receives a statement of economic interests within 15 calendar days after the due date for the statement of economic interests, the commission may issue a written warning to the individual.

(b) If the commission receives a statement of economic interests 16 or more calendar days after the due date for the statement of economic interests, the commission may extend a settlement



offer of \$100, plus \$100 for every additional 15 calendar days after the 16th calendar day following the due date.

**(2) AGGRAVATING OR MITIGATING CIRCUMSTANCES.** Notwithstanding the settlement terms provided in this section, the commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer that may be extended.

**History:** CR 17-035; cr., Register January 2018 No. 745 eff. 2-1-18; CR 20-019: am. (1) Register June 2021 No. 786, eff. 7-1-21.

**STATEMENT OF SCOPE  
PURSUANT TO WIS. STAT. § 227.135  
WISCONSIN ETHICS COMMISSION**

**Rule No.:** ETH Ch. 26

**Relating to:** Ethics Commission Settlement Schedule

**Rule Type:** Permanent

**1. Detailed description of the objective of the proposed rule:**

The Commission proposes a rule to amend Wis. Admin. Code ETH 26 to further its compliance with the requirement of Wis. Stat. § 19.49(2)(b)10. This statute requires the Commission to prescribe, by rule, categories of civil offenses which the Commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The Commission may only settle alleged offenses, which in the opinion of the Commission, constitute a minor violation, a violation caused by excusable neglect, or which for other good cause shown is not in the public interest to prosecute. The Commission proposes to amend its existing settlement schedules for late reports to reduce the amounts sought by 50% if there was no activity during the applicable reporting period or where the committee has requested termination. The Commission also proposes to amend its existing settlement schedule for late reports to include treat a late September report similarly to a late pre-primary or pre-election report. Finally, the Commission proposes to create new settlement schedules for late post-election reports and violations of the attribution requirement.

**2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Reductions for Committees with No-Activity or Committees Requesting Termination

Currently, the standard settlement schedule provides that notwithstanding the settlement offer amounts specified, the Commission may consider aggravating or mitigating circumstances in determining the terms of any settlement offer. Two of the most common mitigating factors are that the committee had no activity during the reporting period or is requesting termination.

If a committee has no activity during the reporting period, the lack of timely disclosure presents much less harm than if there were contributions, disbursements, or obligations during the reporting period that were not timely reported.

Termination is only available to a committee once it has no further outstanding obligations and has reduced its cash balance to zero. Committees seeking termination commonly have little funds remaining and the only activity ultimately reported are the transactions necessary to reduce the committee's cash balance to zero. A common way to



reduce a committee's cash balance to zero is to issue refunds of contributions to contributors. The reporting of such refunds has limited public value as the identities of these contributors have already been reported when they originally contributed to the committee and no new information is provided.

### Late September Reports

Under the current settlement schedule, September reports are treated similarly to continuing reports. However, the September report is only due in even-numbered years to cover the period between the Pre-primary and Pre-election reports. The fact that it is only due in even-numbered years during this specific period makes it more akin to an election-specific report than the January and July Continuing reports, which are due every year from every registrant. The September report is also more time sensitive. For example, in 2022, the September report is due on September 27th and the Pre-election report is due on October 31st. If a registrant filed its September report on October 27<sup>th</sup> (30 days late), the current settlement schedule would only result in a warning. If a registrant filed its September report the day after the general election, the current settlement schedule would only seek a \$100 penalty. If the September report is intended to provide timely disclosure of transactions between the Pre-primary and Pre-election reports, the settlement schedule should escalate more quickly to deter delayed disclosure. As such, the Commission seeks to amend the rule to treat late September reports similarly to late Pre-primary and Pre-election reports.

### Late Special Post-election Reports

Special post-election reports cover the period beginning 14 days prior to a special election and ending 22 days after a special election. These reports are due 45 days after the special election if no continuing report is due in that same window. Under the current settlement schedule post-election reports are treated similarly to Pre-primary and Pre-election reports. However, as the report is not due until 45 days after the election, this report appears to fill the same role as the January Continuing report does after a General Election by disclosing the activity two weeks prior to the election, and any activity after the election, several weeks later. As such the Commission proposes to create a new schedule for Special post-election reports that would more accurately reflect the amounts appropriate to a late filing of this type.

### Violations of the Attribution Requirement

Wisconsin law requires that every communication containing express advocacy which is paid for by any contribution or disbursement, clearly identify its source by including the words "Paid for by" followed by the name of the committee making the payment or reimbursement or assuming responsibility for the communication. It also requires every communication for express advocacy the cost of which exceeds \$2,500 and is paid for or reimbursed by any person, other than a registrant, to similarly identify its source. This language is required to be readable, legible, and readily accessible. This required language is referred to as an attribution. The current settlement schedule does not address violations of the attribution requirement. Complaints regarding missing or noncompliant

attributions have grown to be one of the most common types of complaint the Commission receives. Committees that fail to include an attribution or include a noncompliant attribution are commonly first-time registrants and local candidates. Upon receiving notice that their material is noncompliant, most offenders have promptly taken remedial action to correct their error or omission. The Commission proposes to create a settlement schedule that would address these common violations and encourage prompt remedial action where appropriate.

**3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

The Wisconsin Ethics Commission is specifically directed to promulgate this rule pursuant to Wis. Stat. § 19.49(2)(b)10.

**10.** The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender.

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

Wis. Stat. § 11.1304(17):

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

Wis. Stat. § 19.48(1):

**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.

Wis. Stat. § 227.11(2)(a):

**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.

**4. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The Commission estimates that it will use approximately 0.05 FTE staff to develop this rule. This includes time required for research, rule drafting, preparing related documents,

coordinating stakeholder meetings, holding public hearings, legislative review and adoption, and communicating the final rule with affected persons and groups. The Commission will use existing staff resources to develop this rule.

**5. List with description of all entities that may be affected by the proposed rule:**

Candidates, political parties, and other registered committees, as well as the general public may be affected by the proposed rule.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The Wisconsin Ethics Commission is unaware of any existing or proposed federal regulation that is applicable to this rule.

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The Wisconsin Ethics Commission anticipates the rule having no economic impact beyond the specified amounts proposed to be forfeited in the event of a violation. The settlement schedule is designed to deprive the alleged violator of any benefit and serve as a deterrent to violations. This proposed rule includes no significant economic impact on small businesses.

**Contact person:** David P. Buerger  
david.buerger@wisconsin.gov (608) 267-0951

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Daniel A. Carlton, Jr.  
Administrator  
Wisconsin Ethics Commission

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Date Submitted





# Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics  
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**DATE:** For the Commission Meeting on August 30, 2022

**TO:** Members, Wisconsin Ethics Commission

**FROM:** Ethics Commission Staff

**SUBJECT:** Ethics Commission Staff Report

## Commission Administration

### Lobbying Website

So far, most of the feedback on the new website has been positive. As with any website changes, some users may prefer the old ways of inputting certain information. Staff has received some feedback along those lines regarding how lobbyists input their time into the system. We are looking into a way to accommodate those wishes before the January 2023 SLAE is due. Staff plans on surveying users later this month 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.

### Trainings

Since the last Commission meeting, staff has conducted two campaign finance related trainings. The first was on June 22, 2022. The target audience of that training were treasurers and administrators of PACs, IECs, and conduits. Additionally, staff conducted a training on June 30, 2022, for County Clerks and Local Fall Candidates. Staff also conducted training on the new lobbying website on July 12, 2022.

Staff has several more trainings scheduled for September 2022.

## Campaign Finance

The July Continuing 2022 report was due July 15, 2022. This is a mandatory report for all committee registered with our office, that have not claimed the exemption from filing campaign finance reports (under \$2,000 per year). We had 1121 committees required to file the July Continuing 2022 report. There were 89%, or 1002 reports file on time, with 63 filing late and 56 (5%) still outstanding. Staff has sent multiple email reminders and has been attempting to contact candidates and treasurers by phone to get the reports filed.

All candidates and committees active in the 2022 Fall Primary were required to file the Fall Pre-Primary report by August 1, 2022. There were 296 candidates required to file, with 96% (285) filing on time. The remaining 11 candidates have since filed their report and received the standard settlements for filing late.

Future filings are the September 2022 report, which is required of all committees supporting or opposing a candidate for the Fall 2022 elections. This report covers all activity through August 31, 2022. This report is due September 27, 2022.

## **Lobbying**

### 2021-2022 Legislative Session

The Statement of Lobbying Activity and Expenditures (SLAE) covering January-June 2022 was due on August 1, 2022. A total of 823 principals were required to file the report, with 807 (98%) filing on time. An additional 13 principals filed late and 3 SLAEs are still outstanding. Staff has made multiple attempts to contact non-filers by phone and email.

The next SLAE covering July-December 2022 will be due on January 31, 2023.

As of August 17, 2022, there are 660 lobbyists licensed, 837 principals registered, and 1,677 lobbyist authorizations.

### Legislative Liaison Reporting

The last 6-month legislative liaison report was due August 1, 2022. Out of 90 agencies, 77 filed by the due date. As of August 16<sup>th</sup>, four agencies have yet to file. Staff will continue to follow up until all reports are filed.

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

### Statements of Economic Interests (SEIs)

Annual Statements of Economic Interests were due by May 2, 2022. 5 settlements have been issues, and a few appeals will be handled in closed session. Two annual SEIs are still outstanding.

Candidates on the November 2022 ballot had to file an SEI by June 6, 2022. All candidates who turned in nomination papers with the Elections Commission turned in the SEI by the deadline.

In April 2022, a new law was passed that requires any SEI filer who leaves office to 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. As of August 16<sup>th</sup>, 81 filers have filed a final SEI and seven final SEIs are pending.

### State of Wisconsin Investment Board Quarterly Reports

The 2022 second quarter reports were due by August 1, 2022. All SWIB filers filed within the grace period and staff referred the Quarterly Reports to the Legislative Audit Bureau on August 16, 2022. The next Quarterly Reports are due October 31, 2022.